53-1-105. Food deemed misbranded.

(a) A food shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is offered for sale under the name of another food;

(3) It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation," and immediately thereafter, the name of the food imitated;

(4) Its container is so made, formed or filled as to be misleading;

(5) In package form, unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that under this subdivision (5) reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the commissioner;

(6) Any word, statement or other information required by this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness, as compared with other words, statements, designs or devices, in the labeling, and such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) It purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided in § 53-1-205, unless:

(A) It conforms to the definition and standard; and

(B) Its label bears the name of the food specified in the definition and standard, and insofar as may be required by the regulations, the common names of optional ingredients, other than spices, flavorings and coloring, present in the food;

(8) It purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by § 53-1-205 and its quality falls below the standard, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below the standard, or standard of fill of container applicable to the food;

(9) It is not subject to subdivision (7), unless its label bears:

(A) The common or usual name of the food, if there is one; and

(B) In case it is fabricated from two (2) or more ingredients, the common or usual name of each ingredient; except that spices, flavorings and colorings, other than those sold as spices, flavoring and colorings, may be designated as spices, flavorings and colorings, without naming each; provided, that to the extent that compliance with the requirements of this subdivision (9)(B) is impractical or results in deception or unfair competition, exemption shall be established by regulations promulgated by the commissioner. The requirements of this subdivision (9)(B) shall not apply to any carbonated beverage, the ingredients of which have been fully and correctly disclosed, to the extent prescribed by this subdivision (9)(B), to the commissioner in an affidavit;

(10) It purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral and other dietary

properties that the commissioner determines to be, and by regulations prescribes, as necessary in order to fully inform purchasers as to its value for special dietary uses; or

(11) It bears or contains any artificial flavoring, artificial coloring or chemical preservatives, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this subdivision (11) is impracticable, exemptions shall be established by regulations promulgated by the commissioner. This subdivision (11) with respect to artificial coloring shall not apply in the case of butter, cheese or ice cream.

(b)(1) Any poultry, poultry product, meat, or meat food product offered for sale, sold, or distributed in this state and labeled or advertised as "Tennessee-raised" or by a similar designation is misbranded if the poultry or animal was not raised in this state.

(2) The commissioner may waive a determination that poultry, a poultry product, meat, or a meat food product is misbranded under subdivision (b)(1) upon application of the producer or processor, if the commissioner finds that a waiver is warranted due to economic factors, including, but not limited to, the proximity of processing facilities to the producer and the availability of processing facilities in this state.

(3) As used in this subsection (b):

(A) "Meat", "meat food products", "poultry", and "poultry products" have the same meanings as defined in § 53-7-202; and

(B) "Tennessee-raised" means:

(i) For poultry and poultry products, that the poultry was raised solely in this state from no later than the seventh day after hatching and processed solely in this state; and

(ii) For meat and meat food products, that the animal was born, raised, and processed solely in this state.

53-1-207. Authority to promulgate regulations — Hearings — Notice.

(a)(1) The authority to promulgate regulations for the efficient enforcement of this chapter is vested in the commissioner.

(2) The commissioner is authorized to make regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this chapter shall be conducted by the commissioner or an officer, agent or employee that the commissioner designates for the purpose of hearings.

(c)(1) Before promulgating any regulation contemplated by §§ 53-1-105(a)(10), 53-1-108(4), 53-1-109(a)(6)-(8), 53-1-113(b), 53-1-205 or 53-1-206, the commissioner shall give a thirty-day notice of the proposal and of the time and place for a hearing.

(2) The regulation promulgated shall become effective on a date fixed by the commissioner, which date shall not be prior to ninety (90) days after its promulgation.

(3) The regulations may be amended or repealed in the same manner as is provided for their adoption; provided, that, in the case of a regulation amending or repealing a regulation, the commissioner, to the extent the commissioner deems necessary in order to prevent undue hardships, may disregard subdivisions (c)(1) and (2) regarding notice, hearing or effective

date.

(d) Storage, transportation and processing practices and standards of composition of perishable food products, including meats, poultry and seafood, shall conform to regulations set forth under this section.

(e) Regulations shall prescribe, when necessary, code dating, open dating, or both, as well as uniform unit pricing systems. The regulations shall be consistent with federal requirements.

53-1-208. Inspections — Examination of specimens.

(a) The commissioner or the commissioner's duly authorized agent shall have free access at all reasonable hours to any factory, warehouse or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed or held for introduction into commerce, or to enter any vehicle being used to transport or hold the foods, drugs, devices or cosmetics in commerce, for the purpose of:

(1) Inspecting the factory, warehouse, establishment or vehicle to determine if this chapter is being violated; and

(2) Securing samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for the sample. It is the duty of the commissioner to make or cause to be made examination of samples secured under this section to determine whether or not this chapter is being violated;

(b) Except as provided in subsection (d), no person shall manufacture, process, pack, or hold food for introduction into commerce unless the person holds a valid license issued by the commissioner. Applicants for licensure shall submit an application for the license on forms provided by the commissioner. The commissioner may issue a license to an applicant only upon receipt of the proper license fee and an inspection of the applicant's facility that indicates the applicant is in compliance with the requirements of this part and the rules promulgated thereunder. Licenses issued under this section shall expire on July 1 of each year or as the commissioner may otherwise provide by rule. The commissioner shall set annual fees for licenses issued under this section by rule pursuant to § 43-1-703. Notwithstanding § 43-1-704(b), the commissioner shall set fees for licenses issued under this section on or before April 1, 2018.

(c) The commissioner shall set by rule pursuant to § 43-1-703 a fee for a certificate of free sale.

(d) No license shall be required under this section for any person who manufactures, processes, packs, or holds food for introduction into commerce, if:

(1) The food is not potentially hazardous, as defined by departmental regulation;

(2) The person is not subject to any license or permit requirements under § 53-3-105, § 53-3-106, § 53-7-216, § 53-7-220, or § 53-8-206;

(3) The person introduces food into commerce only through direct retail sales to end consumers in the state;

(4) The person employs no regular, full-time employees for the manufacturing, processing, packing, or holding of food; and

(5) Prior to introducing the food into commerce, the person labels the food in accordance with this part and regulations promulgated by the commissioner.

(e) Exemption from licensure requirements under this section shall not be

construed to exempt any person from any other regulations applicable to the manufacturing, processing, packing, or holding of food for introduction into commerce, including, but not limited to, requirements regarding recordkeeping, sanitary operation, and availability for inspection by agencies charged with enforcing food safety laws.

(f) A license shall not be required for the operation of a farm to consumer distribution point; provided, that the operator of the farm to consumer distribution point:

(1) Has registered the farm to consumer distribution point with the department of revenue for purposes of paying the sales tax under any agreement entered into between a farmer and a consumer pursuant to which the farmer or the farmer's agent delivers food, produced by the farmer and previously sold to the consumer by the farmer, directly to the consumer or the consumer's agent at the farm to consumer distribution point; and

(2) Agrees to only allow deliveries of meats produced by farmers who comply with the Tennessee Meat and Poultry Inspection Act, compiled in chapter 7, part 2 of this title to be made at the farm to consumer distribution point.

53-2-101. [Repealed.]

53-2-102. [Repealed.]

53-2-103. [Repealed.]

53-2-104. [Repealed.]

53-2-105. [Repealed.]

53-2-106. [Repealed.]

53-2-107. [Repealed.]

53-2-108. [Repealed.]

53-2-109. [Repealed.]

53-2-110. [Repealed.]

53-2-111. [Repealed.]

53-2-112. [Repealed.]

53-2-113. [Repealed.]

53-2-114. [Repealed.]

53-2-115. [Repealed.]

53-2-116. [Repealed.]

53-3-119. Use of milk from hoofed mammal for owner's personal consumption or use — Safe milk-handling course — Cooperative agricultural extension funding — Records — Penalty.

(a) As used in this section:

(1) "Department" means the department of health; and

(2) "Farm owner" means a farm owner who tends to one (1) or more hoofed mammals for the purpose of producing milk to be consumed or otherwise used by an independent or partial owner of the hoofed mammal as authorized by subsection (b).

(b) Notwithstanding any law, an independent or partial owner of a hoofed mammal may use the milk from the mammal for the owner's personal consumption or other personal use in compliance with this section.

(c) A farm owner is encouraged to complete a safe milk-handling course offered by the University of Tennessee Agricultural Extension Service.

(d) If a farm owner complies with this section, then the farm owner may participate in the cooperative agricultural extension fund, created by § 49-50-103, for the purpose of receiving cooperative agricultural extension funding for dairy equipment and processing equipment that promotes public health, including, but not limited to, equipment for pasteurizing, testing, and bottling

milk.

(e) In order to operate in a herd share program, a farm owner shall:

(1) Maintain a list of the names, addresses, phone numbers, and email addresses, if applicable, of all partial owners of a hoofed mammal;

(2) Maintain a contract on file between the farm owner and the partial owner of the hoofed mammal with clear terms of ownership and the rights resulting from that ownership; and

(3) Maintain a contract as described in subdivision (e)(2) that includes the following warning label:

WARNING: Milk produced at this farm has not been inspected by the Department of Agriculture. Raw (unpasteurized) milk may contain disease-causing micro-organisms. Persons at highest risk of disease from these organisms include newborns and infants; the elderly; pregnant women; those taking corticosteroids, antibiotics, or antacids; and those having chronic illnesses or other conditions that weaken their immunity.

(f) A farm owner shall retain the records described in subsection (e) for each partial owner of a hoofed mammal for at least three (3) years following the end of the contract with that partial owner. A farm owner shall allow the department to inspect the records maintained according to subsection (e) upon request by the department.

(g) If a contamination event occurs on a farm owner's farm, then the farm owner shall:

(1) Allow the department access to the farm within twenty-four (24) hours following the contamination event to investigate on the farm and to complete lab testing;

(2) Cease all distribution of milk pursuant to this section until the investigation is completed and the cause of the contamination is determined and remedied to the satisfaction of the department; and

(3) Notify all partial owners of hoofed mammals by email, text message, or phone and provide a list of those partial owners to the department.

(h) If a farm owner violates this section, then the farm owner is subject to a civil penalty of five hundred dollars ($500).

(i) All moneys collected pursuant to this section must be transferred to the University of Tennessee Agricultural Extension Service for the sole purpose of offsetting the cost to farm owners for completing a course described in subsection (c).

53-11-311. Use of buprenorphine products.

(a) Any product containing buprenorphine, whether with or without naloxone, may only be prescribed for a use recognized by the federal food and drug administration. This subsection (a) shall not apply to a person:

(1) Who has a documented diagnosis of opiate addiction as shown in their medical record;

(2) Who receives treatment from a provider practicing under 21 U.S.C. § 823(g)(2); and

(3) Who is counted against the total number of patients allowed to the provider as set forth in 21 U.S.C. § 823(g)(2).

(b)(1) Any prescription for buprenorphine mono or for buprenorphine without use of naloxone for the treatment of substance use disorder shall only be permitted to a patient who is:

(A) Pregnant;

(B) A nursing mother;

(C) Has a documented history of an adverse reaction or hypersensitivity to naloxone; or

(D) Directly administered the buprenorphine mono or buprenorphine without use of naloxone by a healthcare provider, acting within the healthcare provider's scope of practice, for the treatment of substance use disorder pursuant to a medical order or prescription order from a physician licensed under title 63, chapter 6 or 9; provided, however, that this subdivision (b)(1)(D) does not permit buprenorphine mono or buprenorphine without use of naloxone to be dispensed to a patient in a manner that would permit it to be administered away from the premises on which it is dispensed.

(2) If the prescriber of buprenorphine mono or buprenorphine without use of naloxone for a patient under subdivision (b)(1)(A) or (b)(1)(B) is not the patient's obstetrical or gynecological provider, the prescriber shall consult with the patient's obstetrical or gynecological provider to the extent possible to determine whether the prescription is appropriate for the patient.

(c)(1) Notwithstanding any other provision of this title, and except as otherwise provided in subdivision (c)(2), a physician licensed under title 63, chapter 6 or 9, is the only healthcare provider authorized to prescribe any buprenorphine product for any federal food and drug administration approved use in recovery or medication-assisted treatment.

(2) Healthcare providers not licensed pursuant to title 63, chapter 6 or 9, and who are otherwise permitted to prescribe Schedule II or III drugs under this title, are prohibited from prescribing any buprenorphine product for the treatment of opioid use disorder unless the provider:

(A) Is licensed and has practiced as a family, adult, or psychiatric nurse practitioner or physician assistant in this state;

(B) Has had no limitations or conditions imposed on the provider's license by the provider's licensing authority within the previous three (3) years;

(C) Is employed by a community mental health center, as defined in § 33-1-101, or a federally qualified health center, as defined in § 63-10-601(a), that employs one (1) or more physicians and has adopted clinical protocols for medication-assisted treatment;

(D) Is employed at a facility at which healthcare providers are contracted and credentialed with TennCare and TennCare's managed care organizations to treat opioid use disorder with buprenorphine products for use in recovery or medication-assisted treatment;

(E) Is employed at a facility at which healthcare providers are accepting new TennCare enrollees or patients for treatment of opiate addiction;

(F) Is employed by a facility that requires patients to verify identification;

(G) Does not write any prescription for a buprenorphine product that exceeds a sixteen-milligram daily equivalent;

(H) Does not prescribe or dispense a mono product or buprenorphine without naloxone;

(I) Works under the supervision of a physician who holds an active federal Drug Addiction Treatment Act of 2000 (DATA 2000) waiver registration from the federal drug enforcement agency that authorizes the

physician to prescribe buprenorphine products and is actively treating patients with buprenorphine products for recovery or medication-assisted treatment;

(J) Obtains a waiver registration pursuant to the federal Drug Addiction Treatment Act of 2000 (DATA 2000) from the federal drug enforcement agency that authorizes the provider to prescribe buprenorphine products under federal law;

(K) Prescribes buprenorphine products only to patients who are treated through the organization that employs the provider;

(L) Is supervised by or collaborates with a physician who is limited to the supervision of, or collaboration for, a maximum of four (4) licensed nurse practitioners or physician assistants;

(M) Is supervised by or collaborates with a physician who reviews one hundred percent (100%) of the charts of the patients being prescribed a buprenorphine product;

(N) Weighs the risk of relapse with the benefit of tapering down or off of buprenorphine when, similar to other disease states, tapering from the treatment medication is clinically appropriate and in agreement with the patient and tapering schedules and durations are patient specific. Providers shall initiate and lead a discussion regarding patient readiness to taper down or taper off treatment medications employed in the patient's treatment with each patient at any time upon the patient's request but no later than one (1) year after initiating treatment and then every six (6) months thereafter;

(O) Writes prescriptions that can only be dispensed by a licensed pharmacy to ensure entry into the controlled substance database; and

(P) Writes prescriptions of buprenorphine products to fifty (50) or fewer patients at any given time.

(d)(1) A prescriber who treats a patient with more than sixteen milligrams (16 mg) per day of buprenorphine or its therapeutic equivalent for more than thirty (30) consecutive days for treatment of opioid dependence shall clearly document in the patient's medical record why the patient needs the higher dosage amounts of buprenorphine. A prescriber who does not meet the requirements established in the manner described in subdivision (d)(2) and treats a patient with more than twenty milligrams (20 mg) per day of buprenorphine or its therapeutic equivalent for more than thirty (30) consecutive days for treatment of opioid dependence shall, to the extent possible, either consult with an addiction specialist meeting the requirements established in the manner described in subdivision (d)(2) or refer the patient to the addiction specialist for management of the patient's treatment plan. If a prescribing physician cannot make the required consultation or referral as outlined in this subsection (d), the reasons shall be set out in the medical record.

(2) The board of medical examiners and the board of osteopathic examination shall promulgate rules establishing the requirements for licensees to qualify as addiction specialists.

(e) This section shall not apply to perioperative surgery or ventilator sedation that is performed in a licensed healthcare facility set forth in § 68-11-201(3) or (26).

(f) When patients are admitted as inpatients of a hospital, or registered as outpatients of a hospital, prescribers may continue orders for these drug

products as part of a medication reconciliation process to continue home medications as previously prescribed and without restrictions pertaining to the use of the product until the patient is discharged from the facility. However, prescriptions written upon discharge from the facility and intended to be filled by the patient at a retail pharmacy and consumed post-discharge shall follow the requirements of this section.

(g)(1)(A) Notwithstanding any other law, the dispensing of buprenorphine products is prohibited by any person or entity unless the dispensing is done by a nonresidential office-based opiate treatment facility, as defined in § 33-2-402, with approval from the department of mental health and substance abuse services, a nonresidential substitution-based treatment center for opiate addiction as defined in § 33-2-402, a pharmacy licensed under title 63, chapter 10, or a hospital licensed under title 33, or title 68, chapter 11. This subsection (g) does not apply to the administering of buprenorphine products as otherwise permitted by law.

(B) A pharmacy and a distributor, as defined in § 63-10-204, shall report to the department of health the quantities of buprenorphine that the pharmacy or distributor delivers to nonresidential office-based opiate treatment facilities in this state.

(2) The department of mental health and substance abuse services shall promulgate rules to establish requirements for approval of dispensing of buprenorphine products at a nonresidential office-based opiate treatment facility as defined in § 33-2-402. These rules shall include a requirement that a provider who dispenses buprenorphine products at a nonresidential office-based opiate treatment facility must report the fact that the provider dispenses buprenorphine products to the provider's licensing board, check the controlled substance database prior to dispensing, and enter the amounts dispensed into the controlled substance database, to the extent permitted by 42 CFR part 2.

(h)(1) Notwithstanding subsection (c), this subsection (h) controls the prescription of buprenorphine products by any healthcare provider licensed under title 63, chapter 7 or 19, who is employed by or contracted with a nonresidential office-based opiate treatment facility, as defined in § 33-2-402.

(2) A healthcare provider licensed under title 63, chapter 7 or 19, may prescribe a buprenorphine product, as approved by the federal food and drug administration for use in recovery or medication-assisted treatment if:

(A) The provider works in a nonresidential office-based opiate treatment facility, as defined in § 33-2-402, that is licensed by the department of mental health and substance abuse services and that does not have authority to dispense buprenorphine products;

(B) The provider practices under the direct supervision of a physician who is licensed under title 63, chapter 6 or chapter 9; holds an active Drug Addiction Treatment Act of 2000 (DATA 2000) waiver from the United States drug enforcement administration; and is actively treating patients with buprenorphine products for recovery or medication-assisted treatment at the same nonresidential office-based opiate treatment facility, as defined in § 33-2-402, as the provider;

(C) The facility and its healthcare providers are contracted and credentialed with TennCare and TennCare's managed care organizations to treat opioid use disorder with buprenorphine products for use in recovery or

medication-assisted treatment;

(D) The facility or its healthcare providers are directly billing TennCare and TennCare's managed care organizations for the services provided within the facility;

(E) The facility or its healthcare providers are accepting new TennCare enrollees or patients for treatment of opiate addiction;

(F) The provider does not write any prescription for a buprenorphine product that exceeds a sixteen-milligram daily equivalent;

(G) Except as provided in subdivision (h)(2)(H), the provider does not prescribe or dispense a mono product or buprenorphine without naloxone;

(H) The provider uses injectable or implantable buprenorphine formulations in accordance with subdivision (b)(1)(D);

(I) The provider has practiced as a family, adult, or psychiatric nurse practitioner or physician assistant in this state;

(J) The provider obtains a waiver registration from the United States drug enforcement administration that authorizes the provider to prescribe buprenorphine products under federal law and regulations;

(K) The provider prescribes buprenorphine products only to patients who are treated through a nonresidential office-based opiate treatment facility, as defined in § 33-2-402, that employs or contracts with the provider;

(L) The provider writes prescriptions of buprenorphine products that can only be dispensed by a licensed pharmacy to ensure entry into the controlled substance monitoring database;

(M) The provider writes prescriptions of buprenorphine products to one hundred (100) or fewer patients at any given time;

(N) When providing direct supervision, the physician does not oversee more than two (2) providers licensed under title 63, chapter 7 or 19, at one (1) time during clinical operations; and

(O) The supervising physician ensures all rules of operation for a nonresidential office-based opiate treatment facility, as defined in § 33-2-402; the Tennessee Nonresidential Buprenorphine Treatment Guidelines as established by the department of mental health and substance abuse services and the department of health; and all other state laws, rules, and guidelines regarding use of buprenorphine products for medication assisted treatment are followed.

53-11-312. Educational materials for providers and facilities where medication assisted treatment is prescribed or provided.

(a) No later than January 1, 2021, the departments of health and mental health and substance abuse services, and the bureau of TennCare shall collaborate to develop educational materials for providers and facilities where medication assisted treatment including treatment involving controlled substances is prescribed or provided. The educational materials shall include the following:

(1) Access to and availability of family planning services and contraception;

(2) Risks and effects of neonatal abstinence syndrome; and

(3) Approaches to client-centered counseling.

(b) The departments of health and mental health and substance abuse

services and the bureau of TennCare shall make the educational materials available to prescribers of medication assisted treatment and facilities that use medication assisted treatment for the treatment of substance use disorder.

53-11-313. Payment for buprenorphine products.

(a) Except as provided in subsection (b), a healthcare prescriber of a buprenorphine product for use in recovery or medication-assisted treatment, or a nonresidential office-based opiate treatment facility, as defined in § 33-2-402, shall only accept a check, money order, or debit card or credit card that is linked to a bank or credit card account from a financial institution, in payment for services provided by the healthcare prescriber or facility. Use of prepaid debit cards, prepaid credit cards, gift cards, or any other card not linked with a bank or credit card account from a financial institution is prohibited. As used in this subsection (a), "financial institution" means a state or national bank, a state or federally chartered credit union, or a savings bank.

(b) A healthcare prescriber or facility described in subsection (a) may accept payment for services provided to a patient by the prescriber or facility in cash for a co-pay, coinsurance, or deductible if the prescriber or facility submits the remainder of the bill for the services provided to the patient's insurance plan for reimbursement. If the patient does not have an insurance plan, then the healthcare prescriber or facility shall not accept cash as payment for services provided.

(c) No healthcare provider, licensed by title 63, chapter 6, 7, 9, or 19, shall be compensated or receive payment for services related to buprenorphine treatment:

(1) By which the provider receives an amount per patient that is treated within the office or other setting; or

(2) By any means by which the provider receives a percentage of a payment that is directly received by a patient to the office, nonresidential office-based opiate treatment facility, as defined in § 33-2-402, or other provider.

(d) A healthcare provider licensed under title 63, or a nonresidential office-based opiate treatment facility, as defined in § 33-2-402, shall not knowingly treat any TennCare enrollee with buprenorphine products for use in recovery or medication-assisted treatment unless that provider directly bills or seeks reimbursement from TennCare or TennCare's managed care organizations for services provided to the TennCare enrollee. A person is required to disclose to the healthcare provider or nonresidential office-based opiate treatment facility, as defined in § 33-2-402, that the person is a TennCare enrollee seeking treatment with buprenorphine products for use in recovery or medication-assisted treatment.

53-13-101. Chapter definitions.

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

(1) "Apparently wholesome deer meat" means deer meat that complies with applicable standards, requirements, and procedures established by the department of agriculture;

(2) "Apparently wholesome food" means food that meets all standards of quality established by local, county, state and federal agricultural and health laws and regulations, even though the food is not readily marketable due to

appearance; age; freshness, including bearing a past-due expiration date, sell-by date, use-by date, or other date; grade; size; surplus; or other condition. "Apparently wholesome food" does not include canned goods that are leaking, swollen, dented on a seam, or no longer airtight; and

(3) "Gleaner" means a person who harvests for free distribution an agricultural crop that has been donated by the owner.

53-13-102. Immunity of good-faith donor or gleaner from liability.

(a)(1) The good-faith donor of any apparently wholesome food fit for human consumption shall not be subject to criminal penalty for violation of unfair trade practice laws or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional conduct of the donor. This subdivision (a)(1) applies if the donor donates the food:

(A) Directly to an individual for personal use; or

(B) To a bona fide charitable or nonprofit organization for free distribution.

(2) Any local education agency may donate any apparently wholesome food fit for human consumption to a county jail, directly to an individual for personal use, or to a bona fide charitable or nonprofit organization for free distribution, and shall not be subject to criminal penalty for violation of unfair trade practice laws or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional conduct of the agency.

(3) A gleaner of any apparently wholesome food fit for human consumption shall not be subject to criminal penalty for violation of unfair trade practice laws or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional conduct of the gleaner.

(b)(1) The good-faith donor of any apparently wholesome deer meat, fit for human consumption, directly to an individual for personal use, to a bona fide charitable or nonprofit organization for free distribution, or to an on-site feeding program, shall not be subject to civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness, or intentional conduct of the donor.

(2) As used in subdivision (b)(1), "good-faith donor" means deer hunters, deer meat inspectors, and processing facilities acting in compliance with applicable standards, requirements, and procedures established by the department of agriculture.

(c) A restaurant, convention center, or other food service establishment that serves food and is regulated pursuant to title 68, chapter 14, when acting as a good faith donor of any apparently wholesome food fit for human consumption, directly to an individual for personal use or to a bona fide charitable or nonprofit organization that operates a food bank or on-site feeding program, or both, for free distribution of food to combat poverty and hunger, shall not be subject to criminal penalty for violation of unfair trade practice laws or civil damages arising from the condition of the donated food, unless an injury is caused by the gross negligence, recklessness, or intentional conduct of the donor.

53-13-103. Immunity of distributing organization from liability.

(a) A bona fide charitable or nonprofit organization that in good faith receives apparently wholesome food, fit for human consumption, and distributes it, shall not be subject to criminal penalty for violation of unfair trade practice laws or civil damages resulting from the condition of the food, unless an injury results from the gross negligence, recklessness or intentional conduct of the organization.

(b)(1) A bona fide charitable or nonprofit organization that in good faith receives apparently wholesome deer meat, fit for human consumption, and distributes or serves it, shall not be subject to civil damages resulting from the condition of the food, unless an injury results from the gross negligence, recklessness, or intentional conduct of the organization.

(2) As used in subdivision (b)(1), "bona fide charitable or nonprofit organization" means an organization that operates a food bank or on-site feeding program to combat poverty and hunger and that acts in compliance with applicable standards, requirements, and procedures established by the department of agriculture.

54-10-216. Alternative procedure for opening, changing, and closing of public roads in county that are not maintained by any other governmental entity.

(a) Notwithstanding this part to the contrary, a county legislative body, by resolution adopted by a two-thirds (⅔) majority vote, may adopt the provisions of this subsection (a) as an alternative procedure for the opening, changing, and closing of public roads in the county that are not maintained by any other governmental entity. After adopting this subsection (a), each application to open, change, or close a designated public road in the county shall be made in writing to the chief administrative officer. Upon receiving an application to open, change, or close a public road, the chief administrative officer shall give notice to interested parties as provided in this part. The chief administrative officer shall make a recommendation to the regional planning commission, or a committee of the county legislative body if no such regional planning commission exists, regarding whether the public road should be opened, changed, or closed. Before making any recommendation with respect to opening, changing, or closing a road pursuant to this subsection (a), the regional planning commission, or committee of the county legislative body, shall provide notice of the action either by written notice mailed to affected property owners or by notice advertised in a newspaper of general circulation in the county not less than fourteen (14) days before the recommendation is made. After receiving the recommendation of the chief administrative officer, the regional planning commission or committee of the county legislative body shall make its recommendation to the county legislative body and shall attach the recommendation of the chief administrative officer. After receiving the recommendations as provided in this subsection (a), the county legislative body may, by resolution adopted by a majority of its members, order the opening, changing, or closure of the public road.

(b) The committee of the county legislative body formed pursuant to subsection (a) shall be a standing committee of the county legislative body comprised of five (5) county legislative body members selected by the chair of the county legislative body each year on or before September 1. The committee

shall only be formed if no regional planning commission exists to perform the functions under subsection (a) and shall operate for the sole purpose of considering applications to open, change, or close a county road and for no other purpose.

(c) Adoption of the alternative procedure provided in subsection (a) does not preclude interested parties from seeking damages arising from the opening, changing, or closing of a county road to which they are otherwise entitled under the law.

(d) As used in this section, "change", with respect to the changing of public roads, does not include any proposed or actual reduction of the maximum gross weight limits of freight motor vehicles operating over public roads.

(e) Nothing in this section shall be construed to supersede § 55-7-205(a)(8). To the extent that this section is in conflict with § 55-7-205(a)(8), § 55-7-205(a)(8) controls.

54-14-101. [Repealed.]

54-14-102. Condemnation to secure way of ingress and egress and extending utility lines — Jurisdiction — Joinder of parties in action.

(a) A person owning any land, where ingress or egress to and from which is cut off or obstructed entirely from a public road or highway by the intervening land of another, or who has no outlet from the land to a public road in the state, by reason of the intervening land of another, is given the right to have a private easement or right-of-way not exceeding twenty-five feet (25′) condemned and set aside for the benefit of the land over and across the intervening land for the purpose of ingress and egress and extending utility lines, including, but not limited to, electric, natural gas, water, sewage, telephone, or cable television to the enclosed land. Maintenance of the easement or right-of-way shall be the responsibility of the person granted the easement or right-of- way. Gates or fencing that restricts access to the subservient land may not be erected. In counties with a metropolitan form of government, the maximum permissible width for an easement or right-of-way is fifteen feet (15′).

(b) The chancery and circuit courts and county courts, the latter acting by and through the county mayor, are given concurrent jurisdiction in such matters.

(c) As many different owners of lands as may be cut off or obstructed or deprived of adequate and convenient outlets may join together against any number of different owners of intervening lands as wish to have the easement or right-of-way so condemned and set aside to them over the intervening property, and the joining shall not make the proceedings multifarious.

54-14-111. Location of easement or right-of-way.

The jury is authorized to locate the easement or right-of-way at a place where the easement or right-of-way will be of service to the petitioner and cause the least amount of monetary damage as practicable to the value of the intervening land.

54-14-113. Report modified, and easement of way granted, upon payment of damages, costs, and, if awarded, attorney's fees.

(a) The report may be modified by the court and the easement or right-of-way may be granted or decreed to the petitioners as the court may deem proper upon the payment to the defendant, or to the clerk of the court for the defendant's use, of the damages assessed, with costs and, if awarded pursuant to subsection (b), attorney's fees.

(b) In addition to the damages and costs awarded to the defendant as provided by §§ 54-14-103 and 54-14-109, the court may award reasonable attorney's fees to the defendant. The court shall not award attorney's fees if the court finds the defendant has acted in bad faith.

54-14-119. No right to easement or right-of-way if cut-off or obstruction result of intentional and knowing action of the owner of surrounding land.

Notwithstanding § 54-14-102, there is no right to have an easement or right-of-way condemned and set aside for the benefit of the land surrounded or enclosed by the lands of any other person if the court determines that the ingress or egress to and from the surrounded or enclosed land is cut off or obstructed entirely from a public road or highway as a result of the intentional and knowing action of the owner of the surrounded or enclosed land.

54-17-103. Chapter definitions.

In this chapter, unless the context otherwise requires:

(1) "Advertise" means to establish an outdoor display by painting, pasting, or affixing on any surface, a picture, emblem, word, figure, numeral, or lettering for the purpose of making anything known;

(2) "Directional sign" means an official sign that identifies a site, attraction, or activity and directional information useful to a traveler in locating the site, attraction, or activity, including mileage, route numbers, or exit numbers;

(3) "Facility" means a commercial or industrial facility, or other facility open to the public, that operates with regular business hours on a year-round basis within a building or defined physical space, which may include a structure other than a building, together with any immediately adjacent parking areas; provided, that activity conducted in a temporary structure or a structure operated only on a seasonal basis may be considered a facility for the purpose of allowing an on-premises device to be located on the same property, but the device is only allowed on a temporary basis during the period the facility is actually conducting activity;

(4) "On-premises device" means a sign:

(A) That is located within fifty feet (50′) of, and on the same parcel of property and on the same side of the highway as, the facility that owns or operates the sign or within fifty feet (50′) of, and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located; and

(B) For which compensation is not being received and not intended to be received;

(5) "Outdoor advertising device":

(A) Means a sign that is operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign; and

(B) Does not include a sign that is an on-premises device or other type of sign exempt from regulation under this chapter;

(6) "Scenic highway" means any highway, road, or sections of the highway or road designated as a scenic highway from time to time by the general assembly under this part; and

(7) "Sign" means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of an interstate system or primary system.

54-17-106. Severability.

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

54-17-108. Advertising or junkyards prohibited on scenic highways — Authority of commissioner to acquire.

(a) Whenever a road or highway has been designated part of the system, it is unlawful for any person to construct, use, operate or maintain any sign, except as provided in subsection (c) or § 54-17-109, or junkyard within two thousand feet (2,000′) of any road or highway that is a designated part of the system and that is located either outside the corporate limits of any city or town or at any place within a tourist resort county, as defined in § 42-1-301.

(b) The commissioner is authorized to acquire an outdoor advertising device or junkyard by purchase, gift, or condemnation, and to pay just compensation for the removal of these devices and junkyards.

(c) Any outdoor advertising device lawfully in existence prior to the designation of the scenic byway may be maintained, repaired, or reconstructed according to the original application for the outdoor advertising permit.

54-17-109. Excepted signs.

The following signs are excepted from § 54-17-108:

(1) Official signs and notices, including directional and warning signs, authorized or required by law;

(2) Utility signs; and

(3) Signs other than outdoor advertising devices, as defined in § 54-21-102, if such signs:

(A)(i) Have a sign face that does not exceed one hundred square feet (100 sq. ft.) in total area if the sign is an on-premises device; or

(ii) Have a sign face that does not exceed twelve square feet (12 sq. ft.) in total area if the sign is not an on-premises device;

(B) Do not contain any flashing, intermittent, or moving lights; and

(C) Are located at least one thousand feet (1,000′) apart along the highway frontage if the signs are on-premises devices larger than twelve

square feet (12 sq. ft.) and more than one (1) such sign is located on the same property.

54-17-114. Designated scenic highways — Designated urban roads not to be impaired.

(a) For the purposes of this part, the following are initially designated scenic highways:

(1) **Class I — Urban Roads.**

(A) That portion of Kingston Pike bearing the designation of State Highway 1 and United States Highway 11-70 in Knox County from its intersection with Concord Street and Neyland Drive in the City of Knoxville westward to the intersection of Kingston Pike with Lyons View Drive;

(B) That portion of Lyons View Drive from its intersection with Kingston Pike, westward to its intersection with Northshore Drive;

(C) That portion of United States Highway 70 South (West End Avenue) in Nashville from one hundred feet (100′) west of Elmington Avenue westward to its intersection with Ensworth Avenue;

(D) All of Cherokee Boulevard located in the city of Knoxville;

(E) Two Rivers Parkway in Davidson County;

(F) Those portions of State Highway 100 in Davidson County from its intersection with Cheekwood Terrace south to its intersection with the Harpeth River and from its intersection with McCrory Lane south to its intersection with the South Harpeth River, and all of State Highway 251 in Davidson County, and that portion of State Highway 254 (Old Hickory Boulevard) from its intersection with State Highway 100 east to its intersection with Granny White Pike;

(G) South Knoxville Boulevard between the relocated Sevier Avenue and Chapman Highway in Knoxville;

(H) That segment of United States Highway 41 (Cummings Highway) in Hamilton County, beginning at the underpass at the current entrance to the Chattem property in St. Elmo, where that route is also designated as South Broad Street, running westward around the foot of Lookout Mountain to the railroad overpass on the east side of the Tiftonia business district;

(I) On or after April 16, 2015, that segment of State Route 169 (Middlebrook Road, which is commonly referred to as Middlebrook Pike) in Knox County from that route's intersection with Weisgarber Road in the City of Knoxville westward to its terminus at that route's intersection with Hardin Valley Road, but excluding any part of that segment of State Route 169 that has property fronting on the route that was zoned on April 16, 1996, with the commercial designation of CA, CB, or C3, or the industrial designation of I or I-3 under the Knox County or City of Knoxville zoning ordinances; provided, further, that the height restrictions on buildings imposed by, and any other restrictions as to property use contained in this part shall not apply to Parcel ID Numbers 106KC017, 106KC016, and 106DA008 in the City of Knoxville, Knox County, consisting of property on the south side of State Route 169 (Middlebrook Pike) and on the southwest side of Old Weisgarber Road;

(J) That segment of State Route 385 (Nonconnah Parkway) in Shelby County from its intersection with United States Highway 72 to Interstate

240, but excluding any part of the segment of Route 385 that has property fronting on the route that is zoned on June 13, 1997, with the commercial designation of CL, CH or CP or the industrial designation of IL or IH under the Shelby County or city of Memphis zoning ordinances; and

(K) All of State Route 475, Knoxville Parkway, a proposed project connecting I-40 / I-75 southwest of Knoxville to I-75 north of Knoxville, in Knox, Anderson and Loudon counties.

(2) **Class II — Rural Roads.**

(A) The portion of United States Highway 41 from its intersection with Interstate Highway 24 in Hamilton County westward through the Tennessee River Gorge, Jasper and on to the junction of that highway with State Highway 27 at Kimball (Marion County) and south along State Highway 27 to Interstate 24;

(B) That portion of State Highway 66 from the French Broad River to Interstate 40, in Sevier County, except for the first two thousand one hundred fifty feet (2,150′) north of state bridge number 78-66-4.95 toward Interstate 40 in the north-bound lane only;

(C) That portion of the Pellissippi Parkway (State Highway 162) in Knox County from its intersection with Interstate 40, to Melton Hill Lake;

(D) The John Sevier Highway, in Knox County, from the Alcoa Highway (United States Highway 129) to the Chapman Highway (United States Highway 411/441);

(E) That portion of Northshore Drive in Knox County from its intersection with Lyons View Drive and Westland Drive west to Loudon County; provided, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Northshore Drive within Knox County that is now or, subsequent to April 22, 2005, zoned "TC-1 (Town Center)", or zoned C-6 from the east right-of-way line of Keller Bend Road at Northshore to the east right-of-way line of Pellissippi Parkway, or any similar zoning category, under the zoning ordinances of the city of Knoxville;

(F) That portion of United States Highway 70 North beginning east of Cookeville at the Falling Water Bridge and extending approximately five (5) miles toward Monterey through the Dry Valley Community and ending at the Sand Springs Community;

(G) That portion of State Highway 73 from the city of Maryville to the city of Townsend;

(H) That portion of Westland Drive in Knoxville from its intersection with Northshore Drive to its intersection with Northshore Drive at the western end;

(I) All of United States Highway 411 in Blount County and that portion of United States Highway 411 in Sevier County from the Blount County boundary to the intersection of United States Highway 411 with the Chapman Highway (United States Highway 441);

(J) That portion of new State Highway 95 in Loudon and Blount counties from the Fort Loudon Dam to its intersection with United States Highway 129 at Morganton Road;

(K) That portion of United States Highway 129 in Blount County, known as the 129 Bypass, from its intersection with State Highway 73 and Hall Road in the city of Alcoa to its intersection with United States Highway 411 in the city of Maryville;

(L) All of Lyons Bend Road in Knox County;

(M) That portion of Pittman Center Road from the intersection of Pittman Center Road with State Highway 73 East to the intersection of Pittman Center Road with United States Highway 411, east of Sevierville, but excluding those portions of Pittman Center Road that are within the boundaries, as of January 1, 1982, of incorporated municipalities;

(N) That portion of United States Highway 321 from the intersection of United States Highway 321 with Interstate 40 in Loudon County through Blount and Sevier counties to the intersection of United States Highway 321 with Interstate 40 in Cocke County, but excluding those portions of United States Highway 321 that are within the boundaries, as of January 1, 1982, of incorporated municipalities;

(O) Hardin Valley Road in Knox County;

(P) That portion of State Highway 58 in Hamilton County from the city limits of Chattanooga, as of July 1, 1987, to the Hamilton County boundary;

(Q) That portion of Pellissippi Parkway (State Highway 162) that has been or will be constructed in Blount and Knox Counties after January 1, 1987; provided, that the height restrictions on buildings imposed by § 54-17-115 and sign restrictions referred to in § 54-17-109 that are applicable to [former] § 54-17-109(1) and (10) shall not apply to that property along the Pellissippi Parkway within Knox County that is located between Kingston Pike and Interstate 75/40, all of which shall be regulated by the zoning ordinances and regulations of the appropriate county or municipal government; and provided, further, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along the Pellissippi Parkway within Knox County that is now or, subsequent to April 22, 2005, zoned "TC-1 (Town Center)", or any similar zoning category, under the zoning ordinances of the city of Knoxville; and provided, further, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Pellissippi Parkway within the corporate limits of the city of Alcoa, that is now or hereafter zoned for planned commercial zones or any similar zoning category under the zoning ordinances of the city of Alcoa;

(R) All of the Natchez Trace Parkway, except for those portions within the boundaries of incorporated municipalities;

(S) All of the Foothills Parkway, except for those portions within the boundaries of incorporated municipalities;

(T) That portion of Alcoa Highway from the intersection of Alcoa Highway and Kingston Pike in Knox County to the intersection of Alcoa Highway and Singleton Station Road in Blount County; provided, that the height restrictions on buildings imposed by § 54-17-115 shall not apply to that property along Alcoa Highway being situated in District 9 in Knox County and Ward 24 of the City of Knoxville and being more particularly bounded and described as Tract 1, the University of Tennessee Medical Center, at the intersection of Alcoa Highway and Cherokee Trail, and regulated by the zoning ordinances and regulations of the City of Knoxville;

(U) The 9.141 mile segment of the Charles H. Coolidge Medal of Honor Highway beginning with its intersection with Signal Mountain Road to State Route 153;

(V) The 9.33 mile segment of the Bill Carter Causeway beginning with its intersection with State Route 153 to north of Soddy Lake in Soddy-Daisy;

(W) That portion of Highway 70 South from Murfreesboro to Woodbury;

(X) All of United States Highway 27/State Route 29 in Rhea County;

(Y) That portion of United States Highway 411 in Sevier County from the city limits of Sevierville to the Jefferson County boundary;

(Z) That portion of United States Highway 411 in Sevier County from its intersection with United States Highway 441 at Newell Station west to the Blount County boundary;

(AA) That segment of state route 416 in Sevier County from its intersection with United States Highway 411 to its intersection with United States Highway 321;

(BB) That portion of State Highway 70 in Hawkins and Hancock counties from the intersection of State Highway 94 at Alumwell to the intersection of State Highway 33 at Kyles Ford, eleven and three tenths (11.3) miles;

(CC) All of the highway known as The Trace located in Land Between the Lakes National Recreational Area in Stewart County;

(DD) That portion of United States Highway 441 (Newfound Gap Road) in Sevier County from the city limits of the city of Gatlinburg to the Tennessee-North Carolina state line; and

(EE) Powell Drive (State Route 131) in Knox County from the intersection with Clinton Highway (State Route 9) to the intersection with Emory Road.

(b) No state or local governmental entity, agency or department shall take any action that undermines the scenic and historical qualities of roads designated as scenic highways under subdivision (a)(1).

54-17-205. Existing outdoor advertising structures.

(a) Whenever a road or highway has been designated part of the Tennessee parkway system, it is unlawful for any person to construct, use, operate, or maintain any sign, except as provided in subsection (c) or § 54-17-206, or junkyard within two thousand feet (2,000′) of any road or highway that is a designated part of the system and that is located either outside the corporate limits of any city or town or at any place within a tourist resort county, as defined in § 42-1-301.

(b) The commissioner is authorized to acquire an outdoor advertising device or junkyard by purchase, gift, or condemnation, and to pay just compensation for the removal of these structures and junkyards.

(c) Any outdoor advertising device lawfully in existence prior to the designation of the parkway may be maintained, repaired, or reconstructed according to the original application for the outdoor advertising permit.

54-17-206. Advertising structures, junkyards, and trash dumping.

(a) The provisions of the Scenic Highway System Act of 1971, compiled in part 1 of this chapter, regarding signs, outdoor advertising devices, junkyards, and trash dumping applies to the Tennessee parkway system. If a conflict exists between this part and part 1 of this chapter regarding signs, outdoor advertising devices, junkyards, and trash dumping, due to a road having been

designated as being on both the scenic highway system pursuant to part 1 of this chapter and the parkway system pursuant to this part, then part 1 of this chapter shall prevail. It is the intent of the general assembly that nothing contained in this subsection (a) shall be construed as having any retroactive force or taking away any vested right or be applied to any contractual obligation.

(b) Subsection (a) shall not apply to those parts of the system lying within any comprehensively zoned area, unless otherwise provided by the zoning regulations and within one-half (½) mile of any section of the parkway system where it crosses an interstate highway system.

(c) The following signs are excepted from this part:

(1) Official signs and notices, including directional and warning signs, authorized or required by law;

(2) Utility signs; and

(3) Signs other than outdoor advertising devices, as defined in § 54-21-102, if such signs:

(A)(i) Have a sign face that does not exceed five hundred square feet (500 sq. ft.) in total area if the sign is an on-premises device; or

(ii) Have a sign face that does not exceed twenty square feet (20 sq. ft.) in total area if the sign is not an on-premises device;

(B) Do not contain any flashing, intermittent, or moving lights; and

(C) Are located at least one thousand feet (1,000′) apart along the highway frontage if the signs are on-premises devices larger than twenty square feet (20 sq. ft.) and more than one (1) such sign is located on the same property.

54-17-208. Severability.

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

54-21-101. Short title.

This chapter shall be known and may be cited as the "Outdoor Advertising Control Act of 2020."

54-21-102. Chapter definitions.

As used in this chapter:

(1) "Adjacent area" means that area within six hundred sixty feet (660′) of the nearest edge of the right-of-way of interstate and primary highways and visible from the main traveled way of the interstate or primary highways;

(2) "Changeable message sign" means an outdoor advertising device that displays a series of messages at intervals by means of digital display or mechanical rotating panels;

(3) "Commissioner" means the commissioner of transportation or the commissioner's designee;

(4) "Compensation" means the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of future payment, or forbearance of debt;

(5) "Conforming" means an outdoor advertising device that was permitted under and conforms to the zoning, size, lighting, and spacing criteria established in accordance with either the current agreement entered into between the commissioner and the secretary of transportation of the United States on or about October 18, 1984, or the original agreement entered into on or about November 11, 1971, as authorized in § 54-21-113. Any permitted outdoor advertising device that continues to conform to either the current agreement or the original agreement and conditions provided in § 54-21-113 is considered conforming;

(6) "Customary maintenance" means maintenance of a nonconforming outdoor advertising device, which may include, but shall not exceed, the replacement of the sign face and stringers in like materials, and the replacement in like materials of up to fifty percent (50%) of the device's poles, posts, or other support structures; provided, that the replacement of any poles, posts, or other support structures is limited to one (1) time within a twenty-four-month period;

(7) "Department" means the department of transportation;

(8) "Destroyed" means, with respect to a nonconforming outdoor advertising device, that, in the case of wooden sign structures, sixty percent (60%) or more of the upright supports of a sign structure are physically damaged such that normal repair practices would call for replacement of the broken supports or, in the case of metal sign structures, replacement of at least thirty percent (30%) of the length above ground of each broken, bent, or twisted support;

(9) "Digital display" means a type of changeable message sign that displays a series of messages at intervals through the electronic coding of lights or light emitting diodes or any other means that does not use or require mechanical rotating panels;

(10) "Directional sign" means an official sign that identifies a site, attraction, or activity and directional information useful to a traveler in locating the site, attraction, or activity, including mileage, route numbers, or exit numbers;

(11) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish, but does not apply to changes of copy treatment on an existing outdoor advertising device;

(12) "Facility" means a commercial or industrial facility, or other facility open to the public, that operates with regular business hours on a year-round basis within a building or defined physical space, which may include a structure other than a building, together with any immediately adjacent parking areas; provided, that activity conducted in a temporary structure or a structure operated only on a seasonal basis may be considered a facility for the purpose of allowing an on-premises device to be located on the same property, but the device is only allowed on a temporary basis during the period the facility is actually conducting activity;

(13) "Information center" means an area or site established and maintained at a safety rest area for the purpose of informing the public of places of interest within this state and providing other information the commissioner may consider desirable;

(14) "Interstate system" means that portion of the national system of interstate and defense highways, located within this state, as officially

designated, or as may hereafter be designated, by the commissioner, and approved by the secretary of transportation of the United States, pursuant to title 23 of the United States Code;

(15) "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. "Main traveled way" does not include such facilities as frontage roads, turning roadways, or parking areas;

(16) "Nonconforming" means an outdoor advertising device that does not conform to the zoning, size, lighting, or spacing criteria established by and in accordance with either the current agreement entered into between the commissioner and the secretary of transportation of the United States, or in accordance with the original agreement entered into on or about November 11, 1971, as authorized in § 54-21-113. Any outdoor advertising device that continues to conform to either the current agreement or the original agreement as provided in § 54-21-113 shall not be considered nonconforming;

(17) "On-premises device" means a sign:

(A) That is located within fifty feet (50′) of, and on the same parcel of property and on the same side of the highway as, the facility that owns or operates the sign or within fifty feet (50′) of, and on the same parcel of property and on the same side of the highway as, the entrance to the parcel of property upon which two (2) or more facilities are located; and

(B) For which compensation is not being received and not intended to be received;

(18) "Outdoor advertising device":

(A) Means a sign that is operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign; and

(B) Does not include a sign that is an on-premises device or other type of sign exempt from regulation under this chapter;

(19) "Person" means and includes an individual, a partnership, an association, a corporation, or other entity;

(20) "Primary system" means that portion of connected main highways, located within this state, as officially designated, or as may hereafter be designated by the commissioner, and approved by the secretary of transportation of the United States, pursuant to title 23 of the United States Code, including highways designated as part of the national highway system and highways formerly designated as part of the federal-aid primary system;

(21) "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public;

(22) "Sign" means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of an interstate system or primary system;

(23) "State system" means that portion of highways located within this state, as officially designated, or as may hereafter be designated by the commissioner;

(24) "Traveled way" means the portion of a roadway for the movement of

vehicles, exclusive of shoulders;

(25) "Unzoned commercial or industrial area":

(A) Means an area on which there is located one (1) or more permanent structures within which a commercial or industrial business is actively conducted, and which is equipped with all customary utilities facilities and open to the public regularly or regularly used by employees of the business as their principal work station, or which, due to the nature of the business, is equipped, staffed, and accessible to the public as necessary, and includes the area along the highway extending outward six hundred feet (600′) from and beyond the edge of such activity in each direction and a corresponding zone directly across a primary highway that is not also a limited access highway when the area is not primarily residential in character or a:

(i) Public park;

(ii) Public playground;

(iii) Public recreational area;

(iv) Public forest, wildlife, or waterfowl refuge;

(v) Historic scenic area; or

(vi) Cemetery;

(B) Does not include land across the highway from a commercial or industrial activity when the highway is an interstate or controlled access primary highway;

(C) Must be measured from the outer edges of the regularly used buildings, parking lots, storage, processing, or landscaped areas of the commercial or industrial activity, not from the property lines of the activity, and the measurements must be along or parallel to the edge of the pavement of the highway; and

(D) Does not include the following activities conducted within the area, when considered for purposes of outdoor advertising:

(i) Outdoor advertising structures;

(ii) Agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands;

(iii) Transient or temporary activities;

(iv) Activities not visible from the main traveled way;

(v) Activities more than six hundred sixty feet (660′) from the nearest edge of the right-of-way;

(vi) Activities conducted in a building primarily used as a residence; and

(vii) Railroad tracks and minor sidings;

(26) "Utility signs" means warning signs, notices, or markers that are customarily erected and maintained for operational and public safety purposes by publicly or privately owned utilities, railroads, ferries, airports, or other entities that provide utility or transportation services; and

(27) "Visible" means capable of being seen, whether or not readable, without visual aid by a person of normal visual acuity.

54-21-103. Restrictions on outdoor advertising devices on interstate and primary highways.

(a) An outdoor advertising device shall not be erected or maintained within six hundred sixty feet (660′) of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems in

this state except the following:

(1) Outdoor advertising devices located in areas that are zoned industrial or commercial under authority of local government law and whose size, lighting, and spacing are consistent with customary use as determined by agreement between the state and the secretary of transportation of the United States; and

(2) Outdoor advertising devices located in unzoned commercial or industrial areas as may be determined by agreement between the state and the secretary of transportation of the United States.

(b) The following types of signs are not subject to regulation as outdoor advertising devices under subsection (a):

(1) Official signs and notices, including directional signs, authorized or required by law;

(2) On-premises devices;

(3) Signs other than outdoor advertising devices that:

(A) Have a sign face that does not exceed twenty square feet (20 sq. ft.) in total area; and

(B) Do not contain any flashing, intermittent, or moving lights;

(4) Landmark signs lawfully in existence on October 22, 1965, as authorized under 23 U.S.C. § 131 and 23 CFR 750.710; and

(5) Utility signs.

54-21-104. Permits and tags — Fees.

(a)(1) Unless otherwise provided in this chapter, a person shall not construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising device within six hundred sixty feet (660′) of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems without first obtaining from the commissioner a permit and tag.

(2) If an existing outdoor advertising device was not subject to this chapter when it was erected but is subsequently made subject to this chapter by a federal law or action that adds a highway or section of a highway to the interstate or primary highway systems, such outdoor advertising device is required to obtain a permit and tag from the commissioner as provided in subdivision (b)(2).

(3) An outdoor advertising device erected within six hundred sixty feet (660′) of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems between September 11, 2019, and June 22, 2020, is deemed legal conforming or legal nonconforming and is required to obtain a permit and tag from the department as provided in subdivision (b)(2).

(4) Outdoor advertising devices that were permitted under the Billboard Regulation and Control Act of 1972, compiled in this chapter as it existed prior to June 22, 2020, shall be assigned the same permit number that was given under that act.

(b)(1) Except as otherwise provided in subdivision (b)(2), permits and tags shall not be issued until applications are made in accordance with and on forms provided by the commissioner and accompanied by payment of a fee of two hundred dollars ($200) for each permit and tag requested. This fee represents payment for the required tag and for the first annual permit and

is not subject to return upon rejection of any application. The commissioner shall use best efforts to process an application for a permit, in accordance with the rules of the department, within no greater than sixty (60) days after a completed application is received. If the application is incomplete or defective on its face, the commissioner shall notify an applicant in writing no later than fifteen (15) days of receipt of the filed application of its incomplete or defective status, and indicate the information or documentation that is needed to complete or correct the application. If a decision either to issue or deny the permit cannot be made within sixty (60) days after receipt of the completed or corrected application, the commissioner shall contact the applicant prior to the expiration of the sixty (60) days to provide an explanation of the reasons why additional time is needed to process the application.

(2) If an existing outdoor advertising device is made subject to this chapter under subdivision (a)(2) or (a)(3) or if an existing outdoor advertising device that was subject to this chapter when it was erected but is subsequently modified from its original permitted state as provided in subdivision (a)(2), the owner or operator of the outdoor advertising device shall obtain a permit and tag in the same manner as provided in subdivision (b)(1) except as follows:

(A) The application for the permit and tag must be made on an application form specifically provided for this purpose;

(B) The application form must exempt the applicant from providing:

(i) Any stake or mark on the ground showing the location of the outdoor advertising device on the real property;

(ii) A map or scaled drawing showing the property lines of the real property within which the outdoor advertising device is located, the location of the outdoor advertising device within the real property, the public roads adjacent to the real property, or the means of access to the outdoor advertising device; or

(iii) Any affidavit or other document from the real property owner verifying that the owner has granted the applicant the right to construct and operate the outdoor advertising device on the real property;

(C) The application must be accompanied by payment of a fee of seventy dollars ($70.00) for each permit and tag requested. This fee represents payment for the required tag and for the first annual permit and is not subject to return upon rejection of any application;

(D) After a completed application is submitted to and processed by the department in accordance with this subdivision (b)(2) and the applicable provisions of the department's outdoor advertising device regulations, the department shall issue the permit, except as otherwise provided in subdivision (b)(2)(F);

(E) The department shall not deny a permit for an existing outdoor advertising device under this subdivision (b)(2) solely because the outdoor advertising device does not meet the size, lighting, spacing, or zoning criteria that are required for new outdoor advertising devices under current law and regulations;

(F)(i) An application for a permit may be denied on other grounds under this subdivision (b)(2) only in accordance with current law or regulations, including as follows:

(a) The outdoor advertising device is located within or encroaches

upon state highway right-of-way;

(b) There is no access to the outdoor advertising device for maintenance or operational purposes except by direct access from state highway right-of-way or across the state's access control limits;

(c) The applicant for the permit is subject to enforcement action under § 54-21-105(c); or

(d) Issuance of the permit would violate federal law;

(ii) Before denying a permit on any of the grounds provided in subdivision (b)(2)(F)(i), the department shall notify the applicant in writing of the violation that prevents issuance of the permit. The department shall also give the applicant a reasonable amount of time to undertake such action, if any, that would cure the violation. If the applicant cures the violation, the department shall issue the permit, but if the applicant fails to cure the violation, the department shall deny the permit;

(G) Any permit that is issued under this subdivision (b)(2) must indicate whether the outdoor advertising device is characterized and regulated as a conforming or nonconforming device under this chapter based upon the conditions and laws in effect on the date of the department's field inspection. The department shall notify the applicant in writing of the reason or reasons for characterizing a device as nonconforming; and

(H) The applicant has the right to appeal the department's decision in accordance with the department's outdoor advertising device rules and the applicable provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) An application for an addendum to an existing permit requesting authorization to upgrade an existing outdoor advertising device to a changeable message sign with a digital display, as provided in § 54-21-119, must also be accompanied by payment of a fee of two hundred dollars ($200), which is not subject to return upon rejection of the application. An outdoor advertising device authorized by a valid permit from the department that was effective on September 10, 2019, and has been upgraded to a changeable message sign with a digital display between September 11, 2019, and June 22, 2020 is required to apply for an addendum to the permit in accordance with this subdivision (b)(3). The department shall charge an application fee of seventy dollars ($70.00) for the addendum to the permit and shall process the application in the same manner as provided for an original permit under subdivisions (b)(2)(E)-(H).

(4) For the purposes of issuing permits and regulating outdoor advertising devices in accordance with this chapter, the location of a permitted outdoor advertising device is determined by the location of the supporting monopole, or by the location of the supporting pole nearest to the highway in the case of a device erected on multiple supporting poles; provided, however, that where a permitted multiple-pole device may be lawfully reconstructed, the replacement of the supporting poles with a monopole is not considered a change of location requiring a new permit if:

(A) The permittee gives advance notice to, and receives the prior approval of, the department before reconstructing the outdoor advertising device;

(B) The monopole is erected within the line segment defined by the

previous supporting poles; and

(C) The location of the monopole meets applicable spacing requirements.

(5) Any advertising structure existing along the parkway system by and for the sole benefit of a nonprofit organization exempt from federal income tax under 26 U.S.C. § 501(c)(3) is exempt from the payment of fees for permits or tags under this subsection (b).

(c)(1) All tags issued are permanent; however, permits must be renewed annually between November 1 and December 31, and the commissioner shall charge the sum of seventy dollars ($70.00) for 2021 and thereafter for annual renewal of each permit. A valid permit that was effective on September 10, 2019, shall not become invalid based on any failure to renew the permit between November 1 and December 31, 2019, and such permit shall not be subject to renewal until the renewal period occurring after June 22, 2020.

(2) In the event that a permit has not been renewed by December 31 for the following year as required by subdivision (c)(1), the permit is not considered void until the commissioner has given the permit holder notice of the failure to renew and the opportunity to correct the unlawfulness, as provided in § 54-21-105(b). The department must send the notice of the failure to renew within sixty (60) days after the failure to renew. The failure to renew may be remedied by submitting a late renewal form and paying the annual permit renewal fee together with a late fee, in the total amount of two hundred dollars ($200), within one hundred twenty (120) days of receipt of the notice. If a permit holder fails to renew the permit within this one-hundred-twenty-day notice period, then the permit is void and the outdoor advertising device is considered unlawful and subject to removal as further provided in § 54-21-105. The notice given by the commissioner must include the requirements for renewal and consequences of failure to renew as provided by this subdivision (c)(2).

(d) For each permit issued, the commissioner shall deliver to the applicant a serially numbered permit tag, which must be attached on the outdoor advertising device in a manner as to be visible from the main traveled way of the interstate or primary highway. If more than one (1) side of any structure is used for an outdoor advertising device, a permit and tag is required for each side. Any outdoor advertising device sculptured in the round is considered to have three (3) sides.

(e) For each replacement tag issued, the commissioner shall deliver to the applicant a serially numbered permit tag. The cost of this replacement tag is twenty-five dollars ($25.00), payable at the time of request.

(f) Whenever it becomes necessary to transfer a permit from one (1) permit holder to another, the department shall charge a transfer fee of ten dollars ($10.00) to the permit holder of record.

54-21-105. Failure to comply with § 54-21-104 — Effect.

(a)(1) Any owner of any outdoor advertising device who has failed to act in accordance with § 54-21-104 must remove the outdoor advertising device immediately.

(2) Failure to remove the outdoor advertising device renders the outdoor advertising device a public nuisance and subject to immediate disposal,

removal, or destruction.

(3) In addition, the commissioner has the authority to assess and collect from the owner a civil penalty in the amount of five hundred dollars ($500) for each calendar day after the date that the owner is determined through a contested case hearing to have failed to act in accordance with § 54-21-104. The total amount of the civil penalty imposed each year must not exceed five thousand dollars ($5,000).

(4) In addition, or in lieu of subdivisions (a)(1)-(3), the commissioner may enter upon any property on which an outdoor advertising device is located and dispose of, remove, or destroy the outdoor advertising device, all without incurring any liability for those actions.

(b) Prior to invoking this section, the commissioner shall give notice either by certified mail or by personal service to the owner of the outdoor advertising device or occupant of the land on which the outdoor advertising device is located. The notice must specify the basis for the alleged unlawfulness, the remedial action that is required to correct the unlawfulness, and advise that a failure to take the remedial action or request a hearing within forty-five (45) days results in the sign being subject to removal. In addition, the commissioner must give, or have previously given, the owner or operator of the outdoor advertising device an opportunity to request a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to determine the lawfulness of the outdoor advertising device. For good cause shown, the commissioner may extend the forty-five-day period for remedial action for up to an additional one hundred fifty (150) days, so long as all advertising content is removed from the unlawful outdoor advertising device within the forty-five-day period. If advertising content is placed on the outdoor advertising device during any extended period, the outdoor advertising device may be immediately removed by the commissioner without further notice. The owner of the outdoor advertising device is liable to the state for damages equal to three (3) times the cost of removal, in addition to disgorgement of any profit and gains or benefit derived from the violation and any other applicable fees, costs, or damages. The owner of the land on which the outdoor advertising device is located shall not be presumed to be the owner of the outdoor advertising device simply because it is on the owner's property.

(c)(1) If the department has reason to believe that a sign is being operated, in whole or part, as an outdoor advertising device without first obtaining a permit as required under § 54-21-104, the department may issue an investigative request to the owner or operator of the sign, the owner of the property, or any other person for the purpose of obtaining relevant documents or information to determine whether the sign is being operated as an outdoor advertising device.

(2) If, after being served with an investigative request by the department under subdivision (c)(1), the person provides the requested documents or information and the department determines that the sign is being operated as an outdoor advertising device in violation of §§ 54-21-103 and 54-21-104, the department shall issue a written order to the owner or operator of the outdoor advertising device explaining the basis for determining that the sign is an outdoor advertising device and directing the owner or operator of the device to remedy the violation by applying for the applicable outdoor advertising device permit, or by removing the unlawful device, as appropriate, by the date set forth in the order, which shall be no less than sixty (60)

days after the date of the order.

(3) The person may appeal the department's order under subdivision (c)(2) by filing a written notice of appeal with the department within thirty (30) days of the date on which the order is issued. If an appeal is timely filed with the department, the department shall initiate a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to hear the person's appeal.

(4) If a person fails to comply with the department's investigative request under subdivision (c)(1), or if the department reasonably believes the documents or information provided are incomplete or inaccurate, the department may initiate a contested case proceeding under the Uniform Administrative Procedures Act to compel the production of relevant documents or information and to determine whether the outdoor advertising device is being operated in violation of §§ 54-21-103 and 54-21-104 and therefore subject to enforcement action under § 54-21-105.

54-21-106. Disposition of fees.

All fees received by the commissioner under § 54-21-104 must be paid into the state treasury and placed in the highway fund for the administration of this chapter, and any fees received in excess of those administration costs shall be allocated to the department's general fund.

54-21-107. Acquisition by commissioner of outdoor advertising devices along the interstate and primary highway systems.

(a) The commissioner is authorized to acquire by purchase, gift, or condemnation, and to pay just compensation upon the removal of the following outdoor advertising devices in areas adjacent to the interstate and primary highway systems:

(1) Those lawfully in existence on April 4, 1972; and

(2) Those lawfully erected on or after April 4, 1972.

(b)(1) Compensation is authorized to be made only for the following:

(A) The taking from the owner of the outdoor advertising device of all right, title, leasehold, and interest in the outdoor advertising device; and

(B) The taking from the owner of the real property on which the outdoor advertising device is located, of the right to erect and maintain the outdoor advertising device on the property.

(2) If funds other than federal funds are used, the state shall follow the following order of purchasing priorities:

(A) Volunteer nonconforming outdoor advertising devices;

(B) Hardship situations;

(C) Normal value signs;

(D) Signs in areas that are designated scenic or parkway;

(E) Product advertising on:

(i) Rural interstate;

(ii) Rural primary; and

(iii) Urban areas;

(F) Non-tourist-oriented directional advertising; and

(G) Tourist-oriented devices.

(3) All funds other than federal funds, acquired by the state from whatever source for the purpose of acquiring nonconforming outdoor advertising devices, must be appropriated by the general assembly to the department and shall not be earmarked for acquisitions at any particular location.

(4) Funds obtained from private sources not appropriated within one (1) year revert to the donor.

(5) Upon funds being made available, owners of outdoor advertising device must be notified of the availability of the funds for the purpose of volunteering nonconforming outdoor advertising devices for purchase by the state.

(c) Upon the request of the commissioner, the owner of the outdoor advertising devices and the owner of the property upon which the outdoor advertising device is located who are seeking compensation as provided under subdivisions (b)(1)(A) and (B) shall present evidence satisfactory to the commissioner that the outdoor advertising device in question was in existence or lawfully erected, as the case may be, on, before, or after the appropriate dates set out in subdivisions (a)(1) and (2). Except by court order, the commissioner shall not make any payment under subdivisions (b)(1)(A) and (B) until the proof has been presented. Notwithstanding this chapter, those outdoor advertising devices legally in existence on April 4, 1972, are entitled to remain in place and in use until compensation for removal has been made as provided in this section.

(d) In determining whether any outdoor advertising device is lawful or unlawful, any failure to have obtained a license or permit, or to have attached a permit, or failure to have complied with setback requirements is not a cause for declaring any outdoor advertising device unlawful. Any person having constructed, erected, operated, used, maintained, or having caused or permitted any outdoor advertising device to be constructed, erected, operated, used, or maintained, shall pay the fee prescribed by § 54-21-104; provided, that the outdoor advertising device was erected prior to April 4, 1972.

54-21-108. Restrictions on outdoor advertising devices adjacent to state highways.

(a) Control of outdoor advertising devices, as provided in §§ 54-21-103 and 54-21-104, is extended to outdoor advertising devices located beyond six hundred sixty feet (660′) of the edge of the right-of-way of the federal-aid interstate or primary systems outside of urban areas erected with the purpose of their message being read from the main traveled ways of the systems. Such outdoor advertising devices are prohibited, regardless of whether located in commercial or industrial areas, unless they are of a class or type allowed under existing law within six hundred sixty feet (660′) of the edge of the right-of-way of the systems outside of commercial or industrial areas.

(b) Those outdoor advertising devices lawfully erected prior to July 1, 1976, but prohibited as of July 1, 1976, by subsection (a) shall be removed upon the payment of just compensation in the same manner and subject to the same limitations as outdoor advertising devices lawfully erected within six hundred sixty feet (660′) of the edge of the right-of-way of the federal-aid interstate and primary systems outside of commercial and industrial areas.

(c) Signs lawfully in existence on October 22, 1965, determined by the

commissioner, subject to the concurrence of the secretary of transportation of the United States, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this section, are not required to be removed.

54-21-109. Damage, destruction, or removal of signs or markers on state highway system.

A person shall not erect any sign, or affix another sign to or on any sign erected under the authority of the department, on any right-of-way of any state highway without authorization from the department.

54-21-110. Information for traveling public.

In order to provide information in the specific interest of the traveling public, the commissioner is authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas for the purpose of informing the public of places of interest within the state and providing other information considered desirable.

54-21-111. Power of commissioner to enforce provisions — Rulemaking.

The commissioner is given authority to and shall, within sixty (60) days of June 22, 2020, begin promulgating and enforcing only those rules as necessary to carry out this chapter and 23 U.S.C. § 131; provided, that the commissioner by rule shall establish procedures for accepting and resolving written complaints related to signs that are subject to this chapter. The rules must include:

(1) A process to make information available describing the department's procedures for complaint investigation and resolution, including making information about the procedures available on the department's website;

(2) A system to prioritize complaints so that the most serious complaints receive attention before less serious complaints; and

(3) A procedure for compiling and reporting detailed annual statistics about complaints.

54-21-112. Commissioner's authority to enter on property without penalty.

The commissioner and all employees under the commissioner's direction, in the performance of their functions and duties under this chapter, may enter into and upon any property, without penalty, upon which an outdoor advertising device is located and make examinations and surveys as may be relevant or dispose of the outdoor advertising device when disposal is provided for under this chapter.

54-21-113. Commissioner's authority to enter into agreement with secretary of transportation.

(a) The commissioner is authorized and directed to enter into agreements with the secretary of transportation of the United States regarding the definition of unzoned industrial and commercial areas; and regarding the size, lighting, and spacing of outdoor advertising devices that may be erected and

maintained within six hundred sixty feet (660′) of the nearest edge of the right-of-way within the areas adjacent to the interstate and primary systems that are zoned industrial or commercial under the authority of state or local law, or in unzoned industrial or commercial areas that may be permitted in accordance with the terms of the agreement between the commissioner and the secretary of transportation of the United States. In any agreement entered into with the secretary of transportation, the commissioner reserves the right to renegotiate or make whatever modifications are necessary to conform to any subsequent amendments to the federal Highway Beautification Act of 1965, compiled in 23 U.S.C. §§ 131, 136, and 319. Any modification of the agreement with the United States department of transportation that the commissioner signed on or about November 11, 1971, or any subsequent agreement becomes effective only upon passage of an act authorizing the modification by the general assembly.

(b) The commissioner is authorized to execute a modification of the agreement signed on or about November 11, 1971, to change the maximum area for any one (1) outdoor advertising device from one thousand two hundred square feet (1,200 sq. ft.) to seven hundred seventy-five square feet (775 sq. ft.); to reduce the optional maximum square footage of outdoor advertising devices authorized in counties having a population greater than two hundred fifty thousand (250,000) from three thousand square feet (3,000 sq. ft.) to one thousand two hundred square feet (1,200 sq. ft.); to modify the agreement to change the minimum spacing of outdoor advertising devices on the interstate system and controlled access highways on the primary system from five hundred feet (500′) to one thousand feet (1,000′) where the same are not separated by buildings or other obstructions, so that only one (1) outdoor advertising device is visible from the highway at any one (1) time; to change the minimum spacing on noncontrolled access highways on the primary system outside the corporate limits of a municipality from three hundred feet (300′) to five hundred feet (500′); and to change the minimum distance from an interchange, or intersection at grade, on the interstate system or controlled access highways on the primary system, outside incorporated cities, from five hundred feet (500′) to one thousand feet (1,000′). Inside the corporate limits of a municipality, the distance between signs remains one hundred feet (100′). Permits issued prior to any change authorized for outdoor advertising devices or for outdoor advertising devices subsequently erected pursuant to the permit, that meet size, lighting, spacing, and zoning criteria are unaffected.

(c) The commissioner is further authorized to change the definition of an unzoned commercial or industrial area to provide that only those areas on which there is located one (1) or more permanent structures within which a commercial or an industrial business is actively conducted, and that are equipped with all customary utilities facilities and open to the public regularly or regularly used by employees of the business as their principal work station, or that, due to the nature of the business, are equipped, staffed, and accessible to the public as is customary, may be so defined.

(d)(1) The commissioner is authorized to execute a modification of the agreement signed on or about November 11, 1971, to change the minimum distance from an interchange, or intersection, at grade, on the interstate system or controlled access highway on the primary system, outside incorporated cities, to five hundred feet (500′) when the interchange or intersection is within two thousand five hundred feet (2,500′) of an interchange or

intersection, at grade, of a welcome station. This distance may be measured from that side of the interstate or controlled access highway on which the outdoor advertising is to be located if a determination is made by the commissioner that there exists a geographical feature or foliage in the median of the highway that would substantially block visibility of such outdoor advertising device from any lane of highway on the opposite side of the median.

(2) If the commissioner is formally notified by the appropriate federal offices of the United States department of transportation that as a result of any provision of this subsection (d), the state will lose federal funds or if a loss of federal funds occurs, then the provision is void and inoperative.

(3) If this subsection (d) is found to be void and inoperative, or if notice is received from the United States department of transportation as provided in subdivision (d)(2), then any outdoor advertising device placed pursuant to this subsection (d) must be removed immediately by and at the expense of the owner. Failure to remove the outdoor advertising device renders the sign a public nuisance and § 54-21-105 applies. Nothing in this subsection (d) grants an absolute right in the placement of an outdoor advertising device or makes the state in any way liable under this subsection (d), if this subsection (d) is found in violation of any federal regulations as provided in subdivision (d)(2).

54-21-114. Exceptions.

This chapter does not apply to signs or markers identifying the location or depth of underground communications and power cables, water mains, gas transmission lines, and other utility facilities located within or without the boundary of the right-of-way of the interstate or primary highway systems in the state.

54-21-115. Outdoor advertising on certain interstate highways prohibited — Penalty — Exceptions.

No outdoor advertising device shall be erected or continued in use for the purpose of having its message read from the main traveled ways of Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), except those portions within the boundaries of an incorporated municipality on March 3, 1994, Interstate 440 in Davidson County, Interstate 640 in Knox County, or the section of State Route 840 in Williamson County from State Route 246 to one (1) mile from the intersection with State Route 100. Failure to comply with this section renders the outdoor advertising device a nuisance, subject to immediate disposal, removal, or destruction and subject to the civil penalty and remedies provided in § 54-21-105. Valid permits for outdoor advertising devices located along Interstate 640 in Knox County issued prior to May 13, 1982, remain valid after May 13, 1982, and the holders of the permits are permitted to construct, reconstruct, maintain, or repair the outdoor advertising devices according to the original application for which a permit was issued. Valid permits for outdoor advertising devices located along Interstate 26 from State Route 1 in Sullivan County to State Route 67 in Washington County (formerly Interstate 181), issued prior to March 3, 1994, remain valid after March 3, 1994, and the holders of the permits are permitted to construct, reconstruct, maintain, or repair the

outdoor advertising devices according to the original application for which a permit was issued.

54-21-116. Vegetation control permits and fees.

(a)(1) The commissioner shall issue to the owners or holders of lawfully issued outdoor advertising device permits, which definition includes those described as legal conforming, grandfathered, and nonconforming outdoor advertising devices in federal regulations, when the face of the outdoor advertising device is generally visible to occupants of vehicles from the main traveled ways of the system on the date of erection, permits to remove, block cut, or trim vegetation located on the right-of-way adjacent to the outdoor advertising device and replace the vegetation as directed, whenever the vegetation prevents clear visibility for a distance not to exceed five hundred yards (500 yds.) to occupants of vehicles using the main traveled ways of the controlled systems. Notwithstanding this chapter to the contrary, vegetation that, on the date of erection of the outdoor advertising device, blocks the view of the outdoor advertising device, in whole or in any part, for a distance not to exceed five hundred yards (500 yds.), to occupants of vehicles using the main traveled ways, is not eligible for removal under a vegetation control permit. The maximum area to be controlled shall not exceed five hundred feet (500′). The regional engineering director for the department shall issue a vegetation control permit where all criteria are met, following submission of information specified and a nonrefundable fee of one hundred dollars ($100) for each face involved. Vegetation control permits will be issued upon payment of a fee of one hundred fifty dollars ($150) per face for supervision of the work. All fees received by the commissioner under this section shall be deposited to the highway fund for the administration of this part. Each subsequent year a maintenance permit may be purchased for fifty dollars ($50.00) to provide annual maintenance at any one (1) location that is consistent with the original vegetation control permit. Vegetation permits issued pursuant to the Billboard Regulation and Control Act of 1972, compiled in this chapter as it existed prior to June 22, 2020, shall be reinstated under chapter 706 of the Public Acts of 2020. Alternatively, the owner of the device may apply for a new vegetation control permit, and the department shall issue the permit.

(2) No later than thirty (30) days from June 22, 2020, the commissioner shall develop and make available any forms necessary to apply for a permit and shall begin accepting and considering such applications. The commissioner shall use best efforts to process an application for a permit, in accordance with the rules of the department, within no greater than thirty (30) days after a completed application is received. If the application is incomplete or defective on its face, the commissioner shall notify an applicant in writing no later than fifteen (15) days of receipt of the filed application of its incomplete or defective status, and indicate the information or documentation that is needed to complete or correct the application. If a decision to approve or deny the application cannot be made within thirty (30) days after receipt of the completed or corrected application, the commissioner shall contact the applicant prior to the expiration of the thirty (30) days to provide an explanation of the reasons why additional time is needed to process the application. If the application is approved, the applicant shall

notify the commissioner of the date on which the applicant wishes the permit to be issued. The applicant shall complete the authorized vegetation control within the time period specified in the permit, and in any event, the applicant shall complete the vegetation control within one (1) year after the date on which the application was approved or the application approval and permit is void.

(b) One (1) vegetation control permit fee must be waived for those owners who voluntarily remove a nonconforming outdoor advertising device. If the nonconforming outdoor advertising device to be removed is not at least one hundred fifty square feet (150 sq. ft.) in size, two (2) nonconforming outdoor advertising devices must be removed to authorize waiver. The latter applies only when the outdoor advertising device around which control is to occur is larger than three hundred square feet (300 sq. ft.).

(c) This waiver shall not be used as evidence in any future eminent domain proceeding relating to nonconforming outdoor advertising devices.

(d) Notwithstanding any other law to the contrary, it is the legislative intent that issuance of permits and carrying out of the work pursuant to the permits are lawful activities and shall not be construed as violating any provision of law.

(e) The commissioner may revoke, suspend, or modify any vegetation control permit for cause, including violation of any terms or conditions of the permit.

54-21-117. Unauthorized removal, cutting, or trimming of vegetation.

(a) If, before obtaining an outdoor advertising device permit and a vegetation control permit, vegetation located on the right-of-way is removed, cut, or trimmed, and application is subsequently made for an outdoor advertising permit, then the commissioner may deny the permit.

(b) If, before applying for a vegetation control permit, vegetation located on the right-of-way is removed, cut, or trimmed in the vicinity of an outdoor advertising device, which action was reasonably calculated to afford greater visibility of the outdoor advertising device, then the commissioner may revoke the outdoor advertising device permit or permits for the affected outdoor advertising devices.

(c) Prior to invoking this section, the commissioner or the commissioner's designee shall advise the affected outdoor advertising device permit applicant or holder, whichever is appropriate, that a preliminary determination of illegality has been made. The party so advised must be given the opportunity to request a hearing to be conducted pursuant to contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, before the commissioner may make a final determination of illegality.

54-21-118. Restrictions on new outdoor advertising devices.

(a) After July 1, 2001, permits shall not be issued pursuant to this chapter for any new outdoor advertising device in which two (2) or more displays are stacked one (1) above the other. Outdoor advertising devices with two (2) or more displays stacked one (1) above the other that were legally erected on or before July 1, 2001, are unaffected by this subsection (a).

(b) The holder of a legal permit under subsection (a) may move the outdoor advertising device to a new location, if that location is otherwise eligible for a permit.

54-21-119. Changeable message signs.

(a) Changeable message signs may be double faced, back to back, or V- type signs.

(b) Changeable message signs with a digital display that meet all other requirements pursuant to this chapter are permissible subject to the following restrictions:

(1) The message display time must remain static for a minimum of eight (8) seconds with a maximum change time of two (2) seconds;

(2) Video, continuous scrolling messages, and animation are prohibited; and

(3) The minimum spacing of the changeable message signs with a digital display facing the same direction of travel on the same side of the interstate system or controlled access highways is two thousand feet (2,000'); provided, however, that an outdoor advertising device that uses only a small digital display, not to exceed one hundred square feet (100 sq. ft.) in total area, within a larger non-digital sign face is not subject to the minimum spacing requirement established in this subdivision (b)(3), or to any application for a specific digital display permit or permit addendum as established in subsections (c) and (d), or to any fee for a permit addendum as established in § 54-21-104(b).

(c) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in a new location without first obtaining a permit and tag expressly authorizing a changeable message sign with a digital display, and annually renewing the permit and tag, as provided in § 54-21-104. The department shall not require any additional permit under this subsection (c) for an outdoor advertising device with a digital display lawfully permitted, erected, and in operation prior to June 22, 2020.

(d) A person shall not erect, operate, use, or maintain a changeable message sign with a digital display in place of or as an addition to any existing permitted outdoor advertising device without first obtaining, and annually renewing with the permit, an addendum to the permit expressly authorizing a changeable message sign with a digital display in that location as provided in § 54-21-104(b)(3).

(e) The commissioner shall under no circumstances permit or authorize any person to erect, operate, use, or maintain a changeable message sign of any type as a replacement for or as an addition to any nonconforming outdoor advertising device or in any nonconforming location.

(f) Notwithstanding any other law to the contrary, a person who is granted a permit or an addendum to a permit authorizing a changeable message sign with a digital display in accordance with subsection (c) or (d) has up to, but no more than, twelve (12) months after the date on which the permit or addendum is granted within which to erect and begin displaying an outdoor advertising message on the changeable message sign; provided, however, that prior to the expiration of this twelve-month period, and upon making application to the commissioner and paying an additional permit fee in the amount of two hundred dollars ($200), the permit holder may obtain an additional twelve (12) months within which to erect and begin displaying an outdoor advertising message on the changeable message sign. This additional two-hundred-dollar fee is separate from any annual permit renewal fee required under § 54-21-104. If the permitted or authorized changeable message sign with a digital

display is not erected and displaying a message within the required time, or as extended, the permit or addendum to the permit will be revoked and the changeable message sign with the digital display must be removed by the applicant or subject to removal by the commissioner as provided in § 54-21-105.

(g) Any application for a permit or addendum for a digital display as described in this section may be made using the form for an application for permit for an outdoor advertising device existing on June 22, 2020, until a separate form is available.

(h)(1) All changeable message signs installed on or after July 1, 2014, must come equipped with a light-sensing device that automatically adjusts the brightness in direct correlation with ambient light conditions.

(2) The brightness of light emitted from a changeable message sign must not exceed 0.3 foot candles over ambient light levels measured at a distance of one hundred fifty feet (150') for those sign faces less than or equal to three hundred square feet (300 sq. ft.), measured at a distance of two hundred feet (200') for those sign faces greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.), measured at a distance of two hundred fifty feet (250') for those sign faces greater than three hundred eighty-five square feet (385 sq. ft.) and less than or equal to six hundred eighty square feet (680 sq. ft.), measured at a distance of three hundred fifty feet (350') for those sign faces greater than six hundred eighty square feet (680 sq. ft.), or subject to the measuring criteria in the applicable table set forth in subdivision (h)(4).

(3) Any measurements required pursuant to this subsection (h) must be taken from a point within the highway right-of-way at a safe distance from the edge of the traveled way, at a height above the roadway that approximates a motorist's line of sight, and as close to perpendicular to the face of the changeable message sign as practical. If perpendicular measurement is not practical, valid measurements may be taken at an angle up to forty-five (45) degrees from the center point of the sign face. If measurement shows a level above that prescribed in subdivision (h)(4), the exact calculations must be provided to the sign permit holder.

(4) In the event it is found not to be practical to measure a changeable message sign at the distances prescribed in subdivision (h)(2), a measurer may opt to measure the sign at any of the alternative measuring distances described in the applicable table set forth in this subdivision (h)(4). In the event the sign measurer chooses to measure the sign using an alternative measuring distance, the prescribed foot candle level above ambient light must not exceed the prescribed level, to be determined based on the alternative measuring distances set forth in the tables in subdivisions (h)(4)(A), (B), (C), and (D), as applicable.

For any measuring distance between the alternative measuring distances set forth in the following tables, the prescribed foot candle level above ambient light must not exceed the interpolated level derived from the following formula:

$$[l2 = (D2<2>/D1<2>) \times l1]$$

Where l1 = the prescribed foot candle level above ambient light for the measuring distance listed in the tables, l2 = the derived foot candle level above ambient light for the desired measuring distance, D1 = the desired measuring distance in feet, and D2 = the alternative measuring distance in

feet listed in the tables, as follows:

(A) For changeable message signs less than or equal to three hundred square feet (300 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	0.68
125	0.43
150	0.3
200	0.17
250	0.11
275	0.09
300	0.08
325	0.06
350	0.06
400	0.04

(B) For changeable message signs greater than three hundred square feet (300 sq. ft.) but less than or equal to three hundred eighty-five square feet (385 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.2
125	0.77
150	0.53
200	0.3
250	0.19
275	0.16
300	0.13
325	0.11
350	0.1
400	0.08

(C) For changeable message signs greater than three hundred eighty-five square feet (385 sq. ft.) but less than or equal to six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:
100	1.88
125	1.2
150	0.83
200	0.47
250	0.3
275	0.25
300	0.21
325	0.18
350	0.15
400	0.12

(D) For changeable message signs greater than six hundred eighty square feet (680 sq. ft.):

Alternative Measuring Distance:	Prescribed Foot Candle Level:

100	3.675
125	2.35
150	1.63
200	0.92
250	0.59
275	0.49
300	0.41
325	0.35
350	0.3
400	0.23
425	0.2
450	0.18
500	0.15

(5) This subsection (h) applies to all changeable message signs located in this state operated pursuant to a permit issued by the commissioner.

54-21-120. Removal of nonconforming device that is destroyed.

A nonconforming outdoor advertising device that is destroyed is no longer permitted and must be removed, except when the outdoor advertising device is destroyed by vandalism or some other criminal or tortious act.

56-7-114. Certificates of insurance.

(a) For purposes of this section:

(1) "Casualty insurance" has the same meaning as defined in § 56-2-201;

(2) "Certificate of insurance":

(A) Means a document or instrument prepared or issued by an insurer or insurance producer as evidence of property or casualty insurance coverage; and

(B) Does not include a policy of insurance, insurance binder, policy endorsement, or automobile insurance identification or information card;

(3) "Governmental entity" means any political subdivision of this state, including, but not limited to, any incorporated city or town, metropolitan government, county, utility district, or school district;

(4) "Insurance producer" means a person licensed to sell, solicit, or negotiate property or casualty insurance under the laws of this state;

(5) "Insurer" means a person duly licensed to transact a property or casualty insurance business in this state;

(6) "Person" means any individual, partnership, corporation, association, or other legal entity, including any governmental entity; and

(7) "Property insurance" has the same meaning as defined in § 56-2-201.

(b) A certificate of insurance is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance refers. A certificate of insurance does not confer any rights beyond what the referenced policy of insurance expressly provides.

(c) A person shall not:

(1) Prepare, issue, request, or require the issuance of a certificate of insurance that contains any false or misleading information concerning the policy of insurance referenced in the certificate of insurance;

(2) Prepare, issue, request, or require the issuance of a certificate of insurance that purports to alter, amend, or extend the coverage provided by

the policy of insurance referenced in the certificate of insurance; or

(3) Alter or modify a certificate of insurance after issuance.

(d) A certificate of insurance must not warrant that the policy of insurance referenced in the certificate of insurance complies with the insurance or indemnification requirements of a contract. The inclusion of a contract number or description within a certificate of insurance does not warrant that the policy of insurance referenced in the certificate of insurance complies with the insurance or indemnification requirements of a contract.

(e) An insurer must provide a person with notice of a cancellation, nonrenewal, material change, or any similar notice concerning a policy of insurance only if the person has a right to the notice under the terms of the policy of insurance, an endorsement to the policy, or state law. The policy of insurance, an endorsement to a policy of insurance, and state law govern the terms and conditions of any notice under this subsection (e), including the required timing of the notice.

(f) This section applies to all certificates of insurance issued in connection with property insurance or casualty insurance risks located in this state, regardless of where the policyholder, insurer, insurance producer, or person requesting or requiring the issuance of a certificate of insurance is located.

(g) A certificate of insurance, or any other document or correspondence relative to a certificate of insurance, prepared, issued, requested, or required in violation of this section is void.

(h) The commissioner, in accordance with § 56-6-120, may examine and investigate the activities of any person that the commissioner reasonably believes engaged in, or is currently engaging in, an act or practice prohibited by this section.

(i) If a person intentionally violates this section, then the commissioner may take any of the following actions:

(1) Issue an order requiring the person to cease and desist from the actions constituting the violation; and

(2) Assess a civil penalty of not more than one thousand dollars ($1,000) per violation.

(j) This section does not limit the authority of the commissioner to investigate conduct, enforce compliance, or issue penalties under this title.

(k) The commissioner may promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to carry out this section.

56-7-601. Short title.

This part shall be known and may be cited as the "Tennessee Right to Shop Act."

56-7-602. Part definitions.

As used in this part:

(1) "Allowed amount" means the contractually agreed upon payment amount between a carrier and a healthcare entity participating in the carrier's network, excluding any member deductible, co-pay, or other obligation;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "Comparable healthcare service" includes, but is not limited to:

(A) Physical and occupational therapy services;

(B) Radiology and imaging services;

(C) Laboratory services; and

(D) Infusion therapy;

(4) "Department" means the department of commerce and insurance;

(5) "Health plan" means health insurance coverage as defined in § 56-7-109;

(6) "Healthcare entity" means:

(A) Any healthcare facility licensed under title 33 or 68; and

(B) Any healthcare provider licensed under title 63 or 68;

(7) "Insurance carrier" or "carrier" means a health insurance entity as defined in § 56-7-109; and

(8) "Shopping and decision support program" means the program established by a carrier pursuant to this part.

56-7-603. Shopping and decision support program.

(a)(1) Beginning upon approval of the next health insurance rate filing on or after January 1, 2021, a carrier offering a health plan in this state shall implement a shopping and decision support program that provides shopping capabilities and decision support services for enrollees in a health plan. Beginning on January 1, 2021, a carrier may provide incentives for enrollees in a health plan who elect to receive a comparable healthcare service from a network provider that is covered by the health plan and that is paid less than the average allowed amount paid by that carrier to network providers for that comparable healthcare service before and after an enrollee's out-of-pocket limit has been met.

(2) Incentives, effective January 1, 2021, may be calculated as a percentage of the difference between the amount actually paid by the carrier for a given comparable healthcare service and the average allowed amount for that service. Incentives may be provided as a cash payment to the enrollee, a credit toward the enrollee's annual in-network deductible and out-of-pocket limit, or a credit or reduction of a premium, a copayment, cost sharing, or a deductible.

(3) The shopping and decision support program may provide each enrollee with at least fifty percent (50%) of the carrier's saved costs for each comparable healthcare service. However, the shopping and decision support program may exclude incentive payments, credits, or reductions for services where the savings to the carrier is fifty dollars ($50.00) or less.

(4) The average allowed amount must be based on the actual allowed amounts paid to network providers under the enrollee's health plan within a reasonable timeframe, not to exceed one (1) year.

(5) Annually, at enrollment or renewal, a carrier shall provide, at a minimum, notice to enrollees of the right to obtain information described in subdivision (a)(4) and the process for obtaining the information, and a description of how to earn any incentives. A carrier shall provide this notice on the carrier's website and in health plan materials provided to enrollees.

(b) An insurance carrier shall make the shopping and decision support program available as a component of all health plans offered by the carrier in this state.

(c) Prior to offering the shopping and decision support program to any

enrollee, a carrier shall file a description of the shopping and decision support program established by the carrier pursuant to this section with the department. The insurance carrier has discretion as to the appropriate format for providing the information required and may customize the format in order to provide the most relevant information necessary to permit the department to determine compliance. The department may review the filing made by the carrier to determine if the carrier's shopping and decision support program complies with this section.

(d)(1) Beginning January 1, 2022, a carrier shall annually file with the department for the most recent calendar year the total number of comparable healthcare service incentive payments made pursuant to this section, the use of comparable healthcare services by category of service for which comparable healthcare service incentive payments were made, the total incentive payments made to enrollees, the average amount of incentive payments made by service for the transactions, and the total number and percentage of a carrier's enrollees that participated in the transactions.

(2) Beginning in 2022 and by April 1 of each year thereafter, the commissioner shall submit an aggregate report for all carriers filing the information required by this subsection (d) to the commerce and labor committee of the senate and the insurance committee of the house of representatives. The commissioner may set reasonable limits on the annual reporting requirements on carriers to focus on the more popular comparable healthcare services.

56-7-604. Interactive member portal or toll-free phone number for estimate of out-of-pocket estimates.

(a)(1) Except as provided in subdivision (a)(2), beginning upon approval of the next health insurance rate filing on or after January 1, 2020, a carrier offering a health plan in this state shall comply with this section.

(2) On and after December 1, 2020, a carrier offering a health plan in this state shall make available the interactive member portal described in subsection (b), and may make available the toll-free phone number described in subsection (b).

(b)(1) A carrier shall make available an interactive member portal or a toll-free phone number that enables an enrollee to request and obtain from the carrier information on out-of-pocket costs to the enrollee for the comparable healthcare services or on the average payments made by the carrier to network entities or providers for comparable healthcare services, as well as quality data for those providers, to the extent available.

(2) The member portal or toll-free phone number must allow an enrollee seeking information about the cost of a particular healthcare service to estimate out-of-pocket costs applicable to that enrollee and compare the average allowed amount paid to a network provider for the procedure or service under the enrollee's health plan within a reasonable timeframe not to exceed one (1) year.

(3) The out-of-pocket estimate must provide a good faith estimate based on the information provided by the enrollee or the enrollee's provider of the amount the enrollee will be responsible to pay out-of-pocket for a proposed non-emergency procedure or service that is determined by the carrier to be a medically necessary covered benefit from a carrier's network provider,

including any copayment, deductible, coinsurance, or other out-of-pocket amount for any covered benefit, based on the information available to the carrier at the time the request is made, and subject to further medical necessity review by the carrier. A carrier may contract with a third-party vendor to comply with this subsection (b).

(4) A carrier shall provide the information described in this subsection (b) by the carrier's member portal or toll-free phone number even if the enrollee requesting the information has exceeded the enrollee's deductible or out-of-pocket costs according to the enrollee's health plan. Existing transparency mechanisms or programs that estimate out-of-pocket costs for enrollees still within their deductible qualify under this section as long as those mechanisms or programs continue to disclose the estimated average allowed amount even after an enrollee has exceeded the enrollee's deductible as well as any estimated out-of-pocket cost.

(c) Nothing in this section prohibits a carrier from imposing cost-sharing requirements disclosed in the enrollee's policy, contract, or certificate of coverage for unforeseen healthcare services that arise out of the non-emergency procedure or service or for a procedure or service provided to an enrollee that was not included in the original estimate.

(d) A carrier shall notify an enrollee that the provided costs are estimated costs, and that the actual amount the enrollee will be responsible to pay may vary due to unforeseen services that arise out of the proposed non-emergency procedure or service.

56-7-605. Order for comparable healthcare service upon request.

At the request of a patient, a healthcare provider licensed under title 63 or 68 shall provide a copy of an order for a comparable healthcare service within two (2) business days of the request.

56-7-606. Report on examples of shared savings incentive programs.

The state insurance committee, created by § 8-27-201, shall publish a report no later than January 1, 2020, on examples of shared savings incentive programs that directly incentivize current enrollees and retirees to shop for lower cost care in other states and consider implementation of such a program in this state. The state insurance committee may implement such a program as part of the next open enrollment period if it is believed to be cost effective. The state insurance committee shall share the report in writing to the government operations committees in both the senate and house of representatives.

56-7-607. Promulgation of rules.

The commissioner is authorized to promulgate rules as necessary to implement this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

56-7-608. Applicability of part.

Except for § 56-7-3506, and notwithstanding § 56-7-1005, this part does not apply to:

(1) Any managed care organization contracting with the state to provide insurance through the TennCare program or the CoverKids program; or

(2) Any plan described in Section 1251 of the federal Patient Protection and Affordable Care Act (42 U.S.C. § 18011) and Section 2301 of the federal Health Care and Education Reconciliation Act.

56-7-609. Annual total value of incentives.

Notwithstanding this part, the total value of incentives offered to any one (1) enrollee must not exceed five hundred ninety-nine dollars ($599) in any year.

56-7-610. Study on cost savings due to incentive programs for shopping for healthcare services at lower costs.

(a) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of any cost savings realized by enrollees with health plans, including private health plans and state funded health plans, in states that have adopted legislation or programs that require carriers offering health plans in those states to offer incentive programs to enrollees for shopping for healthcare services at lower costs, commonly referred to as "Right to Shop" legislation or programs. The study shall include, at a minimum, an examination of savings realized by such programs in Maine, New Hampshire, Florida, Arizona, and Kentucky.

(b) All appropriate state departments and agencies shall provide assistance to TACIR.

(c) TACIR shall report its findings to the general assembly no later than December 2020.

56-7-1002. Telehealth services.

(a) As used in this section:

(1) "Health insurance entity" has the same meaning as defined in § 56-7-109 and includes managed care organizations participating in the medical assistance program under title 71, chapter 5;

(2) "Healthcare services" has the same meaning as defined in § 56-61-102;

(3) "Healthcare services provider" means an individual acting within the scope of a valid license issued pursuant to title 63 or any state-contracted crisis service provider employed by a facility licensed under title 33;

(4) "Originating site" means the location where a patient is located pursuant to subdivision (a)(7)(A) and that originates a telehealth service to another qualified site;

(5) "Qualified site" means the office of a healthcare services provider, a hospital licensed under title 68, a facility recognized as a rural health clinic under federal Medicare regulations, a federally qualified health center, any facility licensed under title 33, or any other location deemed acceptable by the health insurance entity;

(6) "Store-and-forward telemedicine services":

(A) Means the use of asynchronous computer-based communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients; and

(B) Includes the transferring of medical data from one (1) site to another through the use of a camera or similar device that records or stores an image that is sent or forwarded via telecommunication to

another site for consultation;

(7) "Telehealth":

(A) Means the use of real-time, interactive audio, video telecommunications or electronic technology, or store-and-forward telemedicine services by a healthcare services provider to deliver healthcare services to a patient within the scope of practice of the healthcare services provider when:

(i) Such provider is at a qualified site other than the site where the patient is located; and

(ii) The patient is at a qualified site, at a school clinic staffed by a healthcare services provider and equipped to engage in the telecommunications described in this section, or at a public elementary or secondary school staffed by a healthcare services provider and equipped to engage in the telecommunications described in this section; and

(B) Does not include:

(i) An audio-only conversation;

(ii) An electronic mail message; or

(iii) A facsimile transmission; and

(8) "Telehealth provider" means a healthcare services provider engaged in the delivery of healthcare services through telehealth.

(b) Healthcare services provided through a telehealth encounter shall comply with state licensure requirements promulgated by the appropriate licensure boards. Telehealth providers shall be held to the same standard of care as healthcare services providers providing the same healthcare service through in-person encounters.

(c) A telehealth provider who seeks to contract with or who has contracted with a health insurance entity to participate in the health insurance entity's network shall be subject to the same requirements and contractual terms as a healthcare services provider in the health insurance entity's network.

(d) Subject to subsection (c), a health insurance entity:

(1) Shall provide coverage under a health insurance policy or contract for covered healthcare services delivered through telehealth;

(2) Shall reimburse a healthcare services provider for the diagnosis, consultation, and treatment of an insured patient for a healthcare service covered under a health insurance policy or contract that is provided through telehealth without any distinction or consideration of the geographic location or any federal, state, or local designation, or classification of the geographic area where the patient is located;

(3) Shall not exclude from coverage a healthcare service solely because it is provided through telehealth and is not provided through an in-person encounter between a healthcare services provider and a patient; and

(4) Shall reimburse healthcare services providers who are out-of-network for telehealth care services under the same reimbursement policies applicable to other out-of-network healthcare services providers.

(e) A health insurance entity shall provide coverage for healthcare services provided during a telehealth encounter in a manner that is consistent with what the health insurance policy or contract provides for in-person encounters for the same service, and shall reimburse for healthcare services provided during a telehealth encounter without distinction or consideration of the geographic location, or any federal, state, or local designation or classification of the geographic area where the patient is located.

(f) [Deleted by 2020 (2nd Ex. Sess.) amendment.]

(g) Any provisions not stipulated by this section shall be governed by the terms and conditions of the health insurance contract.

(h) Telehealth is subject to utilization review under the Health Care Service Utilization Review Act, compiled in chapter 6, part 7 of this title.

(i)(1) This section does not apply to accident-only, specified disease, hospital indemnity, plans described in § 1251 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended and § 2301 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, as amended (both in 42 U.S.C. § 18011), plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), medicare supplement, disability income, long-term care, or other limited benefit hospital insurance policies.

(2) This section does apply to the basic health plans authorized under title 8, chapter 27, parts 1, 2, 3, and 7.

(j) A health insurance entity shall reimburse an originating site hosting a patient as part of a telehealth encounter an originating site fee in accordance with the federal centers for medicare and medicaid services telehealth services rule 42 C.F.R. § 410.78 and at an amount established prior to August 20, 2020, by the federal centers for medicare and medicaid services.

(k)(1) This section does not require a health insurance entity to provide coverage for healthcare services that are not medically necessary, unless the terms and conditions of an applicable health insurance policy provide that coverage.

(2) As used in subdivision (k)(1):

(A) For a healthcare service for which coverage or reimbursement is provided under the Medical Assistance Act of 1968, compiled in title 71, chapter 5, part 1, or provided under title 71, chapter 3, part 11, "medically necessary" means a healthcare service that is determined by the bureau of TennCare to satisfy the medical necessity standard set forth in 71-5-144; and

(B) For all other healthcare services, "medically necessary" means healthcare services that a healthcare services provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease, and that are:

(i) In accordance with generally accepted standards of medical practice;

(ii) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease; and

(iii) Not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury, or disease excluding any costs paid pursuant to subsection (j).

(3) This section does not require a health insurance entity to provide coverage for healthcare services delivered by means of telehealth if the applicable health insurance policy would not provide coverage for the same healthcare services if delivered by in-person means.

(4) This section does not require a health insurance entity to reimburse a healthcare services provider for healthcare services delivered by means of

telehealth if the applicable health insurance policy would not reimburse that healthcare services provider if the same healthcare services had been delivered by in-person means.

56-7-1003. Provider-based telemedicine.

(a) As used in this section:

(1) "Health insurance entity" has the same meaning as defined in § 56-7-109 and includes managed care organizations participating in the medical assistance program under title 71, chapter 5;

(2) "Healthcare services" has the same meaning as defined in § 56-61-102;

(3) "Healthcare services provider" means an individual acting within the scope of a valid license issued pursuant to title 63 or title 68, chapter 24, part 6, or any state-contracted crisis service provider employed by a facility licensed under title 33;

(4) "Healthcare system" means two (2) or more healthcare organizations as defined in § 63-1-150, that are affiliated through shared ownership or pursuant to a contractual relationship that controls payment terms and service delivery;

(5) "Practice group" means two (2) or more healthcare services providers that share a common employer for the purposes of the healthcare services providers' clinical practice;

(6) "Provider-based telemedicine":

(A) Means the use of Health Insurance Portability and Accessibility Act (HIPAA) (42 U.S.C. § 1320d et seq.) compliant real-time, interactive audio, video telecommunications, or electronic technology, or store-and-forward telemedicine services, used over the course of an interactive visit by a healthcare services provider to deliver healthcare services to a patient within the scope of practice of the healthcare services provider when:

(i) The healthcare services provider is at a qualified site other than the site where the patient is located and has access to the relevant medical record for that patient;

(ii) The patient is located at a location the patient deems appropriate to receive the healthcare service that is equipped to engage in the telecommunication described in this section; and

(iii) The healthcare services provider makes use of HIPAA compliant real-time, interactive audio, video telecommunications or electronic technology, or store-and-forward telemedicine services to deliver healthcare services to a patient within the scope of practice of the healthcare services provider as long as the healthcare services provider, the healthcare services provider's practice group, or the healthcare system has established a provider-patient relationship by submitting to a health insurance entity evidence of an in-person encounter between the healthcare service provider, the healthcare services provider's practice group, or the healthcare system and the patient within sixteen (16) months prior to the interactive visit; and

(B) Does not include:

(i) An audio-only conversation;

(ii) An electronic mail message or phone text message;

(iii) A facsimile transmission;

(iv) Remote patient monitoring; or

(v) Healthcare services provided pursuant to a contractual relationship between a health insurance entity and an entity that facilitates the delivery of provider-based telemedicine as the substantial portion of the entity's business;

(7) "Qualified site" means the primary or satellite office of a healthcare services provider, a hospital licensed under title 68, a facility recognized as a rural health clinic under federal medicare regulations, a federally qualified health center, a facility licensed under title 33, or any other location deemed acceptable by the health insurance entity; and

(8) "Store-and-forward telemedicine services":

(A) Means the use of asynchronous computer-based communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients; and

(B) Includes the transferring of medical data from one (1) site to another through the use of a camera or similar device that records or stores an image that is sent or forwarded via telecommunication to another site for consultation.

(b) Healthcare services provided through a provider-based telemedicine encounter must comply with state licensure requirements promulgated by the appropriate licensure boards. Provider-based telemedicine providers are held to the same standard of care as healthcare services providers providing the same healthcare services through in-person encounters.

(c) A provider-based telemedicine provider who seeks to contract with or who has contracted with a health insurance entity to participate in the health insurance entity's network is subject to the same requirements and contractual terms as any other healthcare services provider in the health insurance entity's network.

(d) A health insurance entity:

(1) Shall provide coverage under a health insurance policy or contract for covered healthcare services delivered through provider-based telemedicine;

(2) Shall reimburse a healthcare services provider for a healthcare service covered under an insured patient's health insurance policy or contract that is provided through provider-based telemedicine without any distinction or consideration of the geographic location or any federal, state, or local designation, or classification of the geographic area where the patient is located;

(3) Shall not exclude from coverage a healthcare service solely because it is provided through provider-based telemedicine and is not provided through an in-person encounter between a healthcare services provider and a patient; and

(4) Shall reimburse healthcare services providers who are out-of-network for provider-based telemedicine care services under the same reimbursement policies applicable to other out-of-network healthcare services providers.

(e) A health insurance entity shall provide coverage for healthcare services provided during a provider-based telemedicine encounter in a manner that is consistent with what the health insurance policy or contract provides for in-person encounters for the same service, and shall reimburse for healthcare

services provided during a provider-based telemedicine encounter without distinction or consideration of the geographic location, or any federal, state, or local designation or classification of the geographic area where the patient is located.

(f) This section does not require a health insurance entity to pay total reimbursement for a provider-based telemedicine encounter in an amount that exceeds the amount that would be paid for the same service provided by a healthcare services provider for an in-person encounter.

(g)(1) This section does not require a health insurance entity to provide coverage for healthcare services that are not medically necessary, unless the terms and conditions of an applicable health insurance policy provide that coverage.

(2) As used in subdivision (g)(1):

(A) For a healthcare service for which coverage or reimbursement is provided under the Medical Assistance Act of 1968, compiled in title 71, chapter 5, part 1, or provided under title 71, chapter 3, part 11, "medically necessary" means a healthcare service that is determined by the bureau of TennCare to satisfy the medical necessity standard set forth in 71-5-144; and

(B) For all other healthcare services, "medically necessary" means healthcare services that a healthcare services provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease, and that are:

(i) In accordance with generally accepted standards of medical practice;

(ii) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease; and

(iii) Not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury, or disease.

(3) This section does not require a health insurance entity to provide coverage for healthcare services delivered by means of provider-based telemedicine if the applicable health insurance policy would not provide coverage for the same healthcare services if delivered by in-person means.

(4) This section does not require a health insurance entity to reimburse a healthcare services provider for healthcare services delivered by means of provider-based telemedicine if the applicable health insurance policy would not reimburse that healthcare services provider if the same healthcare services had been delivered by in-person means.

(h) Any provisions not required by this section are governed by the terms and conditions of the health insurance policy or contract.

(i) Provider-based telemedicine is subject to utilization review under the Health Care Service Utilization Review Act, compiled in chapter 6, part 7 of this title.

(j)(1) This section does not apply to accident-only, specified disease, hospital indemnity, plans described in § 1251 of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended and § 2301 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, as

amended (both in 42 U.S.C. § 18011), plans governed by the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 et seq.), medicare supplement, disability income, long-term care, or other limited benefit hospital insurance policies.

(2) This section does apply to the basic health plans authorized under title 8, chapter 27, parts 1, 2, 3, and 7.

56-7-1011. Remote patient monitoring services.

(a) As used in this section, "remote patient monitoring services" means using digital technologies to collect medical and other forms of health data from a patient and then electronically transmitting that information securely to healthcare providers in a different location for interpretation and recommendation.

(b) A health insurance entity may consider any remote patient monitoring service a covered medical service if the same service is covered by medicare. The appropriate parties may negotiate the rate for these services in the manner in which is deemed appropriate by the parties.

(c) Reimbursement of expenses for covered remote patient monitoring services must be established through negotiations conducted by the health insurance entity with the healthcare services provider, healthcare system, or practice group in the same manner as the health insurance entity establishes reimbursement of expenses for covered healthcare services that are delivered by in-person means.

(d) Remote patient monitoring services are subject to utilization review under the Health Care Service Utilization Review Act, compiled in chapter 6, part 7 of this title.

(e) This section does not apply to a health incentive program operated by a health insurance entity that utilized an electronic device for physiological monitoring.

56-7-1012. Reimbursement for healthcare services provided during telehealth encounter. [Repealed effective April 1, 2022.]

(a) Notwithstanding § 56-7-1002(e), a health insurance entity shall provide reimbursement for healthcare services provided during a telehealth encounter in a manner that is consistent with what the health insurance policy or contract provides for in-person encounters for the same service, and shall reimburse for healthcare services provided during a telehealth encounter without distinction or consideration of the geographic location, or any federal, state, or local designation or classification of the geographic area where the patient is located.

(b) Notwithstanding § 56-7-1003(e), a health insurance entity shall provide reimbursement for healthcare services provided during a provider-based telemedicine encounter in a manner that is consistent with what the health insurance policy or contract provides for in-person encounters for the same service, and shall reimburse for healthcare services provided during a provider-based telemedicine encounter without distinction or consideration of the geographic location, or any federal, state, or local designation or classification of the geographic area where the patient is located.

(c) Reimbursement made pursuant to this section is subject to utilization review under the Health Care Service Utilization Review Act, compiled in

chapter 6, part 7 of this title.

(d)(1) This section does not require a health insurance entity to provide reimbursement for healthcare services that are not medically necessary, unless the terms and conditions of an applicable health insurance policy provide that coverage.

(2) As used in this subsection (d):

(A) For a healthcare service for which coverage or reimbursement is provided under the Medical Assistance Act of 1968, compiled in title 71, chapter 5, part 1, or provided under title 71, chapter 3, part 11, "medically necessary" means a healthcare service that is determined by the bureau of TennCare to satisfy the medical necessity standard set forth in § 71-5-144; and

(B) For all other healthcare services, "medically necessary" means healthcare services that a healthcare services provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing, or treating an illness, injury, or disease or the symptoms of an illness, injury, or disease, and that are:

(i) In accordance with generally accepted standards of medical practice;

(ii) Clinically appropriate, in terms of type, frequency, extent, site and duration; and considered effective for the patient's illness, injury or disease; and

(iii) Not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of that patient's illness, injury or disease.

(e) This section does not require a healthcare services provider to seek reimbursement from a health insurance entity for healthcare services provided by telehealth or provider-based telemedicine.

(f) For the purposes of this section:

(1) "Health insurance entity" has the same meaning as defined in § 56-7-109 and includes managed care organizations participating in the medical assistance program under title 71, chapter 5;

(2) "Healthcare services" has the same meaning as defined in § 56-61-102;

(3) "Healthcare services provider" means an individual acting within the scope of a valid license issued pursuant to title 63 or title 68, chapter 24, part 6, or any state-contracted crisis service provider employed by a facility licensed under title 33;

(4) "Provider-based telemedicine" has the same meaning as defined in § 56-7-1003; and

(5) "Telehealth" has the same meaning as defined in § 56-7-1002.

(g) This section is repealed on April 1, 2022.

56-7-1120. Insurance coverage for car sharing programs. [Effective on January 1, 2021.]

(a) As used in this section:

(1) "Car sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program

agreement;

(2) "Car sharing period" means the period of time:

(A) That commences with the car sharing delivery period and ends at the car sharing termination time; or

(B) If there is no car sharing delivery period, that commences with the car sharing start time and ends at the car sharing termination time;

(3) "Car sharing program agreement":

(A) Means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program; and

(B) Does not mean a rental car agreement with a rental car company;

(4) "Car sharing start time" means the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program;

(5) "Car sharing termination time" means the earliest of the following events:

(A) The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement;

(B) When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program; or

(C) When the shared vehicle owner, or the shared vehicle owner's authorized designee, takes possession and control of the shared vehicle;

(6) "Peer-to-peer car sharing":

(A) Means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program; and

(B) Does not include the services offered by a rental car company;

(7) "Peer-to-peer car sharing program":

(A) Means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration; and

(B) Does not include:

(i) The services offered by a rental car company; or

(ii) A service provider who is solely providing hardware or software as a service to a person or entity that is not effectuating payment of financial consideration for use of a shared vehicle;

(8) "Rental car company" means a business engaged in the rental of motor vehicles that is subject to title 67, chapter 4, part 19, and not a peer-to-peer car sharing program;

(9) "Shared vehicle":

(A) Means a vehicle that is available for sharing through a peer-to-peer car sharing program; and

(B) Does not mean a rental vehicle provided by a rental car company;

(10) "Shared vehicle driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement; and

(11) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program.

(b) An authorized insurer that writes motor vehicle liability insurance in the

state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including, but not limited to:

(1) Liability coverage for bodily injury and property damage;

(2) Uninsured and underinsured motorist coverage;

(3) Medical payments coverage;

(4) Comprehensive physical damage coverage; and

(5) Collision physical damage coverage.

(c) The exclusions in subsection (b) apply notwithstanding any requirement in this title or title 55, chapter 12. This section does not require that a personal automobile insurance policy provide coverage during a car sharing period.

(d) Automobile insurers that exclude coverage as described in subsection (b) have no duty to defend or indemnify any claim expressly excluded. This section and title 55, chapter 12, do not invalidate or limit an exclusion contained in the policy, including any policy in use or approved for use in this state prior to January 1, 2021, that excludes coverage for vehicles that are rented or that are engaged in a commercial use.

(e) A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded or not covered under the terms of its policy may seek contribution from any other motor vehicle insurer providing coverage required by § 55-12-302(d), except to the extent the shared vehicle is excluded or not covered under the terms of the other policy.

(f) In a claims investigation involving a shared vehicle, the insurer of the peer-to-peer car sharing program, the insurer of the shared vehicle owner, and the insurer of the shared vehicle driver shall cooperate with each other to facilitate the exchange of relevant information, including, without limitation, records that the peer-to-peer car sharing program is required to collect under title 55, chapter 12, part 3. The insurer of the peer-to-peer car sharing program, the insurer of the shared vehicle owner, and the insurer of a shared vehicle driver shall disclose to each other a clear description of the coverage, exclusions, and limits provided in their respective policies.

(g)(1) Notwithstanding any other law, statute, or rule to the contrary, a peer-to-peer car sharing program has an insurable interest in a shared vehicle during the car sharing period.

(2) This section does not create liability on a peer-to-peer car sharing program to maintain insurance coverage beyond the extent mandated by § 55-12-302.

(3) A peer-to-peer car sharing program may own and maintain as the named insured one (1) or more policies of motor vehicle liability insurance that provides coverage for:

(A) Liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement;

(B) Any liability of the shared vehicle owner; or

(C) Damage or loss to the shared motor vehicle or any liability of the shared vehicle driver.

(h) This section does not preclude an insurer from providing coverage for a peer-to-peer car sharing program or a shared vehicle owner, if it chooses to do so by contract or endorsement.

56-7-2802. Part definitions.

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

(1) "Affiliation period":

(A) Means a period that, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during the affiliation period and no premium shall be charged to the participant or beneficiary for any coverage during the period;

(B) The period shall begin on the enrollment date; and

(C) An affiliation period under a plan shall run concurrently with any waiting period under the plan;

(2) "Beneficiary" has the meaning given such term under § 3(8) of ERISA (29 U.S.C. § 1002(8));

(3) "Bona fide association" means an association that satisfies the requirements of § 56-26-204(a) and:

(A) Does not condition membership in the association on any health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(B) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member;

(C) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and

(D) Meets additional requirements established by the commissioner;

(4) "Church plan" has the meaning given the term under § 3(33) of ERISA (29 U.S.C. § 1002(33));

(5) "COBRA continuation provision" means any of the following:

(A) Section 4980B of the Internal Revenue Code of 1986 (26 U.S.C. § 4980B), other than subdivision (f)(1) of that section insofar as it relates to pediatric vaccines;

(B) ERISA, Part 6 of Subtitle B of Title I (29 U.S.C. § 1161 et seq.), other than § 609 (29 U.S.C. § 1169); or

(C) Title XXII of the Public Health Service Act (42 U.S.C. § 300bb-1 et seq.);

(6)(A) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

(i) A group health plan;

(ii) Health insurance coverage;

(iii) Title XVIII, Part A or Part B of the Social Security Act, known as medicare (42 U.S.C. § 1395 et seq.);

(iv) Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), other than coverage consisting solely of benefits under § 1928 (42 U.S.C. § 300x-28);

(v) United States Code, title 10, ch. 55 (10 U.S.C. § 1071 et seq.);

(vi) A medical care program of the Indian Health Service or of a tribal organization;

(vii) A state health benefits risk pool;

(viii) A health plan offered under United States Code, title 5, ch. 89 (5 U.S.C. § 8901 et seq.);

(ix) A public health plan; or

(x) A health benefit plan under § 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e));

(B) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits;

(7) "Employee" has the meaning given the term under § 3(6) of ERISA (29 U.S.C. § 1002(6));

(8) "Employer" has the meaning given the term under § 3(5) of ERISA (29 U.S.C. § 1002(5)), except that the term includes only employers of two (2) or more employees;

(9) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for the enrollment;

(10) "Excepted benefits" means benefits under one (1) or more, or any combination, of the following:

(A) Benefits not subject to requirements:

(i) Coverage only for accident or disability income insurance, or any combination of accident and disability income insurance;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; or

(viii) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(B) Benefits not subject to requirements if offered separately:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination of long-term care, nursing home care, home health care and community-based care; and

(iii) Other similar, limited benefits specified in regulations;

(C) Benefits not subject to the requirements if offered as independent, noncoordinated benefits are coverage only for a specified disease or illness and hospital indemnity or other fixed indemnity insurance; and

(D) Benefits not subject to the requirements if offered as a separate insurance policy are medicare supplement insurance, coverage supplemental to the coverage provided under United States Code, title 10, ch. 55 (10 U.S.C. § 1071 et seq.), and similar supplemental coverage provided to coverage under a group health plan;

(11) "Federal governmental plan" means a governmental plan established or maintained for its employees by the federal government or by any agency or instrumentality of the federal government;

(12) "Governmental plan" has the meaning given the term under ERISA, § 3(32) (29 U.S.C. § 1002(32)), and any federal governmental plan;

(13) "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with the plan;

(14) "Group health plan" means an employee welfare benefit plan, as defined in ERISA, § 3(1) (29 U.S.C. § 1002(1)), to the extent that the plan

provides medical care and including items and services paid for as medical care to employees or their dependents, as defined under the terms of the plan, directly or through insurance, reimbursement, or otherwise. A program under which creditable coverage is provided shall be treated as a group health plan for the purposes of applying this part;

(15) "Health insurance coverage" means benefits consisting of medical care, provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care, under any policy, certificate, or agreement offered by a health insurance issuer;

(16) "Health insurance issuer" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide health insurance coverage, including, but not limited to, an insurance company, a health maintenance organization and a nonprofit hospital and medical service corporation. "Health insurance issuer" does not include a group health plan;

(17) "Health maintenance organization" means:

(A) A federally qualified health maintenance organization, as defined under federal law; or

(B) An organization recognized under state law as a health maintenance organization;

(18) "Health status-related factor" means any of the following factors:

(A) Health status;

(B) Medical condition, including both physical and mental illnesses;

(C) Claims experience;

(D) Receipt of health care;

(E) Medical history;

(F) Genetic information;

(G) Evidence of insurability, including conditions arising out of acts of domestic violence; and

(H) Disability;

(19) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance;

(20) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan. This includes coverage offered in connection with a group health plan that has fewer than two (2) participants as current employees on the first day of the plan year;

(21) "Large employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least fifty-one (51) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;

(22) "Large group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents, through a group health plan maintained by a large employer;

(23) "Late enrollee" means, with respect to coverage under a group health plan, a participant or beneficiary who enrolls under the plan other than during:

(A) The first period in which the individual is eligible to enroll under

the plan; or

(B) A special enrollment period;

(24) "Medical care" means amounts paid for:

(A) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(B) Amounts paid for transportation primarily for and essential to medical care referred to in subdivision (24)(A); and

(C) Amounts paid for insurance covering medical care referred to in subdivisions (24)(A) and (B);

(25) "Network plan" means health insurance coverage of a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer;

(26) "Nonfederal governmental plan" means a governmental plan that is not a federal governmental plan;

(27) "Participant" has the meaning given the term under ERISA, § 3(7) (29 U.S.C. § 1002(7));

(28) "Placed for adoption," in connection with any placement for adoption of a child with any person, means the assumption and retention by the person of a legal obligation for total or partial support of the child in anticipation of adoption of the child. The child's placement with the person terminates upon the termination of the legal obligation;

(29) "Plan sponsor" has the meaning given the term under § 3(16)(B) of ERISA (29 U.S.C. § 1002(16)(B));

(30) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for the coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that date. Genetic information shall not be treated as a preexisting condition in the absence of a diagnosis of the condition related to such information;

(31) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employs an average of at least two (2) but no more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;

(32) "Small group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents, through a group health plan maintained by a small employer; and

(33) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

56-7-2901. Short title. [Effective until June 30, 2025. See the Compiler's Notes.]

This part shall be known and may be cited as the "Access Tennessee Act of 2006."

56-7-2902. Part definitions. [Effective until June 30, 2025. See the Compiler's Notes.]

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

(1) "Access Tennessee" means the nonprofit entity created pursuant to § 56-7-2903(a);

(2) "Board" means the Access Tennessee board of directors established pursuant to § 56-7-2903(b);

(3) "Church plan" has the meaning given the term under ERISA, in 29 U.S.C. § 1002(33);

(4) "COBRA continuation coverage" refers to continuation of coverage offered pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (42 U.S.C. § 300bb-1 et seq.);

(5) "Commissioner" means the commissioner of finance and administration;

(6)(A) "Creditable coverage" means, with respect to an individual, coverage of the individual that provides the minimum essential coverage required under 26 U.S.C. § 5000A;

(B) A period of creditable coverage shall not be counted, with respect to the enrollment of an individual who seeks coverage under this part, if, after the period and before the enrollment date, the individual experiences a significant break in coverage;

(7) "Department" means the department of finance and administration;

(8) "ERISA" means the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.);

(9) "Federally defined eligible individual" means an individual:

(A) For whom, as of the date on which the individual seeks coverage under this part, the aggregate of the periods of creditable coverage is eighteen (18) or more months;

(B) Whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or plan described in § 56-2-121(a), or health insurance coverage offered in connection with the plan;

(C) Who is not eligible for coverage under a group health plan, medicare, medicaid, or any successor program, and who does not have other health insurance coverage;

(D) With respect to whom the most recent coverage within the period of aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud;

(E) Who, if offered the option of continuation of coverage under a COBRA continuation coverage provision or under a similar state program, elected the coverage; and

(F) Who has exhausted the continuation coverage described in subdivision (9)(E);

(10) "Fund" means the Access Tennessee health insurance program fund established by § 56-7-2911(d);

(11) "Governmental plan" has the meaning under ERISA, in 29 U.S.C. § 1002(32);

(12) "Group health plan" means an employee welfare benefit plan as defined in ERISA, in 29 U.S.C. § 1002(1), to the extent that the plan provides medical care, as defined in subdivision (19), and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reim-

bursement or otherwise;

(13)(A) "Health insurance coverage" means any hospital and medical expense incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or health care services, whether by insurance or otherwise;

(B) "Health insurance coverage" shall not include one (1) or more, or any combination of, the following:

(i) Coverage only for accident or disability income insurance, or any combination of accident and disability income insurance;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Automobile medical payment insurance;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; and

(viii) Other similar insurance coverage, specified in federal regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. § 1320d et seq.), under which benefits for medical care are secondary or incidental to other insurance benefits;

(C) "Health insurance coverage" shall not include the following benefits, if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the coverage:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(iii) Other similar, limited benefits specified in federal regulations issued pursuant to HIPAA;

(D) "Health insurance coverage" shall not include the following benefits, if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to the event under any group health plan maintained by the same plan sponsor:

(i) Coverage only for a specified disease or illness; or

(ii) Hospital indemnity or other fixed indemnity insurance; and

(E) "Health insurance coverage" shall not include the following, if offered as a separate policy, certificate or contract of insurance:

(i) Medicare supplemental health insurance, as defined under § 1882(g)(1) of the Social Security Act (42 U.S.C. § 1395ss(g)(1));

(ii) Coverage supplemental to the coverage provided under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (10 U.S.C. § 1071 et seq.); or

(iii) Similar supplemental coverage provided to coverage under a group health plan;

(14) "Health maintenance organization" means an organization as defined in § 56-32-102;

(15) "Hospital" means a licensed public or private institution as defined in § 68-11-201;

(16) "Insurance arrangement" means, to the extent permitted by ERISA, any plan, program, contract or other arrangement under which one (1) or more employers, unions or other organizations provide to their employees or members, either directly or indirectly through a trust or third party administration, health care services or benefits other than through an insurer, and shall include any plan described in § 56-2-121(a);

(17) "Insurer" means any entity that provides health insurance coverage in this state. For the purposes of this part, insurer includes, but is not limited to, an insurance company, a health maintenance organization, a preferred provider organization, a hospital and medical service corporation, a surplus lines insurer, an insurer providing stop-loss or excess loss insurance to a group health plan, a reinsurer reinsuring health insurance in this state, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation;

(18) "Medicaid" means the federal- and state-financed, state-run program of medical assistance established pursuant to Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), and any waivers thereof;

(19) "Medical care" means:

(A) The diagnosis, care, mitigation, treatment, or prevention of disease;

(B) Transportation primarily for and essential to medical care referred to in subdivision (19)(A); and

(C) Insurance covering medical care referred to in subdivisions (19)(A) and (B);

(20) "Medicare" means coverage under Parts A and/or B of Title XVIII of the Social Security Act (42 U.S.C. § 1395 et seq.);

(21) "Plan of operation" means the articles, bylaws, and operating rules and procedures adopted by the board pursuant to § 56-7-2903(i);

(22) "Program" means the Access Tennessee health insurance program, created in § 56-7-2903(a);

(23) "Resident" means an individual who is legally domiciled in Tennessee;

(24) "Significant break in coverage" means a period of sixty-three (63) consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage;

(25) "Third party administrator" means any entity that, on behalf of an insurer or insurance arrangement, provides health insurance coverage to individuals in this state, receives or collects charges, contributions or premiums for, or adjudicates, processes or settles claims in connection with, any type of health benefit provided in or as an alternative to health insurance coverage; and

(26) "Unfair referral" means a referral to the program described in § 56-7-2908(h).

56-7-2903. Creation of Access Tennessee health insurance program — Board of directors — Advisory committee — Funding plan and plan of operation — Promulgation of rules — Errors and omissions by commissioner or board members. [Effective until June 30, 2025. See the Compiler's Notes.]

(a) There is created a nonprofit entity known as Access Tennessee to operate a program to provide health insurance coverage pursuant to this part. The program shall be known as the Access Tennessee health insurance program.

(b) Access Tennessee shall operate the program subject to the supervision and control of a board of directors composed of fourteen (14) members. The commissioner shall, within ninety (90) days after July 1, 2006, give notice to all insurers of the time and place for the initial organizational meeting of the board. The board shall consist of the following members:

(1) The commissioner of finance and administration or the commissioner's designee;

(2) The commissioner of health or the commissioner's designee;

(3) The commissioner of mental health and substance abuse services or the commissioner's designee;

(4) One (1) representative of the Tennessee Hospital Association, selected by the commissioner;

(5) One (1) representative of the Tennessee Medical Association, selected by the commissioner;

(6) One (1) member involved primarily as a producer in the business of health insurance, selected by the commissioner;

(7) One (1) member of the general public, selected by the commissioner;

(8) One (1) member selected by the speaker of the house of representatives;

(9) One (1) member selected by the speaker of the senate;

(10) One (1) representative of an employer of greater than or equal to five hundred (500) employees that is self-insured, selected by the commissioner;

(11) One (1) representative of an employer of less than five hundred (500) employees that is commercially insured, selected by the commissioner;

(12) One (1) representative of a hospital medical service corporation, selected by the commissioner, unless, pursuant to subsection (d), no such representative is able to serve, in which case this position shall be filled by a representative of another insurer;

(13) One (1) representative of an insurer other than a hospital medical service corporation, selected by the commissioner, unless, pursuant to subsection (d), no such representative is able to serve, in which case this position shall be filled by a representative of another insurer; and

(14) The commissioner of intellectual and developmental disabilities or the commissioner's designee.

(c) The commissioner and the speakers of the senate and the house of representatives, in making appointments to the board, shall strive to ensure that the membership of the board is representative of the state's geographic and demographic composition, with appropriate attention to the representation of women and minorities.

(d) No individual representing an entity selected to administer the program, pursuant to § 56-7-2909, or its affiliates shall serve on the board. Any appointed board member who represents an entity or affiliate that has the

intention of serving as administrator of the program shall be prohibited from serving as the administrator, unless the board member provides written notice to the board of the entity's or affiliate's intent to bid on the contract for administrator. The notice shall be delivered to the board at least six (6) months prior to the release of any request for proposal (RFP) seeking to select or renew an administrator. In the event the notice is delivered, the board member shall simultaneously resign the board member's membership on the board.

(e) The commissioner shall, on an annual basis, designate one (1) member of the board to serve as chair and one (1) member of the board to serve as vice chair.

(f) The board members selected pursuant to subdivisions (b)(4), (5) and (6) shall serve for an original term of one (1) year. The board members selected pursuant to subdivisions (b)(8), (9), (12) and (13) shall serve for an original term of two (2) years. The board members selected pursuant to subdivisions (b)(7), (10) and (11) shall serve for an original term of three (3) years. Thereafter, all board members selected pursuant to subdivisions (b)(4) - (11) shall serve for a term of three (3) years. Board members appointed pursuant to subdivisions (b)(12) and (13) shall not be appointed to the board until after Access Tennessee awards an initial contract to an administrator of the program.

(g) Board members shall receive no compensation, but shall be reimbursed for all travel expenses in accordance with state travel regulations.

(h) Vacancies in the board shall be filled by the appropriate appointing authority. Board members may be removed by their respective appointing authority for cause.

(i) In order to assist the board, there shall be an advisory committee consisting of five (5) representatives of insurers that offer health insurance coverage in this state who shall be selected by the commissioner. The advisory committee may provide advice on insurance related issues, including, but not limited to, benefit design and market impact of the plans created and offered by Access Tennessee.

(j) The board, on an annual basis, shall submit to the commissioner and the comptroller of the treasury a funding plan and a plan for operation of the program and any amendments necessary or suitable to assure the fair, reasonable and efficient administration of the program and its financial solvency, based upon timely and accurate actuarial assumptions. The plan of operation shall become effective upon approval, in writing, by the commissioner and the comptroller of the treasury.

(k) The commissioner and the comptroller of the treasury shall approve the funding plan and the plan of operation, if they determine that the plans assure the financial solvency of the program, the efficient administration of the program, and otherwise are in compliance with this part.

(*l*) If the board fails to submit a suitable plan of operation within one hundred eighty (180) days after the appointment of the board or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner may initiate actions necessary or advisable to effectuate this part. The actions shall continue in effect until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner and the comptroller. To the extent that the actions include the promulgation of rules to effectuate this part, the rules shall be promulgated as emergency rules pursuant to § 4-5-208.

(m) The plan of operation shall:

(1) Establish procedures for operation of the program;

(2) Establish procedures for selecting an administrator, in accordance with § 56-7-2909;

(3) Establish procedures to create a fund, under management of the board, for administrative expenses;

(4) Establish procedures for the handling, accounting, and auditing of assets, moneys and claims of the program and the program administrator;

(5) Develop and implement a program to publicize the existence of the program, the eligibility requirements, and procedures for enrollment, and to maintain public awareness of the program;

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the board. The grievances shall be reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three (3) years;

(7) Establish procedures to implement the requirements of § 56-7-2909(g); and

(8) Provide for other matters as may be necessary and proper for the execution of the board's powers, duties and obligations under this part.

(n) The funding plan shall:

(1) Establish premium rates for the upcoming year, pursuant to § 56-7-2911(a);

(2) Establish an assessment rate for insurers and insurance arrangements, pursuant to § 56-7-2911(a)(2); provided, however, that the total amount of the assessments authorized under § 56-7-2911(a)(2) for a fiscal year shall not exceed the amount appropriated by the state to the program for that same fiscal year; and

(3) Identify other available funds for the program, including any legislative appropriations and federal funding.

(o) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner or the board members, or any of their employees or agents, for any omission or any action taken by them within the scope of their duties arising from this part, except for willful, malicious or criminal acts or omissions done for personal gain.

56-7-2904. Powers and authority. [Effective until June 30, 2025. See the Compiler's Notes.]

Access Tennessee has the general powers and authority granted under the laws of this state to insurance companies licensed to transact the kinds of insurance defined under § 56-2-201. In addition, Access Tennessee has the specific power to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs in other states for the joint performance of common administrative functions, or with persons, other organizations or other state agencies for the performance of administrative functions;

(2)(A) Sue or be sued, including taking any legal actions necessary or proper to:

(i) Avoid the payment of improper claims against the program or the coverage provided by or through the program;

(ii) Recover any amounts erroneously or improperly paid by the program;

(iii) Recover any amounts paid by the program as a result of mistake of fact or law; or

(iv) Recover other amounts due the program.

(B) For purposes of subdivision (2)(A), as well as for legal representation of Access Tennessee, Access Tennessee is considered to be an instrumentality of the state for the purpose of being represented by the attorney general and reporter, pursuant to § 8-6-109;

(3) Establish and modify, from time to time as appropriate, rates, rate schedules, rate adjustments, expense allowances, agent referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the program. Rates shall be determined in relation to the coverage provided, the risk experience, and expenses of providing coverage. Rates and risk schedules may be adjusted for age, tobacco use and weight and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;

(4) Establish a program to provide premium assistance to low income individuals eligible to participate in the program;

(5) Purchase or issue policies of insurance in accordance with the requirements of this part;

(6) Appoint appropriate legal, actuarial and other committees as necessary, including advisory committees of external experts, to provide technical assistance in the operation of the program, policy and other contract design, and assistance with any other function within the authority of Access Tennessee;

(7) Request an annual audit by the comptroller of the treasury, as otherwise provided by law, or, with the prior written approval of the comptroller of the treasury, contract with an independent public accountant for the audit;

(8) Determine the eligibility requirements for program participants, in accordance with this part;

(9) Establish at least two (2) coverage options, pursuant to § 56-7-2910;

(10) Employ and set the compensation of, or contract with, any persons or entities necessary to assist Access Tennessee in carrying out its responsibilities and functions;

(11) Provide for reinsurance of risks incurred by the program;

(12) Issue additional types of health insurance policies to provide optional coverage;

(13) Provide for and employ cost containment measures and requirements, including, but not limited to, preadmission screening, second surgical opinion, concurrent utilization review, disease management and individual case management, for the purpose of making the program more cost effective;

(14) Design, utilize, contract or otherwise arrange for the delivery of cost effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations and other limited network provider arrangements; and

(15) Adopt bylaws, policies, procedures and a plan document detailing program benefits as may be necessary or convenient for the implementation of this part and the operation of the program.

56-7-2905. Annual report. [Effective until June 30, 2025. See the Compiler's Notes.]

Beginning by October 1, 2007, Access Tennessee shall make an annual report to the governor and comptroller of the treasury, to be submitted by October 1 of each year. The report shall be in a form approved by the commissioner and shall summarize the activities of Access Tennessee in the preceding calendar year, including the net written and earned premiums, enrollment, the expense of administration, and the paid and incurred losses. The report shall also include an evaluation of the ability of low income individuals to participate in the program.

56-7-2906. Additional powers and duties — Rules. [Effective until June 30, 2025. See the Compiler's Notes.]

The commissioner may, by rule, establish additional powers and duties of Access Tennessee and may adopt rules necessary and proper to implement this part. The rules shall be promulgated as emergency rules pursuant to § 4-5-208. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

56-7-2907. Audit. [Effective until June 30, 2025. See the Compiler's Notes.]

The commissioner and the comptroller of the treasury have the authority to review and audit the expenditure of funds made under this part. Nothing in this section shall limit the authority of the commissioner to ensure that program expenditures are maintained within legislative appropriations.

56-7-2908. Eligibility for program — Unfair practices. [Effective until June 30, 2025. See the Compiler's Notes.]

(a) Eligibility for the program operated pursuant to this part shall be limited to citizens of the United States, except that individuals satisfying the federally defined exceptions contained in 8 U.S.C. § 1622(b) shall also be eligible to apply.

(b) A federally defined eligible individual who has not experienced a significant break in coverage and who is and continues to be a resident shall be eligible for program coverage.

(c) To the extent allowed under federal law, the board may establish eligibility criteria to provide program coverage for individuals not specified in subsection (a).

(1)(A) In the first twelve (12) months of the program's operation, the criteria shall include, with respect to individuals who are not federally defined eligible individuals:

(i) A requirement that an individual be a resident of Tennessee for at least six (6) months;

(ii) A requirement that an individual not have had health insurance coverage in the previous six (6) months;

(iii) A requirement that an individual not have access to health insurance coverage at the time of application to the program;

(iv) A requirement that an individual exhaust any option of continuation coverage under a group or individual health insurance plan, including COBRA continuation coverage; and

(v) A requirement that the person not have coverage pursuant to § 56-7-2809.

(B) The board shall establish procedures to verify that the criteria in subdivisions (c)(1)(A)(i)-(v) have been met.

(2) At the end of the first year of the program's operation, or any time thereafter, the board may assess the implementation and impact of the eligibility criteria established in subdivision (c)(1) and modify the criteria as it deems appropriate.

(3) The board may establish additional eligibility criteria to provide program coverage for individuals who are not federally defined eligible individuals. The criteria may include:

(A) A list of medical or health conditions for which a person shall be eligible for program coverage without applying for health insurance;

(B) A requirement that an individual be uninsured for a specified period of time prior to obtaining program coverage;

(C) Minimum residency requirements;

(D) Citizenship requirements; or

(E) Any other eligibility criteria that the board deems appropriate that are not in conflict with this part.

(d) To the extent allowed under federal law, the board may establish limits on the number of individuals covered by the program or the duration of program coverage, based on available funding. In determining whether to adopt limits, the board shall consider the amount of assessments required pursuant to § 56-7-2911(a)(2), and shall attempt to keep the assessments at a reasonable level through the adoption of limits, if necessary.

(e)(1) A person shall not be eligible for coverage through the program, if:

(A) The person is determined to be eligible for health benefits under medicaid;

(B) The person has previously terminated coverage in the program within twelve (12) months of the date that application is made to the program, except that this subdivision (e)(1)(B) shall not apply with respect to an applicant who is a federally defined eligible individual;

(C) The person is an inmate or resident of a public institution, except that this subdivision (e)(1)(C) shall not apply with respect to an applicant who is a federally defined eligible individual; or

(D) The person has had prior coverage with the program terminated for fraud.

(2) The board may establish additional criteria disqualifying individuals for program coverage; provided, that the criteria do not apply to federally defined eligible individuals.

(f) Program coverage shall cease:

(1) On the date a person is no longer a resident of Tennessee;

(2) On the date a person requests coverage to end;

(3) Upon the death of the covered person;

(4) On the date state law requires cancellation of the policy;

(5) At the option of the board, thirty (30) days after the program makes any inquiry concerning the person's eligibility or place of residence to which

the person does not reply;

(6) At the option of the board, on a specified number of days after the day on which a premium payment for program coverage becomes due, if the payment is not made on or before that date; or

(7) On the date a person becomes eligible for coverage by another plan through the person's spouse or dependent.

(g) Except under the circumstances described in subsection (e), a person who ceases to meet the eligibility requirements of this section may be terminated at the end of the policy period for which the necessary premiums have been paid. Access Tennessee has the sole discretion to determine that a person does not meet the eligibility requirements.

(h) It shall constitute an unfair practice in the business of insurance, for the purposes of §§ 56-8-103 and 56-6-112, for an insurer, insurance producer or third party administrator to refer an individual to the program, or arrange for an individual to apply to the program, for the purpose of separating that individual from group health insurance coverage. A violation of § 56-8-103 under this section shall be punishable by law as a violation of § 56-8-104. The board has the authority and responsibility to adopt policies and procedures that effectively implement this subsection (h). The commissioner may impose a higher assessment pursuant to § 56-7-2911(a)(2) on any entity determined, after appropriate notice and an opportunity for a hearing, to have violated this subsection (h).

(i) Notwithstanding any other provision of this part to the contrary, during an initial two-month period to be determined by the board, the commissioner may waive any eligibility restriction set forth in statute or adopted by the board for any individual disenrolled from the TennCare standard category on or after August 1, 2005.

56-7-2909. Administration of the program. [Effective until June 30, 2025. See the Compiler's Notes.]

(a) The board shall provide for administration of the program by electing, in its plan of operation, to have the program administered in either or both of the following manners:

(1) By the commissioner; or

(2) By using a competitive procurement process to select one (1) or more insurers or third party administrators to administer the program.

(b) If the board elects to use a competitive procurement process to select an insurer or administrator, the board shall evaluate proposals submitted based on criteria established by the board, which shall include, but need not be limited to:

(1) The insurer's or administrator's demonstrated ability to handle health insurance coverage for individuals;

(2) The efficiency and timeliness of the insurer's or administrator's claim processing and payment procedures;

(3) The fees proposed to discharge the insurer's or administrator's responsibility;

(4) The insurer's or administrator's ability to apply effective cost containment programs and procedures and to administer the program in a cost-efficient manner;

(5) The insurer's or administrator's ability to implement effective disease

and/or case management programs;

(6) The availability of a network of providers for the program; and

(7) The financial condition and stability of the insurer or administrator.

(c) A contracted insurer or administrator shall serve for a period specified in the contract between Access Tennessee and the selected insurer or administrator, subject to removal for cause and subject to any terms, conditions, and limitations of the contract.

(d) At least one (1) year prior to the expiration of each period of service by a selected insurer or administrator, the board shall invite eligible entities, including the current insurer or administrator, to submit proposals to serve for the succeeding period. Selection of the succeeding insurer or administrator shall be made at least six (6) months prior to the end of the current period.

(e) An insurer or administrator shall perform functions relating to the program that may be assigned to it, including:

(1) Determination of eligibility and collection of information regarding unfair referrals;

(2) Payment of claims based on rates established by the insurer or administrator;

(3) Establishment of a premium billing procedure for collection of premiums from persons covered under the program;

(4) Making available information relating to the proper manner of submitting a claim for payments and distribution forms upon which submission shall be made; and

(5) Performance of other functions necessary to assure timely payment of benefits to providers of services to persons covered under the program.

(f) An insurer or administrator shall submit regular reports to Access Tennessee, as required by the board regarding the operation of the program. The frequency, content, and form of the report shall be specified in the contract between Access Tennessee and the insurer or administrator.

(g) Following the close of each calendar year, the insurer or administrator shall determine net written and earned premiums, other state or federal funding received by the program, the expense of administration, and the paid and incurred losses for the year, taking into account investment income and other appropriate gains and losses. The administrator shall report this information to the board, the department and the comptroller of the treasury on a form prescribed by the commissioner.

(h) A contracted insurer or administrator shall be paid as provided in the contract between Access Tennessee and the contractor.

56-7-2910. Offering of coverage options — Exclusion of charges and expenses — Availability of third party payment — Recovery of ineligible benefits paid. [Effective until June 30, 2025. See the Compiler's Notes.]

(a) The program shall offer at least one (1) form of coverage to each eligible person. Coverage may be modeled after one (1) of the healthcare options offered to state employees pursuant to § 8-27-201, [repealed and reenacted; See Compiler's Notes.] or may combine a health savings account with a high deductible health plan. Coverage may also be obtained through the commercial market. The board may adopt other coverage options as appropriate.

(b) The board, with the approval of the commissioner, shall establish:

(1) The coverage to be provided by each option;

(2) The applicable schedule of benefits; and

(3) Any exclusions to coverage and other limitations.

(c) In establishing subsection (b), the board shall take into consideration the levels of health insurance coverage provided in the state and medical economic factors as may be deemed appropriate, and shall promulgate benefit levels, deductibles, coinsurance factors, exclusions, and limitations determined to be generally reflective of and commensurate with health insurance coverage provided through a representative number of large employers in Tennessee.

(d) The coverage options offered by the program shall not be required to provide the mandated coverage or the mandated offers of coverage required pursuant to part 23, 24, 25 or 26 of this chapter.

(e) Program coverage may exclude charges or expenses incurred during a period of time not to exceed twelve (12) months following the effective date of coverage, as to any condition that, during a period not to exceed six (6) months immediately preceding the effective date of coverage, had manifested itself in such a manner as would cause an ordinarily prudent person to seek diagnosis, care or treatment or for which medical advice, care or treatment was recommended or received as to the condition. The preexisting condition exclusion shall be waived to the extent to which similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, if the application for program coverage is made not later than sixty-three (63) days following the involuntary termination. In that case, coverage in the program shall be effective from the date on which the prior coverage was terminated. The exclusions may not be applied to a federally defined eligible individual.

(f) Access Tennessee shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the program may be reduced or refused as a set-off against any amount recoverable under this subsection (f).

(g) Nothing in this part shall be construed to prohibit Access Tennessee from issuing additional types of health insurance policies with different types of benefits that, in the opinion of the board, may be of benefit to those individuals otherwise eligible for coverage.

(h) Notwithstanding this part to the contrary, no person shall be eligible for coverage through the program who is not already enrolled in the program prior to April 22, 2015.

56-7-2911. Funding. [Effective until June 30, 2025. See the Compiler's Notes.]

(a) The program shall be funded in the manner set forth as follows:

(1) Premiums.

(A) The board shall establish premium rates for program coverage as provided in subdivision (1)(B). Separate schedules of premium rates based on age, tobacco use and weight may apply for individual risks. Premium rates and schedules shall be submitted to the commissioner for approval prior to use.

(B) The board, with the assistance of the commissioner, shall determine a standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals. The standard

risk rate shall be established using reasonable actuarial techniques, and shall reflect anticipated experience and expenses for the coverage. Initial rates for program coverage shall not be less than one hundred fifty percent (150%) of rates established as applicable for individual standard risks. Subject to the limits provided in this subdivision (a)(1)(B), subsequent rates shall be established to provide fully for the expected costs of claims, including recovery of prior losses, expenses of operation, investment income of claim reserves, and any other cost factors subject to the limitations described herein. In no event shall program rates exceed two hundred percent (200%) of rates applicable to individual standard risks.

(C) Following the close of each fiscal year, the commissioner shall prepare a report analyzing the program's projected revenues and expenditures and funding requirements. The commissioner shall present this report, together with the board's comments, to the governor with a recommendation for the funding of the program.

(2) Sources of Additional Revenue.

(A) The deficit incurred by the program, reported by the insurer or administrator pursuant to § 56-7-2909(g), shall be funded through state appropriations and an assessment on insurers, insurance arrangements and third party administrators.

(B) The board is authorized to determine the amount and allocation of any assessments and advance interim assessments on insurers, insurance arrangements and third party administrators in accordance with this section and subject to approval by the commissioner. The commissioner shall have the authority to assess insurers, insurance arrangements, and third party administrators, and to make advance interim assessments as may be reasonable and necessary for the program's organizational and interim operating expenses. Any interim assessments are to be credited as offsets against any regular assessments due following the close of the fiscal year. The assessments must be presented to the department of commerce and insurance to advise whether the assessment will create a hazardous operational or financial condition for the insurer, insurance arrangement, or third party administrator.

(C) The assessment for each individual insurer, insurance arrangement and third party administrator shall be determined by multiplying the total assessment of all insurers, insurance arrangements and third party administrators as determined in subdivision (a)(2)(B) by a fraction, the numerator of which equals the number of individuals in Tennessee covered by each individual insurer, insurance arrangement and third party administrator, and the denominator of which equals the total number of all individuals in Tennessee covered by insurers, insurance arrangements and third party administrators, all determined as of the end of the prior calendar year.

(D) The board shall make reasonable efforts designed to ensure that each individual covered by insurers, insurance arrangements and third party administrators is counted only once with respect to any assessment. For that purpose, the board shall:

(i) Require each insurer and insurance arrangement that obtains excess or stop loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured, including by way of excess or stop loss coverage, in whole or part;

(ii) Require each insurer and insurance arrangement that contracts with a third party administrator to include in its count of insured individuals all individuals whose coverage is administered in whole or part by a third party administrator;

(iii) Require each insurer that is an excess or stop loss insurer to include in its count of insured individuals all individuals covered through an insurance arrangement;

(iv) Require each third party administrator to include in its count of insured individuals all individuals covered through an insurance arrangement;

(v) Permit an insurer who is an excess or stop loss insurer to exclude from its number of insured individuals those who have been counted by the primary insurer or by the primary reinsurer or primary excess or stop loss insurer for the purpose of determining its assessment under this subdivision (a)(2);

(vi) Permit a third party administrator to exclude from its number of insured individuals those who have been counted by an insurer; and

(vii) Permit an insurance arrangement to exclude from its number of insured individuals those who have been counted by an excess or stop loss insurer or third party administrator.

(E) The amount of the assessment of each insurer, insurance arrangement or third party administrator shall be determined by the board based on annual statements and other reports deemed to be necessary by the board and filed by the participating insurer with the board or through other reporting mechanisms established by the department of commerce and insurance. The board may use any reasonable method of estimating the number of individuals covered by an insurer or insurance arrangement if the specific number is unknown. With respect to insurers that are reinsurers or excess or stop loss insurers, the board may use any reasonable method of estimating the number of persons insured by each reinsurer or excess or stop loss insurer. The commissioner shall approve and may make modifications to the board's determination of amounts and allocations of the assessments, and shall have the authority to issue and collect the assessments.

(F) An insurer, insurance arrangement or third party administrator may petition the commissioner for an abatement or deferment of all or part of an assessment imposed pursuant to this section. The commissioner, in consultation with the commissioner of commerce and insurance, may abate or defer, in whole or in part, the assessment if, in the opinion of the commissioner, payments of the assessment would endanger the ability of the insurer, insurance arrangement or third party administrator to fulfill its contractual obligations. In the event an assessment against an insurer, insurance arrangement or third party administrator is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other insurers, insurance arrangements and third party administrators in a manner consistent with the basis for assessments set forth in this subsection (a). The insurer, insurance arrangement or third party administrator receiving the abatement or deferment shall remain liable to the program for the deficiency for four (4) years.

(b) The board shall operate the program in a manner so that the estimated cost of providing health insurance coverage during any fiscal year

will not exceed total income the program expects to receive from policy premiums, assessments, funds appropriated by the state legislature, and moneys received under subsection (c). After determining the amount of funds appropriated to it for a fiscal year, the board shall estimate the number of new policies it believes the program has the financial capacity to insure during that year so that costs do not exceed income. The board shall take steps necessary to assure that program enrollment does not exceed the number of residents it has estimated it has the financial capacity to insure.

(c) The board may make application for any federal grants or other federal sources under which the program may be eligible to receive moneys.

(d) Program Fund.

(1) The Access Tennessee health insurance program fund shall be established as a separate account in the state treasury.

(2) Moneys in the fund, including interest earned on the moneys, shall be invested by the state treasurer, pursuant to §§ 9-4-602 and 9-4-603 for the sole benefit of the fund.

(3) Any moneys remaining in the fund at the end of the fiscal year shall not revert to the general fund, but shall be brought forward to the next fiscal year for the exclusive benefit of the fund's payment of future expenses.

(4) The fund shall be subject to audit by the comptroller of the treasury.

56-7-2912. Fraud and abuse. [Effective until June 30, 2025. See the Compiler's Notes.]

The office of inspector general, created pursuant to § 71-5-2502, shall have the authority to investigate civil and criminal fraud and abuse of Access Tennessee, or any other violations of state criminal law related to the operation of the program. The powers of the office of inspector general set forth in §§ 71-5-2501 — 72-5-2512 relating to the investigation of fraud and abuse in the TennCare program shall also be applicable to its investigation of fraud and abuse of Access Tennessee.

56-7-2913. Federal funding. [Effective until June 30, 2025. See the Compiler's Notes.]

Notwithstanding any law to the contrary, if the state determines not to apply for or accept federal funding for the purposes of this part, any provisions of this part, including any eligibility requirements regarding federally defined eligible individuals as set forth in § 56-7-2908 of this part, would not be subject to nor would the state or board have to comply with any federal requirements mandated as a result of the acceptance of the federal funds.

56-7-2914. Legislative review. [Effective until June 30, 2025. See the Compiler's Notes.]

This part shall be reviewed annually by the commerce and labor committee of the senate, the insurance 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, and these committees shall recommend necessary changes to the governor and the general assembly.

56-7-2916. Repealer. [Effective until June 30, 2025. See the Compiler's Notes.]

This part shall be repealed on June 30, 2025.

56-26-101. Part definitions.

As used in this part, unless the context otherwise requires, "accident and sickness insurance" includes any policy or contract covering insurance against loss resulting from sickness or from bodily injury or death by accident, or both. The various types of such policies are defined in the following subdivisions:

(1)(A) "Blanket accident and sickness insurance" means that form of accident and sickness insurance covering special groups of persons as enumerated in one (1) of the following divisions:

(i) Under a policy issued to any common carrier, which shall be deemed the policyholder covering a group defined as all persons who may become passengers on the common carrier;

(ii) Under a policy issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to the employment;

(iii) Under a policy issued to a college, school or other institution of learning, or to the head or principal thereof, which or who shall be deemed the policyholder, covering students or teachers;

(iv) Under a policy issued in the name of any volunteer fire department or first aid or other similar volunteer group, which shall be deemed the policyholder, covering all of the members of the department or group; or

(v) Under a policy issued to any other substantially similar group which, in the discretion of the commissioner, may be subject to the issuance of a blanket accident and sickness policy.

(B) An individual application is not required from a person covered under a blanket accident and sickness policy, nor is it necessary for the insurer to furnish each person a certificate;

(2) "Cancellable" or "renewable at option of company" refers to and may be used only in policies under which the company reserves the right to cancel or nonrenew the policy of any individual insured either on any date on which a premium becomes due, or on the policy anniversary, or at any other date subject to refund of any unearned premium;

(3) "Commissioner" means the commissioner of commerce and insurance;

(4) "Franchise accident and sickness insurance" means that form of accident and sickness insurance issued to either of the following:

(A) Three (3) or more employees of any corporation, copartnership or individual employer or any governmental corporation, agency or department thereof; or

(B) Ten (10) or more members of any trade or professional association or of a labor union or of any other association having had an active existence for at least two (2) years where the association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance; where the employees or members, with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by the employees or members, under an arrangement whereby the premiums on the policies

may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the association or union for its members, or by some designated person acting on behalf of the employer, association or union; and

(5) "Individual market" has the same meaning given in § 2791(e)(1)(A) of the Public Health Service Act (42 U.S.C. § 300gg-91);

(6)(A) "Noncancellable" or "noncancellable and guaranteed renewable" or synonymous terms such as "guaranteed continuable" may be used only in a policy, which the insured has the right to continue in force by the timely payment of premiums set forth in the policy:

(i) Until at least age fifty (50); or

(ii) In the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force.

(B) Except as provided in subdivision (6)(A), "guaranteed renewable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums:

(i) Until at least age fifty (50); or

(ii) In the case of a policy issued after age forty-four (44), for at least five (5) years from its date of issue, during which period the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force, except that the insurer may make changes in premium rates by classes.

(C) The limitation in subdivision (6)(A) on use of "noncancellable" also applies to any synonymous term such as "not cancellable," and the limitation in subdivision (6)(B) on use of "guaranteed renewable" applies to any synonymous term such as "guaranteed continuable";

(7) "Small employer" has the same meaning given in § 56-7-2203. However, for purposes of qualifying to establish a liability pool under § 56-26-204(a), all employees of all member employers participating in the provision of health insurance coverage must be included in the number of eligible employees; and

(8) "Written approval" includes an electronic approval.

56-26-201. Part definitions.

As used in this part:

(1) "Employees" includes the officers, managers and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, managers and employees of subsidiary or affiliated corporations, and the individual proprietors, partners and employees of individuals and firms, if the business of the employer and the individual or firm is under common control through stock ownership, contract, or otherwise. "Employees" may include retired employees. A policy issued to insure employees of a public body may provide that "employees" include elected or appointed officials. The policy may provide that "employees" include the trustees or their employees, or both, if their duties are principally connected with the trusteeship of the policy; and

(2) "Group accident and health insurance" means that form of accident and health insurance covering groups of persons as defined in the policy,

with or without one (1) or more members of their families or one (1) or more of their dependents, or covering one (1) or more members of the families or one (1) or more dependents, under a policy issued to an employer or trustees of a fund established by an employer, or to an association or other organization that qualifies under § 56-26-204(a) to establish a liability pool, a labor union or the trustees of a fund established by a labor union or an association, or the trustees of a fund established by two (2) or more employers in the same or related industry, or by one (1) or more labor unions or by one (1) or more employers and one (1) or more labor unions, or to a creditor or vendor in connection with a credit transaction (except for insurance regulated by or provided for in § 56-7-901), who shall be deemed the policyholder, insuring employees of the employer for the benefit of persons other than the employer, or insuring members or employees of the association or labor union for the benefit of persons other than officers of the association or labor union, or insuring employees of the employers or members of the unions, for the benefit of persons other than the employers or the unions, or insuring the debtors of the creditor or vendor to reduce the unpaid indebtedness of the debtor or vendee to the extent of payment of the benefits under the policy (except for insurance regulated by or provided for in § 56-7-901).

56-26-204. Pooling of liabilities to self-insurer.

(a)(1) Two (2) or more member employers of the same trade or professional organization with at least five hundred (500) covered lives may enter into an agreement to pool their liabilities under this chapter for the purpose of qualifying as self-insurers. The trade or professional association must:

(A) Have a constitution or bylaws;

(B) Have members that support the association by regular payment of dues on an annual, semiannual, quarterly, or monthly basis; and

(C) Have at least one (1) substantial business purpose unrelated to offering and providing health insurance coverage or other employee benefits to its employer members and their employees. However, offering and providing such coverage or benefits may serve as the professional association's primary purpose.

(2)(A) Ten (10) or more employers of the same nonprofit business coalition for health, organized in this state, may enter into an agreement with the coalition to pool their liabilities under this chapter for the purpose of qualifying as self-insurers. The business coalition must:

(i) Have a charter or bylaws;

(ii) Have members who support the coalition by regular payment of dues on an annual, semiannual, quarterly, or monthly basis; and

(iii) Have at least one (1) substantial business purpose unrelated to offering and providing health insurance coverage or other employee benefits to its employer members and their employees. However, offering and providing such coverage or benefits may serve as the coalition's primary purpose.

(B) A nonprofit business coalition for health does not qualify as a self-insurer under this subdivision (a)(2) until the department of commerce and insurance has promulgated the rules authorized by subsection (b).

(3) Two (2) or more member employers with at least five hundred (500) covered lives may enter into an agreement to pool their liabilities under this chapter for the purpose of qualifying as self-insurers if the employers are members of the same association that has a principal office within this state. The association must:

(A) Have a constitution or bylaws;

(B) Have members that support the association by regular payment of dues on an annual, semiannual, quarterly, or monthly basis; and

(C) Have at least one (1) substantial business purpose unrelated to offering and providing health insurance coverage or other employee benefits to its employer members and their employees. However, offering and providing such coverage or benefits may serve as the association's primary purpose.

(4) Two (2) or more member employers with at least five hundred (500) covered lives may enter into an agreement to pool their liabilities under this chapter for the purpose of qualifying as self-insurers if the employers are members of the same association that has a principal office within a municipality with a boundary that lies at least partially within this state. The association must:

(A) Have a constitution or bylaws;

(B) Have members that support the association by regular payment of dues on an annual, semiannual, quarterly, or monthly basis;

(C) Have at least one (1) substantial business purpose unrelated to offering and providing health insurance coverage or other employee benefits to its employer members and their employees. However, offering and providing such coverage or benefits may serve as the association's primary purpose;

(D) Adhere to any multi-state compact applicable to its establishment and operation; and

(E) Establish eligibility standards for membership in the association, subject to the requirements of this chapter.

(b) The commissioner of commerce and insurance has the authority to promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as deemed necessary to provide for the solvency, administration, examination, and enforcement of the pooling agreements. However, such rules must not prohibit or deter any association lawfully formed under the laws of this state or any other state from offering health insurance coverage to its members within this state if the health insurance coverage complies with federal law. To the extent deemed necessary by the commissioner, each employer member of the approved group must be classified as a self-insurer as otherwise provided in this chapter.

(c) Pools created under this section are subject to taxation under chapter 4 of this title, filing and approval under this chapter, and laws for protection of policyholders under chapter 7 of this title.

(d) Notwithstanding any law to the contrary, a pool created under this section by an association of private, not-for-profit educational institutions, whose association having been in existence for twenty-five (25) years or more, is exempt from taxation under chapter 4, part 2 of this title.

57-3-202. Manufacturer's or distiller's licenses — Qualifications of applicants — Fees — Permits to solicit orders — Penalty — Rules and regulations.

(a) A manufacturer's or distiller's license may be issued, as hereinafter provided, for the manufacturing of alcoholic spirituous beverages or vintage alcoholic beverages. Any person, firm, or corporation desiring to manufacture for commercial purposes any alcoholic spirituous beverages or vintage alcoholic beverages shall make application to the commission for a license to manufacture the same, which application shall be in writing and verified, on the forms herein authorized, to be prescribed and furnished; and, thereupon, the commission may grant such license, subject to this chapter.

(b) All applicants if individuals must be citizens of the United States, and all stockholders of any corporate licensee must likewise be citizens of the United States.

(c) Such license shall not be issued unless and until there be paid to the commission a separate license fee of one thousand dollars ($1,000).

(d) Before an individual owner, officer, employee, or representative of any manufacturer, rectifier, or importer may solicit orders from a licensed wholesaler in this state, such individual owner, officer, employee, or representative shall be the holder of a permit issued by the commission. The fee for such permit shall be fifty dollars ($50.00). Such permit shall authorize the holder to solicit orders upon the premises of a licensed wholesaler. A representative may sell the products of, or represent more than one (1) manufacturer, rectifier, or importer and such affiliates or subsidiaries that the manufacturer, rectifier, or importer may control by means of ownership or the ownership of a controlling stock interest.

(e) "Vintage alcoholic beverages," as used in this section, means all wine sold by wholesalers licensed under § 57-3-203.

(f)(1) A manufacturer's license may be issued to a person, firm or corporation for the limited purpose of blending nonalcoholic products with alcoholic beverages on premises, either on its own behalf or on behalf of other entities pursuant to contract.

(2) A licensee under this subsection (f) may obtain the alcoholic beverages for use in its blending operations from any entity holding a license or permit issued under this section, §§ 57-2-104, 57-3-203, and part 6 of this chapter.

(3) A license may be issued to a manufacturer, under this subsection (f), notwithstanding the requirements of § 57-3-106.

(4) A manufacturer, licensed under this subsection (f) for the limited purpose of blending, may sell, distribute or transport the product produced from its blending operations in accordance with this title.

(g) Notwithstanding subsection (f), an establishment licensed to sell alcoholic beverages for on-premises consumption pursuant to chapter 4, part 1 of this title, may, without a manufacturer's license, produce, store and sell infused products pursuant to § 57-4-108.

(h) The commission is empowered to make such regulations, investigations and audits as it may deem necessary for enforcing and preventing violations of this chapter.

(i)(1) A manufacturer's license issued or renewed under this section to a manufacturer shall also allow such manufacturer to sell at retail on the licensed premises of the manufacturer products that are manufactured on

the manufacturer's premises; provided, that no more than five gallons (5 gal.) or one-sixth (⅙) of a barrel of its products may be sold to any one (1) individual per visit to the premises. The manufacturer may serve samples of the product manufactured or distilled at the premises to any person of legal drinking age with or without cost or may include such samples as part of a tour of the manufacturer's or distiller's premises available to the public with or without cost. Such samples may be made available at any location on the manufacturing premises permitted by federal law. The manufacturer shall disclose to the commission the location where samples are available. The hours of sale for the manufacturer to sell products at retail shall be between the hours of eight o'clock a.m. (8:00 a.m.) and eleven o'clock p.m (11:00 p.m) on Monday through Saturday and between the hours of ten o'clock a.m. (10:00 a.m.) and eleven o'clock p.m. (11:00 p.m.) on Sunday.

(2) A manufacturer electing to exercise the rights granted to it under subdivision (i)(1), may only sell at retail or provide samples of product that it has obtained from a wholesaler licensed under § 57-3-203, and such wholesaler shall remit all taxes imposed under §§ 57-3-302, 57-3-501 (which shall be collected from the manufacturer based upon its retail sales), and 57-6-201. For products acquired from a wholesaler by a manufacturer under this section, the wholesaler may permit the manufacturer to deliver its products to the location on its premises where such retail sales and samples will be effected, provided the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections.

(3) Notwithstanding any law to the contrary, any manufacturer selling at retail with the license authorized by this subsection (i) shall pay a municipal inspection fee, described in § 57-3-501, if a municipality the manufacturer is located in imposes such inspection fee which shall then be remitted by the wholesaler as described in subdivision (i)(2).

(4)(A) A distiller's license issued or renewed under this section authorizes a distillery to sell to any person of legal drinking age alcoholic beverages for consumption on the premises of the distillery, other than the bonded premises, where such consumption is also permitted by federal law. Distilled spirits sold under this subdivision (i)(4) must be manufactured on the premises of the distillery.

(B) As used in subdivision (i)(4)(A), "premises," for purposes of consumption on the premises:

(i) Means any and all of the real property owned or leased by a distillery upon which the distillery is operated, including any real property owned by the distillery contiguous thereto; and

(ii) Does not mean the bonded premises of a distillery.

(5) Samples served and alcoholic beverages sold for consumption on the premises of a distillery in accordance with this subsection (i) are not subject to the tax imposed by § 57-4-301(c).

(6)(A) Notwithstanding any law to the contrary, and in addition to any rights and abilities already permitted under this subsection (i), a manufacturer electing to exercise the rights granted to it under this subsection (i), may sell alcoholic beverages at retail, sell alcoholic beverages for consumption on the premises, and serve samples of any finished product that is transferred from another site for which a manufacturer's license under this section has been issued to the same licensee, only under the

circumstances and conditions as outlined in this subdivision (i)(6).

(B) A manufacturer may sell product transferred between different sites described in one (1) manufacturer's alcohol and tobacco tax and trade bureau (TTB) permit; provided, that:

(i) The site identified as the plant address in the manufacturer's alcohol and tobacco tax and trade bureau (TTB) permit manufactures a minimum of one thousand (1,000) proof gallons at that site annually (prorated for partial years);

(ii) Any site receiving transferred product has a minimum of two thousand square feet (2,000 sq. ft.) of bonded premises;

(iii) Any site transferring product only transfers product that is manufactured at that site or manufactured at another site for which a manufacturer's license under this section has been issued to the same licensee; and

(iv) Any site transferring or receiving transferred product must hold a manufacturer's license issued pursuant to this section.

(C) A manufacturer may sell product transferred between sites described in separate manufacturer's alcohol and tobacco tax and trade bureau (TTB) permits; provided, that:

(i) Any site transferring or receiving transferred product must hold a manufacturer's license issued pursuant to this section. Any site transferring product must have held the manufacturer's license for a minimum of three (3) years;

(ii) Any site receiving transferred product shall not receive more transferred product than the equivalent amount of the proof gallons distilled at the receiving site for each calendar year; and

(iii) Any site transferring product shall only transfer product that is distilled at that site or distilled at another site for which a manufacturer's license under this section has been issued to the same licensee.

(D) Any manufacturer transferring or receiving product pursuant to this subdivision (i)(6) shall comply with the following requirements:

(i) Provide written notice to the commission regarding the manufacturer's intent to transfer product, which notice shall specify the manufacturer's qualifications to transfer product pursuant to (i)(6)(B) or (i)(6)(C) and identify the address of each licensed premises that will transfer or receive transferred product;

(ii) The manufacturer shall comply with subdivision (i)(2) and the distance restrictions in §§ 57-2-109 and 57-2-103(d)(6), as applicable;

(iii) A manufacturer transferring or receiving product pursuant to subdivision (i)(6)(B) shall maintain sufficient records documenting that the gallonage and transfer requirements of subdivision (i)(6)(B)(i) are being met and, with its annual renewal, shall file a copy of such records along with copies of the manufacturer's TTB Forms 5110.40 and 5110.28 and an affidavit certifying the amount of product manufactured at the site to document that the licensee has complied with the gallonage and transfer requirements; and

(iv) A manufacturer transferring or receiving product pursuant to subdivision (i)(6)(C) shall maintain sufficient records documenting that the gallonage and transfer requirements of subdivision (i)(6)(C)(ii) are being met and, with its renewal, shall file a copy of such records along with copies of the manufacturer's TTB Form 5110.40 and an affidavit

certifying the amounts of product distilled at the site receiving transferred product and the amount of transferred product the site received to document that the licensee has complied with the gallonage and transfer requirements.

(E) Any records or reports filed in accordance with subdivision (i)(6)(D) are privileged and confidential and are not public records.

(F) Failure to comply with the gallonage and transfer requirements of this subdivision (i)(6) may result in a civil penalty not to exceed ten dollars ($10.00) per gallon of the difference between the required gallonage and that disclosed in the licensee's affidavit filed in accordance with subdivision (i)(6)(D). Failure to comply with the gallonage and transfer requirements more than once within a three-year period may result in suspension or revocation of the manufacturer's license.

(j)(1) Any nonprofit association organized to encourage and support the manufacture of alcoholic beverages with three (3) or more manufacturers licensed under this section or non-manufacturer non-resident sellers licensed under § 57-3-602(c) as members shall be allowed to hold not more than fifteen (15) alcoholic beverage festivals per calendar year. Each festival shall not exceed a period of seventy-two (72) hours.

(2) Any manufacturer licensed under this section or non-manufacturer non-resident seller licensed under § 57-3-602(c) participating in a festival authorized by this subsection (j) shall be allowed to transport, serve and offer complimentary samples of any alcoholic beverage lawfully manufactured by the manufacturer or on behalf of the non-manufacturer non-resident seller pursuant to § 57-3-602(c) for tasting at the festival.

(3) Any manufacturer licensed under this section or non-manufacturer non-resident seller licensed under § 57-3-602(c) participating in a festival authorized by this subsection (j) shall be allowed to transport alcoholic beverages produced by that manufacturer or on behalf of that non-manufacturer non-resident seller to sell at the festival for consumption off-premises.

(4)(A) Any nonprofit association authorized by this subsection (j) to hold an alcoholic beverage festival shall apply for a special occasion license as defined in § 57-4-102, in order for participating manufacturers licensed under this section or non-manufacturer non-resident sellers licensed under § 57-3-602(c) to serve complimentary samples as described in subdivision (j)(2) and to sell alcoholic beverages produced by the manufacturers or on behalf of the non-manufacturer non-resident sellers for consumption off-premises.

(B) Notwithstanding § 57-4-102(33)(A), a special occasion license issued for an alcoholic beverage festival authorized by this subsection (j) shall be for the duration of the festival for which application is made for a period not to exceed seventy-two (72) hours. A special occasion license issued pursuant to this subsection (j) shall only be available upon the payment of the fee as required by law for each separate day of the festival.

(C) A nonprofit association authorized to conduct an alcoholic beverage festival pursuant to this subsection (j) shall be permitted to hold the festival in any municipality or county of the state in the manner provided in subdivision (j)(5).

(5) A nonprofit association, as defined in subdivision (j)(1), is authorized to conduct an alcoholic beverage festival pursuant to this subsection (j) in a

municipality or county of this state that has approved the sale of alcoholic beverages or has a licensed manufacturer located in that municipality or county, subject to complying with all permit requirements of the municipality or county, and in all other municipalities or counties upon receiving approval of the legislative body of the municipality or county to hold such festival at a location and in such manner authorized by such legislative body.

(k)(1)(A) Any manufacturer licensed under this section shall be permitted to use items related to or incidental to the tasting of alcoholic beverages manufactured on the premises and such items may be mixed with such alcoholic beverages anywhere on or off the manufacturer's premises where tastings are permitted as well as at private events and events requiring a special occasion license. Such items may include, but are not limited to:

(i) Bitters, whether manufactured on the premises or purchased at retail, used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages;

(ii) Any and all garnishes and food items used in the preparation or garnishment of alcoholic beverages or mixed alcoholic beverages, including any juices, concentrates, and other ingredients used in the preparation of mixed alcoholic beverages;

(iii) Glassware and any other cups, glasses, or other containers normally used for serving drinks;

(iv) Ice, water, soft drinks, and any other nonalcoholic beverages; and

(v) Other alcoholic beverages manufactured on the premises.

(B) Tastings under subsection (i) shall be limited to one-half ounce (½ oz.) of alcohol per stock keeping unit (sku) per tasting;

(2) Any manufacturer licensed under this section shall be permitted to rent or lease out any portion of their premises for any event, with or without charge, whether the event is public, private, requires a special occasion license as defined in § 57-4-102, or catered by a caterer licensed pursuant to chapter 4, part 1 of this title. Events cannot be held on the bonded premises or general premises of the manufacturer, as defined in 27 CFR part 19, unless the manufacturer has obtained prior approval from the alcohol and tobacco tax and trade bureau (TTB) for such events pursuant to federal regulations.

(3) Owners, officers, employees, and representatives of any manufacturer licensed under this section shall be permitted to touch, handle, and pour product of such manufacturer at any and all tastings permitted by law, including, but not limited to, consumer education seminars, employee education seminars, retail sales demonstrations, consumer tastings, private events, events requiring a special occasion license as defined in § 57-4-102, and any and all tastings permitted under this chapter, and any rules or regulations promulgated.

(4) In the event of a conflict between any other law in this title and this subsection (k), this subsection (k) shall govern.

57-4-101. Premises on which certain sales and consumption authorized.

(a) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of, or within the boundaries of, any:

(1) Hotel, commercial passenger boat company, paddlewheel steamboat company, restaurant, commercial airlines, or passenger trains meeting the requirements hereinafter set out, within the boundaries of the political subdivisions, wherein such is authorized under § 57-4-103;

(2) Premier type tourist resort or club as defined in § 57-4-102, to guests of such resort and to members and guests of such clubs, subject to the further provisions of this chapter other than § 57-4-103;

(3) Convention center as defined in § 57-4-102, to those in attendance at the convention center, subject to the further provisions of this chapter other than §§ 57-3-210(b)(1) and 57-4-103;

(4) Historic performing arts center as defined in 57-4-102, to those in attendance at the performing arts center, subject to the further provisions of this chapter other than § 57-4-103;

(5) Historic interpretive center as defined in § 57-4-102, to those in attendance at such interpretive center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1);

(6) Community theater as defined in § 57-4-102, to those in attendance at such community theater, subject to the further provisions of this chapter other than § 57-4-103;

(7) Historic mansion house site as defined in § 57-4-102, subject to the further provisions of this chapter other than § 57-4-103;

(8) Terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport;

(9)(A) Zoological institution as defined in § 57-4-102, to those in attendance at the zoological institution, subject to the further provisions of this chapter other than § 57-4-103. No such wine, alcoholic beverages or beer shall be served during the regular operating hours where the institution is open to the general public unless a special event is scheduled for fund-raising purposes which is by invitation or for which an admission is charged for such event;

(B) Notwithstanding subdivision (a)(9)(A), zoological institution as defined in § 57-4-102(41)(A), (B), and (D), to those in attendance at the zoological institution, subject to the further provisions of this chapter other than § 57-4-103;

(10) Museum as defined in § 57-4-102, to those in attendance at the museum, subject to the further provisions of this chapter other than § 57-4-103. No alcoholic beverage or beer shall be served during the regular operating hours when the museum is open to the general public except at a restaurant located on the premises of such museum or at a special event scheduled for fund-raising purposes when such event is either by invitation or admission is charged;

(11) Commercial airline travel club as defined in § 57-4-102, located within a terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter, other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport;

(12) Public aquarium as defined in § 57-4-102, to those in attendance at the public aquarium subject to this chapter;

(13) Aquarium exhibition facility as defined in § 57-4-102, to those in attendance at such facility subject to the provisions of this chapter. Such

alcoholic beverages, wine and beer shall only be sold on such premises at special functions, wherein attendance is limited to invited guests or groups, the function is not open to the general public, and the area in which the function is held is not open to the general public during such function;

(14) Caterer licensed under this chapter as well as at such other sites as the licensed caterer has given advanced notice to the commission. Such sites shall be considered to be within the licensed premises for the purposes of this chapter;

(15) Sports authority facility as defined in § 57-4-102, to those in attendance at such sports authority facility, subject to the further provisions of this chapter. A sports authority facility as defined in § 57-4-102(34)(A) constitutes an urban park center for the purposes of the taxes provided in § 57-4-301;

(16) Theater as defined in § 57-4-102, to those in attendance at such theater, subject to the further provisions of this chapter;

(17) Retirement center as defined in § 57-4-102;

(18) Tennessee River resort district as defined in § 57-4-102, subject to the further provisions of this chapter other than § 57-4-103;

(19) Civic arts center as defined in § 57-4-102, to those in attendance at the civic arts center, subject to the further provisions of this chapter other than § 57-4-103;

(20) Limited service restaurant as defined in § 57-4-102, wherein such is authorized under § 57-4-103; and

(21) Festival operator as defined in § 57-4-102, to those in attendance at a festival, subject to the further provisions of this chapter, and except as otherwise provided in § 57-4-102.

(b) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, to be consumed on the premises of any:

(1) Permanently constructed facility within an urban park center as defined in § 57-4-102, to those in attendance at the urban park center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1);

(2) Any motor speedway as defined in § 57-4-102, to the patrons and guests of such motor speedway, subject to the further provisions of this chapter other than § 57-4-103. The phrase "premises of any motor speedway" includes any permanent or temporary structure erected on the motor speedway site as defined in § 57-4-102(23)(A); and

(3) Country club located on an historic property, as defined in § 57-4-102, to the patrons and guests of such country club, subject to the further provisions of this chapter other than § 57-4-103.

(c) It is lawful to sell wine, as defined in § 57-4-102, to be consumed on the premises of any:

(1) Restaurant located within the boundaries of any political subdivision which has authorized the sale of alcoholic beverages for consumption on the premises as provided in § 57-4-103, subject to the further provisions of this chapter. Notwithstanding the minimum seating requirement for a restaurant in § 57-4-102, a restaurant operating under this subsection (c) shall have a seating capacity of at least forty (40) people at tables, except in central business improvement districts located in counties having a population of eight hundred thousand (800,000) or more, according to the 2000 federal census or any subsequent federal census where such restaurants

shall have a seating capacity of at least twenty-four (24) people; and

(2) Bed and breakfast establishment as defined in § 57-4-102, to the guests of the bed and breakfast establishment, subject to the further provisions of this chapter other than § 57-4-103.

(d) It is lawful to serve wine and other alcoholic beverages as defined in § 57-3-101, and beer as defined in § 57-6-102, to be consumed on the premises of any club as defined in § 57-4-102(8)(G), to the guests of the club, subject to the further provisions of this chapter other than § 57-4-103; provided, that such club is located in a county having a population of not less than one hundred three thousand one hundred (103,100) nor more than one hundred three thousand four hundred (103,400), according to the 1990 federal census or any subsequent federal census, and in a municipality which lies within two (2) contiguous counties.

(e) It is lawful to serve wine as defined in § 57-3-101, and beer as defined in § 57-6-102, to be consumed on the premises of any restaurant as defined in § 57-4-102(30)(F), located in the unincorporated areas of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

(f) It is lawful to serve wine as defined in § 57-3-101, to be consumed on the premises of any historic inn as defined in § 57-4-102, to the patrons and guests of the historic inn, subject to the further provisions of this chapter other than § 57-4-103.

(g) It is lawful for a charitable, nonprofit or political organization possessing a special occasion license pursuant to § 57-4-102 to serve or sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the designated premises, or sold or donated in sealed containers for off-premises consumption within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved pursuant to § 57-3-106 or wherein the sale of alcoholic beverages for consumption has been approved pursuant to § 57-4-103. A special occasion license may also be issued for an event within the unincorporated portion of a county if at least one (1) municipality in such county has approved the sale of alcoholic beverages at retail pursuant to § 57-3-106 or the sale of alcoholic beverages for consumption pursuant to § 57-4-103.

(h) Any hotel or motel licensed under this chapter may dispense sealed alcoholic beverages and beer to adult guests through locked, in-room units. Distilled spirits so dispensed shall be in bottles not exceeding fifty milliliters (50 ml.). No person under the age of twenty-one (21) shall be issued or supplied with a key by any hotel or motel for such units. Such units may only be located in any such hotel or motel if the voters of such municipality have approved the consumption of alcoholic beverages on the premises by referendum, and in any county in which such municipalities are located if the voters of such county have approved the consumption of alcoholic beverages on the premises by referendum.

(i) A restaurant or hotel licensed under this chapter may seek an additional license permitting the restaurant or hotel to distribute and sell wine, beer and other alcoholic beverages at locations other than the licensed premises if the restaurant or hotel is providing catering services, if such location is within a jurisdiction where such sales are authorized. A caterer licensed under this

chapter may distribute and sell wine, beer and other alcoholic beverages at locations other than the permanent catering hall if the caterer is providing catering services at a location that is within a jurisdiction where such sales are authorized.

(j) It is lawful to serve wine as defined in § 57-4-102 within a special historic district as defined in § 57-4-102 on Fridays and Saturdays. Such establishments serving wine within the special historic district shall not be required to obtain a special occasion license pursuant to § 57-4-102 or be required to obtain server permits pursuant to chapter 3, part 7 of this title. This section shall not apply to any restaurant or bar located within the special historic district.

(k) It is lawful to serve wine, as defined in § 57-3-101, to be consumed on the premises of any restaurant, as defined in § 57-4-102(30)(G), located in any county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

(*l*) It is lawful to serve wine as defined in § 57-3-101, to be consumed on the premises of any restaurant as defined in § 57-4-102(30)(I), located in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

(m) A premier type tourist resort, as defined in § 57-4-102(27)(EEE), licensed pursuant to this part, shall be allowed to sell beer, as defined in § 57-5-101(b), to its patrons or guests, for either on-premises or off-premises consumption provided such premier type tourist resort, as defined in § 57-4-102(27)(EEE), obtains a permit, pursuant to chapter 5 of this title, issued by the county or city where such premier type tourist resort is located.

(n) A licensee who qualifies for a restaurant license, limited service restaurant license, or hotel license may also serve alcoholic beverages in any area of the premises designated on the application that is used for the purpose of entertainment activities. Entertainment activities may include, but are not limited to, bowling, billiards, games, auditoriums, darts, or golf driving ranges. Any area used for entertainment activities shall have table service or be within close observation distance from the service area of the facility as determined by the commission.

(o) It is lawful to furnish, dispense, or give away alcoholic beverages and beer without a license or permit issued by the commission at a private party or private event.

(p) An entity licensed or applying for a license under subsection (a), or a manufacturer exercising the rights granted to it under § 57-3-202(i)(1), may include in the entity's designation of its premises any contiguous area owned or controlled by the entity for purposes of on-premises consumption of alcoholic beverages and beer. If the contiguous area used for on-premises consumption is unenclosed, the entity shall make reasonable efforts to ensure that a customer cannot leave the premises with an alcoholic beverage or beer purchased on the premises by using barriers to prevent the ingress and egress of customers to and from the premises. If more than one (1) entity licensed under subsection (a) or § 57-3-202 operates within the same building or

facility, the designations of premises under this subsection (p) may overlap; provided, that each entity serves alcoholic beverages and beer in a glass or cup identifying the entity selling the alcoholic beverages or beer for on-premises consumption.

57-4-102. Chapter definitions.

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

(1) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer as defined in § 57-5-101(b). Notwithstanding any provision to the contrary in this title, "alcoholic beverage" or "beverage" also includes any product containing distilled alcohol capable of being consumed by a human being manufactured or made with distilled alcohol irrespective of alcoholic content, including any infused product;

(2) "Aquarium exhibition facility" means an enclosed facility possessing each of the following characteristics:

(A) The facility is owned and operated by a bona fide charitable or nonprofit organization that also owns and operates a "public aquarium" as defined in subdivision (29);

(B) The facility contains a minimum area of ten thousand square feet (10,000 sq. ft.); and

(C) The facility is used for either or both of the following purposes:

(i) The exhibition to the public of artifacts, physical objects, pictures and movies; or

(ii) To aid in the education of the public by means of interactive displays or stations, learning laboratories, and classroom areas for instruction in the physical sciences, natural history or other educational disciplines;

(3)(A) "Bed and breakfast establishment" has the same meaning as set forth in § 68-14-502(1)(A); provided, that such bed and breakfast establishment is located in a county having a population of not less than fifty-one thousand three hundred fifty (51,350) nor more than fifty-one thousand four hundred fifty (51,450), according to the 1990 federal census or any subsequent federal census and has eleven (11) furnished guest rooms;

(B) "Bed and breakfast establishment" also means an establishment:

(i) Founded in July 1987;

(ii) With twelve (12) rooms and five (5) cottages;

(iii) Located on approximately fifteen (15) acres;

(iv) Operating a full service day spa; and

(v) Located in a county with not less than eighty-nine thousand eight hundred (89,800) and not more than eighty-nine thousand nine hundred (89,900), according to the 2010 or any subsequent federal census;

(4) "Bona fide charitable or nonprofit organization" means any corporation which has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)), or any organization having been in existence for at least two (2) consecutive years which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational or charitable purposes;

(5) "Bona fide political organization" means any political campaign committee as defined in § 2-10-102 or any political party as defined in § 2-13-101;

(6) "Caterer" means a business engaged in offering food and beverage service for a fee at various locations, which:

(A) Operates a permanent catering hall on an exclusive basis or restaurant;

(B) Has a complete and adequate commercial kitchen facility; and

(C) Is licensed as a caterer by the Tennessee department of health;

(7) "Civic arts center" means a complex that serves as a community center for the arts and further possesses the following characteristics:

(A) Has a performance hall with at least one thousand one hundred (1,100) seats;

(B) Has a flexible theater;

(C) Consists of two (2) buildings and an outdoor plaza between the buildings;

(D) Allows alcoholic beverages to be served when the civic arts center is hosting ticketed events, private functions or is rented to another party hosting an event open to the public; and

(E) Is located in a county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census;

(8)(A) "Club" means a nonprofit association organized and existing under the laws of this state, which has been in existence and operating as a nonprofit association for at least two (2) years prior to the application for a license hereunder, having at least one hundred (100) members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member; and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable kitchen and dining room space and equipment and maintaining and using a sufficient number of employees for cooking, preparing and serving meals for its members and guests; provided, that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of spirituous liquors, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The premises, as provided in § 57-4-101(a)(2) for a club, shall also include the golf course, tennis courts and the area immediately surrounding the swimming pool, if a club offers such amenities. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with the definition above;

(B) "Club" also means an organization composed of members of the Tennessee national guard, air national guard, or other active or reserve military units which operate facilities located on land owned or leased by

this state and which are operated exclusively for the pleasure and recreation of such organization's members, dependents and guests and which are generally referred to as "NCO Clubs" or "Officers Clubs." Such NCO or officers clubs shall be subject to all of the requirements of subdivision (8)(A), except for those requirements relating to having a kitchen, kitchen equipment, and employees;

(C) "Club" also means a nonprofit association organized and existing under the laws of this state which is located in a county having a population of not less than twenty-eight thousand six hundred sixty (28,660) nor more than twenty-eight thousand six hundred ninety (28,690), according to the 1980 federal census or any subsequent federal census. Such club shall be located in a development containing no less than four hundred forty (440) acres and shall be organized and operated exclusively for the pleasure, recreation and other nonprofit purposes of its members and their guests. No part of the net earnings of the association shall inure to the benefit of any shareholder or member. The club shall provide to its members a regulation golf course, tennis courts, and a swimming pool. The club shall own, hire or lease a building or buildings for the reasonable use of its members with suitable kitchen and dining room space and equipment. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests. No member or officer, agent or employee of the club shall be paid, or directly or indirectly receive in the form of salary or other compensation any profits from the sale of alcoholic beverage or malt beverage beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition;

(D)(i) "Club" also means a for-profit recreational club organized and existing under the laws of this state and which has been in existence and operating for at least two (2) years prior to the application for a license. Such club shall have at least one hundred (100) members regularly paying dues, and shall be organized and operated exclusively for recreation, and providing to its members a regulation golf course and owning, hiring or leasing a building or buildings for the reasonable use of its members, with suitable kitchen and dining room space and equipment, and lodging facilities consisting of not less than ten (10) rooms. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests and providing lodging facilities to its members and guests. Other than the payment of dividends to the shareholders of the club from its net income derived from all of its operations, no member or officer, agent or employee of the club shall be paid, or shall directly or indirectly receive in the form of salary or other compensation, any profits from the sale of alcoholic beverages or malt beverages beyond the amount of such salary as may be fixed by the shareholders of the corporation at an annual meeting by its governing body out of the general revenues of the

club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition. The alcoholic beverage commission shall not issue a license to any for-profit recreational club which restricts membership based on race or religion or sex. In any proceeding concerning a license denial or revocation under this subdivision (8)(D)(i), no quota or numerical percentage shall be used to establish proof of the prohibited discrimination among the club's membership;

(ii) Notwithstanding § 57-4-101(a)(2) to the contrary, this subdivision (8)(D) shall not apply in any municipality which has not approved the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103;

(iii) This subdivision (8)(D) only applies in counties having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(E)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which has at least two hundred fifty (250) dues-paying members who pay dues of at least one hundred dollars ($100) a year. Such club shall have golf courses containing at least twenty-seven (27) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin;

(ii) This subdivision (8)(E) only applies in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000), according to the 1990 federal census or any subsequent federal census;

(F)(i)*(a)* "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which has at least two hundred twenty-five (225) dues-paying members who pay dues of at least three hundred dollars ($300) a year. Such club shall have a clubhouse with not less than five thousand square feet (5,000 sq. ft.), golf courses containing at least eighteen (18) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin. It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of

age be strictly enforced in such clubs;

(b) The premises, as provided in § 57-4-101(a)(2) for a club, whether such parcels comprising the club premises are contiguous or not, shall also include the golf course, including beverage carts; tennis courts; all areas of the clubhouse; the area immediately surrounding the swimming pool, if a club offers such amenities; and all other related recreational facilities;

(ii) This subdivision (8)(F) only applies in any county having a population of:

not less than	nor more than
21,800	22,100
22,600	23,000
34,850	35,000
80,000	83,000
103,100	103,400

according to the 1990 federal census or any subsequent federal census;

(G) "Club" also means a clubhouse owned and operated by a for-profit corporation, which is open to the public but has at least one hundred fifty (150) private members and seats at least one hundred (100) persons, that is a planned part of a residential development consisting of no less than two hundred fifty (250) acres and at least one hundred ninety (190) residential units, and such development contains an eighteen-hole golf course under separate ownership; provided, that such club is located in a county having a population of not less than one hundred three thousand one hundred (103,100) nor more than one hundred three thousand four hundred (103,400), according to the 1990 federal census or any subsequent federal census and in a municipality which lies within two (2) contiguous counties;

(H) "Club" also means a facility owned by a for-profit corporation incorporated in Tennessee prior to September 30, 2000, as a private club which does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin, and further possesses the following characteristics:

(i) Is located within three (3) miles of a municipal golf course owned and operated by a home-rule municipality located in a county having a charter form of government and having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eighty-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(ii) Has, on July 3, 2002, a minimum of three hundred (300) members paying annual dues with a copy of membership applications on file on the premises, and which issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member; and

(iii) Has a kitchen and dining area having a minimum seating capacity of seventy-five (75) in a building having at least eighteen hundred square feet (1800 sq. ft.);

(I)(i) "Club" also means a for-profit recreational club organized and existing under the laws of this state which has been in existence and

operating for at least two (2) years prior to June 11, 2003, and which is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least one hundred seventy-five (175) members paying annual dues and does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion or national origin;

(b) Is organized and operated exclusively for recreation and providing a regulation eighteen-hole golf course for the use of its members and guests, and also offers for the use of its members and guests a swimming pool and tennis facility; and

(c) Has a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

(ii) Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold;

(iii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by such club;

(J) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which is located in any county having a population of not less than one hundred thirty thousand (130,000) nor more than one hundred thirty-one thousand (131,000), according to the 2000 federal census or any subsequent federal census, and further possesses the following characteristics:

(i) The club shall be adjacent to a residential development consisting of at least one hundred (100) residential units, and the club property and such residential development shall consist of at least two hundred (200) acres;

(ii) The residential development shall be adjacent to a lake with an area greater than twenty (20) acres;

(iii) The club shall be organized and operated to provide to its members, their guests, and others an eighteen-hole golf course and amenities provided by other similar clubs;

(iv) The club shall serve at least one (1) meal daily, five (5) days a week;

(v) The club shall have a clubhouse with not less than three thousand square feet (3,000 sq. ft.) with suitable kitchen, dining facilities and equipment; and

(vi) The club shall not discriminate against any person on the basis of gender, race, religion or national origin;

(K)(i) "Club" also means a for-profit recreational club organized and existing under the laws of this state that has been in existence and operating for at least two (2) years prior to March 31, 2003, and that is located in any county not having a metropolitan form of government and having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census,

and further possesses the following characteristics:

(a) Has at least two hundred twenty-five (225) members paying monthly or annual dues, or both, and does not discriminate against members or potential members or bona fide guests of the members on the basis of gender, race, religion or national origin;

(b) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and may or may not also provide for the use of its members and guests a swimming pool and tennis facility; and

(c) Has a clubhouse with not less than ten thousand square feet (10,000 sq. ft.) with suitable kitchen, dining facilities and equipment, serving at least one (1) meal daily, at least five (5) days a week;

(d) The club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based on the volume of those beverages sold;

(ii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by the club;

(L)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which is located in a county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), as of the 2010 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least three hundred (300) members, as of December 23, 2015, paying dues with a copy of membership applications on file on the premises and which issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member;

(b) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and also may offer for the use of its members and guests a swimming pool and other recreational amenities;

(c) Has a clubhouse with not less than ten thousand square feet (10,000 sq. ft.) with a suitable kitchen, dining facilities, and equipment, serving at least one (1) meal daily at least five (5) days a week;

(d) The club may not compensate or pay any officer, director, agent, or employee any profits from the sale of alcoholic or malt beverages based on the volume of those beverages sold; and

(e) The premises, as provided in § 57-4-101(a)(2) for a club, whether such parcels comprising the club premises are contiguous or not, shall also include the golf course, including beverage carts; tennis courts; all areas of the clubhouse; the area immediately surrounding the swimming pool, if a club offers such amenities; and all other related recreational facilities; and

(f) Does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, religion, or national origin;

(ii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons

under twenty-one (21) years of age be strictly enforced by the club;

(M)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of this state, which is located in a county having a population of not less than one hundred twenty-two thousand nine hundred (122,900) nor more than one hundred twenty-three thousand (123,000), according to the 2010 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Has at least three hundred (300) members, as of January 1, 2017, paying dues with a copy of membership applications on file on the premises and that issues to its members a membership card which authorizes admittance of the member and bona fide guests of such member;

(b) Is located within a planned residential development consisting of no less than six hundred (600) acres and at least three hundred (300) residential dwelling units, and such residential development contains an eighteen-hole golf course;

(c) Is organized and operated exclusively for recreation and provides a regulation eighteen-hole golf course for the use of its members and guests, and also may offer its members and guests the use of a swimming pool, tennis courts, and other recreational amenities;

(d) Has a clubhouse with not less than nine thousand square feet (9,000 sq. ft.) with a suitable kitchen, dining facilities, and equipment, serving at least one (1) meal daily at least five (5) days a week;

(e) The club does not compensate or pay any officer, director, agent, or employee from any profits from the sale of alcoholic or malt beverages based on the volume of those beverages sold;

(f) The premises, as provided in § 57-4-101(a)(2), for a club, whether such parcel comprising the club premises are contiguous or not, shall also include the golf course; tennis courts; all areas of the clubhouse; the area immediately surrounding the swimming pool, if a club offers such amenities; and all other related recreational facilities; and

(g) Does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, color, age, religion, or national origin; and

(ii) It is the express intention of the general assembly that the law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced by the club;

(N)(i) "Club" also means a for-profit membership-based social club, organized and existing under the laws of this state, that is located in a county with a metropolitan form of government having a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census, and further possesses the following characteristics:

(a) Is located within a building containing three (3) floors and a rooftop area, totaling approximately six thousand square feet (6,000 sq. ft.) that houses a bar, coffee bar, cigar lounge with lockers, meeting and relaxation space, conference rooms, private call rooms, and workstations;

(b) Is within a central business improvement district as of 2020;

(c) Is organized and operated exclusively for offering an upscale business club environment for learning and networking, where members receive exclusive access to amenities and opportunities in the city;

(d) Has at least ten (10) members paying monthly or annual dues, as of January 1, 2020, with a copy of membership applications on file on the premises and that issues to its members a proximity reader security access card which authorizes admittance of the member and bona fide guests of such member;

(e) Offers its members the ability to purchase all club-related services and experiences through cash or credit card;

(f) Offers its members access to multiple locations across the United States, each tailored to its city and located in prime business districts, and offers its members access to experience specialists, who arrange for its members' needs, ranging from dinner reservations, vacation rentals, and unique travel amenities and luxury experiences; and

(g) Does not discriminate against members or potential members or bona fide guests of such members on the basis of gender, race, creed, color, sex, age, religion, or national origin;

(ii) The premises for the club, includes all floors of the singular building constituting the club, whether contiguous or not and connected through stairwells and elevators; the rooftop area; and any area within the building designated by the club in its application for licensure for consumption of alcoholic beverages on the premises;

(9) "Commercial airline" includes any airline operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, or under an exemption from the requirement of obtaining a certificate of public convenience and necessity but otherwise regulated by an appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular schedules, or charter trips, while moving through any county of the state, but not while any such commercial airline is stopped in a county or municipality that has not legalized such sales;

(10) "Commercial airline travel club" means an organization established and operated by or for a commercial airline as defined in this section for the convenience and comfort of airline passengers;

(11) "Commercial passenger boat company" means a company that operates one (1) or more passenger vessels for hire upon navigable waterways and is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel. A commercial passenger boat company licensed pursuant to this chapter shall not sell any type of alcoholic beverage or beer while such boat is docked within the boundaries of any local government that has not approved the sale of alcoholic beverages pursuant to § 57-4-103. A commercial passenger boat company may only operate out of a county that has a population:

(A) In excess of two hundred eighty-five thousand (285,000), according to the 1980 federal census or any subsequent federal census;

(B) Not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400), according to the 1980 federal census or any subsequent federal census; or

(C) Not less than one hundred sixty thousand six hundred (160,600) nor more than one hundred sixty thousand seven hundred (160,700), according to the 2010 federal census or any subsequent federal census;

(12) "Commission" means the alcoholic beverage commission, created pursuant to chapter 1 of this title;

(13)(A) "Community theater" means a facility or theater possessing each of the following characteristics:

(i) The community theater is at least eight (8) years old;

(ii) The theater is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the community theater, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the theater. No alcoholic beverages or beverages of any kind shall be possessed or consumed inside the auditorium of such theater during performances in such auditorium;

(iii) The theater provides or leases facilities for theatrical programs of cultural, civic and educational interest; and

(iv) The theater is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility has a performance hall seating not less than two hundred fifty (250) persons, a resource library, rehearsal rooms, and permanent exhibition space of not less than nine thousand square feet (9,000 sq. ft.);

(ii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the facility, and in furtherance of the purposes of the organization;

(iii) The facility provides or leases facilities for concerts and programs of cultural, civic and educational interest; and

(iv) The facility is located in any county having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000), according to the 1990 federal

census or any subsequent federal census;

(C) Alcoholic beverages may be sold at a community theater only during one (1) performance or benefit program a day and only one (1) hour before, during and one (1) hour after the performance or benefit program;

(D) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility is located in a building that is at least eighty (80) years old;

(ii) The facility has a performance hall seating approximately two hundred fifty (250) persons;

(iii) The facility is operated by a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), and no member or officer, agent or employee of any community theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing and maintenance of the facility, and in furtherance of the purposes of the organization;

(iv) Alcoholic beverages shall only be sold before or after performances or during intermissions in the performances, and no alcoholic beverages shall be consumed inside the auditorium of the facility; and

(v) The facility is located within a municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, in any county having a population of not less than thirty-three thousand five hundred twenty-five (33,525) nor more than thirty-three thousand six hundred (33,600), according to the 2000 federal census or any subsequent federal census;

(E) "Community theater" also includes a privately owned facility possessing each of the following characteristics:

(i) Is a community theater in continuous operation since 1943;

(ii) Is primarily a volunteer organization with limited salaried staff;

(iii) Has an auditorium with more than three hundred (300) seats;

(iv) Is located on an historic square and is allowed to sell alcoholic beverages at up to five (5) special events annually that are held on the historic square along with being allowed to sell alcoholic beverages as provided in subdivision (13)(C); and

(v) Is located in any county having a population of not less than seventy-one thousand three hundred (71,300) nor more than seventy-one thousand four hundred (71,400), according to the 2000 federal census or any subsequent federal census;

(F) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility is at least twenty-seven (27) years old;

(ii) The facility has a performance hall seating not less than one hundred fifty (150) persons and not more than five hundred (500) persons;

(iii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of

1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any community theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing and maintenance of the facility, and in furtherance of the purposes of the organization; and

(iv) The facility is located in any county having a population of not less than one hundred thirty-four thousand seven hundred (134,700) nor more than one hundred thirty-four thousand eight hundred (134,800), according to the 2000 federal census or any subsequent federal census;

(G) "Community theater" also includes a municipally owned facility possessing each of the following characteristics:

(i) Is a community theater in continuous operation since 1980;

(ii) Has an auditorium with more than three hundred (300) seats;

(iii) Provides or leases facilities for concerts, plays and programs of cultural, civic and education interest; and

(iv) The facility is located in any municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, and the municipality has a population of not less than twenty-three thousand nine hundred twenty (23,920), nor more than twenty-three thousand nine hundred thirty (23,930), according to the 2000 federal census or any subsequent federal census;

(H) "Community theater" also means a theater possessing each of the following characteristics:

(i) The theater was founded in 1923;

(ii) The theater has a main performance hall with not less than three hundred eighty (380) seats;

(iii) The theater has an auxiliary performance hall with not less than two hundred (200) seats;

(iv) The facility is operated by a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member, officer, agent, or employee of the theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by the not-for-profit corporation must be used for the operation, renovation, refurbishing, and maintenance of the theater, and in furtherance of the purposes of the organization. Alcoholic beverages may be sold before, during, and after performances, and may be consumed inside any auditorium or performance hall within the theater; and

(v) The theater is located within one thousand feet (1,000′) of the Tennessee River in a city with a population of one hundred sixty-seven thousand six hundred seventy-four (167,674), according to the 2010 federal census or any subsequent federal census;

(I) "Community theater" also means a theater possessing each of the following characteristics:

(i) The theater opened on December 9, 1949;

(ii) The theater originally seated approximately one thousand (1,000) persons in spring-covered chairs;

(iii) The theater reopened in July of 2012, serving as a multifunctional event venue, hosting weddings, concerts, nonprofit events, movies, and musical theatre; and

(iv) The theater is located in a city with a population of not less than twenty-six thousand one hundred ninety (26,190) and not more than twenty-six thousand one hundred ninety-nine (26,199), according to the 2010 and any subsequent federal census;

(J) "Community theater" also means a theater possessing each of the following characteristics:

(i) The theater was opened in 1995;

(ii) The theater's performance hall has seating for at least one hundred twenty (120) patrons;

(iii) The theater is used for concerts, plays, and programs of cultural, civic, and educational interest;

(iv) The theater is operated by a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member, officer, agent, or employee of the theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by the not-for-profit corporation must be used for the operation, renovation, refurbishing, and maintenance of the theater, and in furtherance of the purposes of the organization. Alcoholic beverages may be sold before, during, and after performances, and may be consumed inside any auditorium or performance hall within the theater; and

(v) The theater is located in a county having a population not less than two hundred sixty-two thousand six hundred (262,600) nor more than two hundred sixty-two thousand seven hundred (262,700), according to the 2010 federal census or any subsequent federal census;

(K) "Community theater" also means a theater possessing each of the following characteristics:

(i) The theater began operating in 1965;

(ii) The theater is the only major nonprofit professional performing arts resource in rural Tennessee, and one (1) of the ten (10) largest professional theaters in rural America;

(iii) The theater serves more than one hundred forty-five thousand (145,000) visitors annually with two (2) indoor and two (2) outdoor stages;

(iv) The theater provides young audience productions, a comprehensive dance program, a concert series, and touring shows;

(v) The theater was the recipient of the Governor's Arts Award for the state of Tennessee in 1984;

(vi) The theater is operated by a nonprofit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26

U.S.C. § 501(c)), as amended, where no member, officer, agent, or employee of the theater is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond the amount of the salary as may be fixed by its governing body for the reasonable performance of the person's assigned duties. All profits from the sale of alcoholic beverages by the nonprofit corporation must be used for the operation, renovation, refurbishing, and maintenance of the theater, and in furtherance of the purposes of the organization. Alcoholic beverages may be sold before, during, and after performances, and may be consumed inside any auditorium or performance hall within the theater, or on theater property contiguous to an outdoor performance stage; and

(vii) The theater is located in a city having a population of not less than ten thousand seven hundred ninety (10,790) and not more than ten thousand seven hundred ninety-nine (10,799), according to the 2010 federal census or any subsequent federal census;

(14)(A) "Convention center" means a facility possessing each of the following characteristics:

(i) Owned by the state, municipal and/or county government, or a nonprofit, tax exempt, charitable organization that operates a symphony orchestra, and leased or operated by that government or by a nonprofit charitable corporation established to operate such facility;

(ii) Designed and used for the purposes of holding meetings, conventions, trade shows, classes, dances, banquets and various artistic, musical or other cultural events;

(a) A convention center does not include a building located within one thousand (1,000) yards of both a student museum and a zoological park; provided, that any restaurant, located within a former world's fair site or a zoological park and which meets the requirements of subdivision (30), shall be eligible for licensure under this chapter as long as the requirements of this chapter are otherwise met;

(b) A convention center also does not include a building which is more than twenty (20) years old and is located in any county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800), according to the 1980 federal census or any subsequent federal census;

(iii)*(a)* Except as provided for in (14)(A)(iii)(*b*), which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, has a designated, restricted area outside the seating area of any theater within which area the consumption of such alcoholic beverages shall be permitted. The sale of such alcoholic beverages in such facility is limited to no more than one (1) hour and fifteen (15) minutes prior to a meeting, show, performance, reception, or other similar event, and to no later than thirty (30) minutes after such event; and

(b) In a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, or facility owned by a nonprofit,

tax exempt, charitable organization that operates a symphony orchestra, has designated an area within or adjacent to any theatre or meeting space, or adjacent to the facility within which area the consumption of alcoholic beverages shall be permitted. Nothing herein shall restrict the ability of a convention center, as defined herein, from adjusting the designated area within or adjacent to its theatre areas, upon adequate prior notice to the commission;

(iv) Located in a municipality having a population in excess of one hundred fifty thousand (150,000) and in a county having a population in excess of two hundred thousand (200,000), or both, according to the 1980 federal census or any subsequent federal census;

(v) A convention center licensed under this subdivision (14)(A) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of the franchise shall also be considered a convention center under this subdivision (14)(A);

(B) "Convention center" also means a facility meeting the criteria of subdivision (14)(A)(i) and (ii) and located in a premiere resort city as defined by § 67-6-103(a)(3)(B)(i);

(C) "Convention center" also means a facility possessing each of the following characteristics:

(i) Owned by a county public building authority at the time of development;

(ii) Designed and used for the purposes of attracting conventions, business travelers, tourists and other visitors to promote economic development;

(iii) Located at the intersection of Interstate 24 and Highway 41 near mile marker 114;

(iv) Occupies an area of not less than approximately thirteen thousand five hundred square feet (13,500 sq. ft.); and

(v) Includes a full commercial kitchen to provide meals and catering services;

(D) "Convention center" also means a facility possessing each of the following characteristics:

(i) Is owned by a quasi-governmental development agency;

(ii) Is designed and used for the purposes of attracting conventions, business travelers and tourists to the area and is vital in promoting economic development, fostering community activities, providing training and seminar space for business and industries and in encouraging tourism;

(iii) Is available for community, industry and private events;

(iv) Is the only one of its kind in the area;

(v) Has a seating capacity of approximately three hundred (300) and is fully equipped with tables, chairs, linens, dishware and a catering kitchen;

(vi) Occupies an area of approximately eight thousand five hundred square feet (8,500 sq. ft.) on acreage surrounding Tellico Lake; and

(vii) Is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-four thousand six hundred (44,600), according to the 2010 federal census or any subsequent federal census; and

(E) No member or officer, agent or employee of any convention center as defined by this section shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of spirituous liquors, wines, champagnes, malt beverages or any other alcoholic beverage beyond the amount of such salary as may be fixed by its governing body out of the general revenue of the center. All profits from the sale of such alcoholic beverages shall be used for the operation and maintenance of the convention center;

(15) "Country club located on an historic property" means a country club that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(A) Sits on real property that was formerly the home of the International Printing Pressmen Union;

(B) Has a dining facility; and

(C) Is located adjacent to an eighteen-hole golf course;

(16)(A) "Festival operator" means a person licensed under this subdivision (16) who is either a for-profit business operating a festival for a period of up to seven (7) days in length in which alcoholic beverages or beer will be sold, given away, or otherwise dispensed or a third party with whom such for-profit business engages to conduct alcoholic beverage or beer sales during such festival;

(B) The commission shall issue a license to a festival operator upon the payment of a fee of one thousand dollars ($1,000) per day of the festival, and the submission of an application on a form prescribed by the commission that provides proof satisfactory of the following information, to the satisfaction of the commission:

(i) The premises on which alcoholic beverages or beer will be served, sold, dispensed, or consumed is sufficiently designated, enclosed, secured, and maintained;

(ii) Adequate security for the festival is provided;

(iii) The number and location of each point of sale in which alcoholic beverages or beer will be served, sold, dispensed, or consumed is specified. If the operator of any such point of sale, including any person or entity that receives any portion of the proceeds of the sale of alcoholic beverages or beer from that point of sale, is different from the festival operator, the name and relevant information of such other operator must be specified on the application to the commission, and the commission may determine that such other operator is required to obtain an additional festival operator license;

(iv) The staff selling, serving, or dispensing alcoholic beverages or beer are adequately trained and supervised in the service of alcoholic beverages and beer and on the applicable laws regarding such service;

(v) The city or county in which, or the state governmental entity responsible for the property on which, the festival is to be held has approved the festival; and

(vi) If the applicant intends to sell, serve, or dispense beer, the applicant has a beer permit issued in accordance with chapter 5 of this title;

(C) No person licensed under this title, operating in conjunction with a festival operator licensee, or performing any activities for which a license

is otherwise required under this title, other than a festival operator or special occasion licensee licensed under this section, may provide any service, item, or other thing of value to a festival operator or with respect to a festival operator's festival, except as may be expressly authorized by the commission. Additionally, no festival operator may receive or accept any item or service that a person under this subdivision (16) is prohibited from providing. All alcoholic beverages used for the festival must be purchased from wholesalers licensed under § 57-3-203. Notwithstanding any law to the contrary, a wholesaler may buy back any unopened and resalable bottles of alcoholic beverages at the end of the festival. A wholesaler shall keep all records, as may be required by the commission, necessary to document the purchase of such products pursuant to this subdivision (16);

(D) All applicable taxes, including the tax levied on the sale of alcoholic beverages for consumption on the premises under § 57-4-301, must be remitted as required by law;

(E) Alcoholic beverages and beer may be sold, given away, dispensed, or consumed only within hours sufficient to ensure adequate public health, safety, and welfare as determined by the commission or local beer board, as applicable;

(F) Notwithstanding any law to the contrary, if the commission finds that any of the requirements of this subdivision (16) have not been, or are not being, met by a festival operator during a festival or after the completion of a festival, or that the festival operator misrepresented information in the person's application, the commission may use the failure or misrepresentation as the basis to summarily suspend the license of the festival operator, to deny any future applications for a festival operator license for a period of up to two (2) years after the festival in which the failure or misrepresentation occurred, or to issue a fine of up to ten thousand dollars ($10,000) per violation, which disciplinary action must be resolved prior to the issuance of any new festival operator license to the festival operator;

(17)(A) "Historic inn" means a historic building that is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-five thousand (45,000), according to the 1990 federal census or any subsequent federal census, and has the following characteristics:

(i) Was built in 1824 and was formerly the oldest continuously operating inn in Tennessee;

(ii) Was once visited by United States Presidents Andrew Jackson, Andrew Johnson and James K. Polk, all of whom stayed and dined there; and

(iii) Has a dining facility and a total of nine (9) rooms and suites;

(B) "Historic inn" also means a country inn that is located in any county having a population of not less than seventy-one thousand one hundred (71,100) nor more than seventy-one thousand two hundred (71,200), according to the 2000 federal census or any subsequent federal census, and has the following characteristics:

(i) Has been in operation since 1938;

(ii) Is located within one-half (½) mile of the Great Smoky Mountains National Park;

(iii) Has a total of twenty-four (24) guest rooms and a dining facility offering fine dining to guests and other patrons with a seating capacity of no more than sixty (60); and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(C) "Historic inn" also means an inn that has all of the following characteristics:

(i) Contains at least ten (10) transient guest rooms in the main house;

(ii) Has a separate meeting lodge and facility that also houses at least four (4) transient suites;

(iii) Has at least two (2) kitchens on the premises and offers at least two (2) meals daily;

(iv) Has an open-air, outdoor, sylvan chapel suitable for the accommodation of wedding ceremonies;

(v) Provides entertainment in the form of cooking demonstrations, storytelling and dulcimer playing;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry;

(vii) Is located in any county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census; and

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(18)(A) "Historic interpretive center" means a facility possessing each of the following characteristics:

(i) The center is located in an historic area of town where structures listed on the national register of historic places are located;

(ii) The center operates as a not-for-profit corporation that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any historic interpretive center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of the assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic interpretive center, and in furtherance of the purposes of the organization. Alcoholic beverages may be consumed inside the center at locations designated by the board of the not-for-profit corporation;

(iii) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, musical concerts, films, receptions, exhibitions, seminars or meetings; and

(iv) The center is located in any county having a population of not less than seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Historic interpretive center" also means a commercially operated facility owned by a not-for-profit organization possessing each of the following characteristics:

(i) Is located on the Cumberland Plateau, within one (1) mile of a

national river and recreation area;

(ii) Offers historic interpretation of Victorian-era British architecture, lifestyle, and settlement on the Cumberland Plateau in the 1880s and thereafter;

(iii) Operates public education programs in multiple historic buildings built from 1880 to 1884, including the oldest unchanged and preserved public library in America;

(iv) Preserves the historic character of a British settlement on the Cumberland Plateau in the 1880s through a board of directors engaged in land acquisition and management, design review of new construction and renovation, and the public enjoyment of period crafts, music, and folklife through the organization of festivals, support for local artists through the sale of arts and crafts in a commissary;

(v) Owns, sells, and develops home sites for construction of design-approved homes;

(vi) Offers overnight accommodations to visitors in historic inn and cottage settings;

(vii) Operates a restaurant serving breakfast, lunch, and dinner to visitors, community residents, guests, and members of the public;

(viii) Attracts thousands of visitors annually from around the world;

(ix) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(x) Is located within any county having a population of not less than nineteen thousand five hundred (19,500) nor more than nineteen thousand seven hundred seventy five (19,775), according to the 2000 federal census or any subsequent federal census;

(C) "Historic interpretive center" also means a facility possessing each of the following characteristics:

(i) Was founded in 1983;

(ii) Is located on Martin Luther King Boulevard;

(iii) Provides programs of historical, cultural, civic, and educational interest, including, but not limited to, art exhibitions and musical concerts;

(iv) Is owned by a municipal or county government;

(v) Alcoholic beverages shall only be sold at the center before or during performances; and

(vi) 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;

(19) "Historic mansion house site" means the buildings and grounds of a historic mansion house, located in any county having a metropolitan form of government, included in the Tennessee register of historic places, and operated by the Association for the Preservation of Tennessee Antiquities, and including Association for the Preservation of Tennessee Antiquities sites owned by this state. "Historic mansion house site" also means the buildings and grounds of an historic mansion house located in any county having a metropolitan form of government which has been conveyed by this state in trust to a board of trustees created and appointed in accordance with §§ 4-13-103 and 4-13-104, and for admission to which reasonable fees are charged as provided in § 4-13-105. This subdivision (19) shall apply only to counties having a population of four hundred fifty thousand (450,000) or

greater, according to the 1980 federal census or any subsequent census;

(20)(A) "Historic performing arts center" means a facility possessing each of the following characteristics:

(i) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(ii) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center;

(iii) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings; and

(iv) The center is located in any county having a population of:

not less than	nor more than
143,900	144,000
300,000	400,000
700,000	

according to the 1980 federal census or any subsequent federal census;

(B) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) The center is located in a restored theater or music hall that is at least fifty (50) years old and listed on the national register of historic places;

(ii) The center is operated by a for-profit organization, or a not-for-profit organization that is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, and where no member, officer, agent or employee of the not-for-profit organization receives any incentive compensation relating directly to the sale of alcoholic beverages beyond the amount of such salary and other compensation as may be fixed by the not-for-profit organization's governing body for the reasonable performance of such member's, officer's, agent's or employee's assigned duties. A portion of the profits from the sale of alcoholic beverages at the center shall be used for the operation, renovation, refurbishing or general maintenance of the center. Alcoholic beverages shall only be sold at the center before, during or after performances. Alcoholic beverages may be consumed inside the center at locations designated by its governing body;

(iii) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings; and

(iv) The center is located in any county having a population in excess of five hundred thousand (500,000), which has a metropolitan form of government;

(C) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was opened in 1921;

(ii) Is on the national register of historic places;

(iii) Is located on Broad Street;

(iv) Provides programs of cultural, civic, and educational interest, including, but not limited to, operas and musical concerts;

(v) Is owned by a municipal or county government, or nonprofit, tax exempt, charitable organization. Alcoholic beverages shall only be sold at the center before, during or after performances; and

(vi) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(D) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was opened in 1924;

(ii) Was originally designed as a municipal auditorium and all-purpose exhibition hall;

(iii) Is located on McCallie Avenue;

(iv) Is owned by a municipal or county government, or nonprofit, tax exempt, charitable organization. Alcoholic beverages shall only be sold at the center before, during or after performances;

(v) Provides programs of cultural, civic, and educational interest, including, but not limited to, stage plays and musical concerts; and

(vi) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(E) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Is on the national register of historic places;

(ii) Was built in 1937;

(iii) Is located on Main Street;

(iv) Is an entertainment venue for live performances, movies and other events. Alcoholic beverages shall only be sold at the center before, during or after the performances, movies or other events; and

(v) Is located in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(F) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) Was built in 1931;

(ii) Is on the national register of historic places;

(iii) Is maintained by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended;

(iv) Has an auditorium that seats more than seven hundred fifty (750) people;

(v) Provides programs of cultural, civic, and educational interest, including, but not limited to, stage plays and musical concerts; and

(vi) Is located in any county having a population of not less than one hundred fifty-three thousand (153,000) nor more than one hundred fifty-three thousand one hundred (153,100), according to the 2000 federal census or any subsequent federal census;

(G) "Historic performing arts center" also means a facility possessing each of the following characteristics:

(i) The center:

(a) Is located adjacent to a restored theater that is at least fifty (50) years old and listed on the national register of historic places; and

(b) Shares a plaza with such restored theater;

(ii) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)), as amended, where no member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages may be sold before, during, and after events or during intermissions in such events;

(iii) The center provides facilities for programs of cultural, civic, and educational interest to further the mission of the for-profit or not-for-profit corporation, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars, or meetings; and

(iv) The center is located in a county having a population of more than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census;

(21)(A) "Hotel" (Motel) means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which twenty (20) or more rooms are used for the sleeping accommodations of such guests and having one (1) or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least fifty (50) at tables, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used

in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant on their premises and the holder of such franchise shall be included in the definition of "hotel" hereunder; and property contiguous to a hotel, except property located in any county having a population of not less than seventy-seven thousand seven hundred fifty (77,750) nor more than seventy-seven thousand seven hundred ninety (77,790), according to the 1980 federal census or any subsequent federal census, which is owned by the same entity as the hotel and operated by the same entity as the hotel, which property either serves travelers and guests other than as a separate commercial establishment or is operated as a major entertainment complex serving in excess of one million (1,000,000) persons per year;

(B) "Hotel" also means and includes all entities previously described wherein sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which thirty (30) or more suites are used for sleeping accommodations of such guests and having eating facilities in each room for four (4) or more persons with an adequate and sanitary central kitchen from which meals are regularly prepared and served to guests in such suites. For the purpose of this section, "suite" is defined as a guest facility within a hotel where living, sleeping and dining are regularly provided for such guests within the individual units provided for guests. No such hotel or suite as defined in this subdivision (21)(B) shall be authorized to charge for, inhibit or otherwise interfere in any way with the rights of its guests or tenants to carry into rooms or suites rented by them their own bottles, packages or other containers of alcoholic beverages and/or to use or serve them to themselves, their own visitors or guests within the individual units rented or leased by them;

(C) "Hotel" also includes facilities owned and operated by an individual or event-management organization which plans and coordinates all phases of any function for retreats by groups of persons having similar backgrounds or purposes, and which offers meeting and banquet facilities, dining services, recreation and leisure activities in facilities which include a dining inn with seating capacity of three hundred (300), and a complex which includes meeting and banquet facilities with a seating capacity of two hundred (200), overnight accommodations for at least forty (40), and a fifty (50) acre tract of land with picnic accommodations for at least four thousand (4,000), and a facility with seating capacity of four hundred (400). The scope of any license authorized by this subdivision (21)(C) includes picnic service on the grounds of the complex owned and operated by the licensee;

(D) "Hotel" also includes a residence hotel located in the central business district of any municipality having a population of more than three hundred thousand (300,000), according to the 1990 federal census or any subsequent federal census and having a common smoking room and lobby area;

(E)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in

the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. The premises upon which such establishment is located shall be within the boundaries of a clearly defined arts district which is owned and operated by the same entity and having a common courtyard which is contiguous to all buildings and structures on the premises. The dining facilities, including beverages, may be served from an adequate and sanitary central kitchen and storage facility;

(ii) This subdivision (21)(E) applies in any municipality having a population in excess of one hundred fifty thousand (150,000), according to the 1990 federal census or any subsequent federal census;

(F)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. In such establishment there must be two (2) rooms for sleeping accommodations and a seating capacity of twenty-five (25) people at tables. The premises upon which such establishment is located shall have a business conference center;

(ii) Subdivision (21)(F)(i) applies in any county having a population of not less than eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census;

(iii) "Hotel" also includes a facility located in a county which contains a population of not less than eighty-five thousand nine hundred (85,900) nor more than eighty-six thousand one hundred sixty (86,160), according to the 1990 federal census or any subsequent census, which facility contains the following characteristics:

(a) Contains at least forty (40) rooms for guest sleeping accommodations offered for adequate pay to travelers and guests;

(b) Contains at least three (3) separate dining rooms with adequate sanitary kitchen facilities, either common or separate, where meals are regularly served to guests;

(c) Is located on real property of at least one thousand fifty (1,050) acres, notwithstanding that such real property is not contiguous and may be divided by a public or private road;

(d) Contains a swimming pool, hiking trails, and biking trails for use by registered guests;

(e) Has access to the Double Branch Creek and tributaries, notwithstanding that such creek and tributaries are not contiguous and may be divided by a public or private road;

(f) Has at least two thousand seven hundred sixteen (2,716) acres of land that has been placed in conservation easement;

(g) Provides a full service spa for use by registered guests of the facility;

(h) Any such hotel whose facilities are located on the premises of an area meeting the definition of a hotel under this subdivision (21)(F)(iii) may exercise the privileges authorized under this chapter anywhere within that area, and, in addition, may exercise the privilege authorized under this chapter on any location identified to the commission and held out to the public as part of such hotel

property irrespective of the actual owner of the location, where the hotel is authorized by written contract or lease to provide hotel or resort services by the owner of such location; and

(i) Notwithstanding this title or any rule to the contrary, a hotel under this subdivision (21)(F)(iii) shall be able to:

(1) Hold a manufacturer's license under § 57-3-202 or a non-manufacturer nonresident seller's permit under § 57-3-602(c) or both, and such license or permit may be for facilities on or off the hotel premises;

(2) Offer tastings, with or without charge, and sell sealed bottles in a tasting room or a gift shop on the hotel premises of product manufactured pursuant to the license or permit in subdivision (21)(F)(iii)(*i*)(*1*), as long as such tastings and sealed bottles are offered only to guests of the hotel, as defined in this section, and private owners of homes on the hotel property and are not offered anywhere except in the tasting room and the gift shops;

(3) Sell beer and alcoholic beverages by the drink for on-premises consumption anywhere on the hotel premises, except for the tasting room and the gift shops; and

(4) Only sell at retail or provide samples of product that it has obtained from a wholesaler licensed under § 57-3-203, and such wholesaler shall remit all taxes imposed under §§ 57-3-302 and 57-3-501, which shall be collected from the hotel based upon its retail sales, and § 57-6-201. For products acquired from a wholesaler by a hotel under this subdivision (21)(F)(iii) that are manufactured by the hotel, the wholesaler may permit the hotel to deliver its products to the location on its premises where such retail sales and samples will be effected, provided the wholesaler permitting such direct shipment must include the amounts delivered in its inventory and depletions for purposes of tax collections;

(j) A hotel under this subdivision (21)(F)(iii) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(G)(i) "Hotel" also includes a facility that possesses the following characteristics:

(a) Was built in 1917;

(b) Is listed on the National Register of Historic Places;

(c) Has at least twelve (12) rooms for guest sleeping accommodations with at least one (1) room being handicap accessible;

(d) Has a dining area that seats at least one hundred sixty (160) people;

(e) Has a music and entertainment venue that is at least two thousand nine hundred square feet (2,900 sq. ft.);

(f) Has a two-acre meadow suitable for wedding ceremonies and other events; and

(g) Is located in any county having a population of not less than thirty-seven thousand five hundred (37,500) nor more than thirty-seven thousand six hundred (37,600), according to the 2000 federal census or any subsequent federal census.

(ii) A hotel under this subdivision (21)(G) must comply with all the requirements of this chapter and shall be subject to the restrictions

imposed upon licenses other than § 57-4-103;

(H)(i) "Hotel" also means a facility that possesses all of the following characteristics:

(a) Offers to the public:

(1) At least thirty (30) rooms for the sleeping accommodations of guests for adequate pay; and

(2) A dining room;

(b) Is owned by and located on the campus of a private institution of higher education located on at least ten thousand (10,000) acres; and

(c) Is located in any county having a population of not less than thirty-nine thousand two hundred (39,200) nor more than thirty-nine thousand three hundred (39,300), according to the 2000 federal census or any subsequent federal census;

(ii) A hotel under this subdivision (21)(H) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(I)(i) "Hotel" also includes a facility that possesses the following characteristics:

(a) Is located in a building on which construction began prior to 1940;

(b) Is located approximately twenty-two (22) miles south of Interstate 40 on U.S. Highway 412;

(c) Is fronted on the north side by U.S. Highway 412 and is less than one (1) mile from a scenic river as defined in title 11, chapter 13;

(d) Has at least twelve (12) rooms for guest sleeping accommodations;

(e) Has a separate room for conferences or meetings;

(f) Has at least a forty-seat dining area that has been approved by the local health department and that serves meals at least four (4) days a week, with exceptions of closures for private groups or events, seasonal closures, vacations, and periods of general maintenance or remodeling by the owners;

(g) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(h) Is located in any county having a population of not less than seven thousand nine hundred one (7,901) nor more than eight thousand (8,000), according to the 2010 federal census or any subsequent federal census;

(ii) A hotel under this subdivision (21)(I) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(22) "Limited service restaurant" means a facility possessing each of the following characteristics:

(A) Is a public place which has a seating capacity for at least forty (40) patrons and that is kept, used, maintained, advertised and held out to the public as a place where during regular hours of operation:

(i) Alcoholic beverages, beer or wine are served to patrons;

(ii) A menu of prepared food is made available to patrons;

(iii) The gross revenue from the sale of prepared food is fifty percent (50%) or less than the gross revenue from the sale of alcoholic beverages;

provided, however, that gross revenue of more than fifty percent (50%) from the sale of prepared food shall not prevent a facility from receiving a "limited service restaurant" license or subject such facility to a fine from the commission for having gross revenue of more than fifty percent (50%) from the sale of prepared food. For purposes of determining the gross revenue from the sale of prepared food, chips, popcorn, pretzels, peanuts and similar snack items shall not be included in gross revenue from the sale of prepared food sold;

(iv) The facility affirmatively establishes, to the satisfaction of the commission, that it has complied and will comply with the requirements of § 57-4-204;

(v) The facility provides adequate security during the regular hours of operation; and

(vi) Sleeping accommodations are not provided;

(B) Is located within the jurisdictional boundaries of a political subdivision which has authorized the sale of alcoholic beverages for consumption on the premises as provided in § 57-4-103; and

(C) Is located in an area which is properly zoned for facilities authorized to sell alcoholic beverages for consumption on the premises;

(23)(A) "Motor speedway" means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population of not less than sixty-seven thousand six hundred (67,600) nor more than sixty-seven thousand nine hundred (67,900), according to the 1990 federal census or any subsequent federal census, and at least one (1) municipality located in such county has adopted liquor by the drink;

(ii) Contains a 1.33 mile superspeedway;

(iii) Is situated on a site of at least five hundred (500) acres; and

(iv) Has a seating capacity of fifty thousand (50,000) with the capability to expand to one hundred fifty thousand (150,000) grandstand seats and one hundred (100) luxury skyboxes;

(B) "Motor speedway" also means a motor sports facility that possesses the following characteristics:

(i) Is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(ii) Contains a three-quarter-mile oval track with a seating capacity of sixteen thousand (16,000) seats; and

(iii) Contains a one-quarter-mile drag strip with a seating capacity of fifteen thousand (15,000) seats;

(24)(A) "Museum" means a building or institution serving as a repository of natural, scientific or literary curiosities or works of art for public display and further possesses the following characteristics:

(i) The museum is at least fifty (50) years old; and

(ii) The museum is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census;

(B) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization which has been in existence for at least

twenty-five (25) years;

(ii) The art museum is located in a building which contains not less than fifty thousand square feet (50,000 sq. ft.); and

(iii) The art museum is located in a former world's fair site; and

(C) "Museum" also means a building or institution serving as a repository or exhibition facility for works of art for public display and further possesses the following characteristics:

(i) The museum is owned and operated by a bona fide charitable or nonprofit organization;

(ii) The museum is located in a building which contains not less than one hundred thousand square feet (100,000 sq. ft.);

(iii) The museum is located in a building that previously served as a United States postal service facility; and

(iv) The museum is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(D) "Museum" also means a building or institution serving as a tribute to soul music and which houses a music academy and further possesses the following characteristics:

(i) The museum and music academy is located on the original site of a recording studio; and

(ii) The museum and music academy is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census;

(E) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization;

(ii) The museum has been in existence for at least fifty (50) years;

(iii) The museum focuses on American art from the colonial period to the present day;

(iv) The museum is located in a historical mansion and a sleek contemporary building on the bluffs overlooking the Tennessee River;

(v) The museum does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The museum is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(F) "Museum" also means a building or institution dedicated to the public display, preservation, and promotion of fine metalwork and further possesses the following characteristics:

(i) The museum opened to the public in 1979;

(ii) The museum is located on at least three (3) acres overlooking the Mississippi River;

(iii) The museum features a fully operational blacksmith shop and sand-casting foundry;

(iv) The museum is owned and operated by a bona fide charitable or nonprofit organization; and

(v) The museum is located in a county having a population in excess of eight hundred thousand (800,000), according to the 2000 federal

census or any subsequent federal census;

(25) "Paddlewheel steamboat company" means a company that operates one (1) or more paddlewheel steamboats for hire in interstate commerce upon navigable waterways and is licensed by the United States coast guard to carry not less than one hundred (100) passengers on a single vessel, with adequate facilities and equipment for serving regular meals, on regular schedules, or charter trips, while moving through or docked in any county of the state; provided, however, that no paddlewheel steamboat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such paddlewheel steamboat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(26) "Passenger train" includes any passenger train operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular or special schedules, or charter trips, while moving through any county of the state, but not while any such passenger train is stopped in a county or municipality that has not legalized such sales;

(27) A "premier type tourist resort" means:

(A) A commercially operated recreational facility possessing each of the following characteristics:

(i) Ownership and operation by a profit type corporation having a capitalization of not less than ten million dollars ($10,000,000);

(ii) Situated in a geographical area wholly controlled by the operator of the facility and having not less than six thousand (6,000) acres of contiguous land, not less than five thousand (5,000) acres of which is to be developed and maintained in accordance with sound ecological and environmental practices, such requirement to be subject at all times to the oversight and approval of the department of environment and conservation, which shall not less often than once a year make a written report thereof to the commission. Satisfactory compliance with this requirement and certification thereof by the department to the commission shall be a condition precedent to the issuance or renewal of the permit provided for in § 57-4-201;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodation of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of at least one (1) of the following types of sporting facilities:

(a) A golf course of at least eighteen (18) holes;

(b) A lake covering not less than one hundred (100) acres adapted for boating and fishing;

(c) A ski slope;

(vi) Maintenance, in addition to one (1) or more of the facilities enumerated in subdivision (27)(A)(v), of two (2) or more of the following types of recreational facilities:

(a) Area for camping;

(b) Tennis courts;

(c) Swimming pool;

(d) Trails for hiking and/or horseback riding;

(e) Equestrian center;

(vii) A twenty-four-hour per day security force approved as to adequacy by the commission;

(B) A hotel, motel or restaurant located within a municipality having a population of one thousand (1,000) or more persons, according to the federal census of 1970 or any subsequent federal census in which at least fifty percent (50%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, and tourist courts accommodations, providing the voters of the municipality have heretofore by referendum pursuant to § 57-4-103, approved the sale of alcoholic beverages for consumption on the premises, and such referendum shall be authorized, notwithstanding the population requirements set forth in § 57-3-106. For purposes of implementation of this subdivision (27)(B), the sale of alcoholic beverages shall be limited to hotels, restaurants, and clubs as defined in this section. To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision (27)(B) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(C)(i) A commercially operated recreational facility containing all of the following characteristics:

(a) Ownership and operation by a profit type corporation or partnership;

(b) Situated in a geographical area controlled by the operator of the facility, having not less than two thousand five hundred (2,500) acres of land;

(c) Continuous maintenance of lodging accommodations consisting of not less than one hundred (100) hotel or motel rooms in a building or buildings designed for such purpose;

(d) The maintenance of a ski slope with necessary lifts or tows for use during skiing season;

(e) Continuous maintenance of restaurant facilities for seating at tables of not less than two hundred (200) persons, with adequate kitchen facilities; and

(f) Located within a municipality with a population of not less than one thousand fifty (1,050) nor more than one thousand seventy-five (1,075), according to the 1980 or any subsequent census;

(ii) To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision (27)(C) shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(D) A commercially operated facility possessing each of the following characteristics:

(i) Situated in a geographical area controlled by the operator of the facility, having not less than one hundred seventy-nine (179) acres of land;

(ii) A public golf course of at least eighteen (18) holes with a practice green and irrigation system;

(iii) Such facility has a club house with at least five thousand square feet (5,000 sq. ft.) that can accommodate up to two hundred fifty (250) guests for events;

(iv) Has separate meeting rooms for multiple events;

(v) Has a cart barn on the property that holds no less than sixty (60) golf carts;

(vi) Such facility has a maintenance shop with at least seven thousand square feet (7,000 sq. ft.);

(vii) Is located inside of:

(a) A black bear habitat community; and

(b) A conservation community;

(viii) Surrounded by over one hundred (100) rental cabins;

(ix) At least fifty percent (50%) of the property boundaries border a national park;

(x) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(xi) Is located in any county having a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100) according to the 2010 federal census or any subsequent federal census;

(E) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and operation by a for-profit corporation or partnership;

(ii) Located in a geographic area managed by the operator of the facility, containing a minimum area of one hundred fifty (150) contiguous acres;

(iii) Continuous maintenance of lodging accommodations of not less than fifty (50) rooms available for guests, tourists or for business meetings located in a building or buildings designed for accommodations or business meetings;

(iv) Maintenance of lakeside marina facilities, a golf course of not less than eighteen (18) holes, and riding trails and stables on the premises;

(v) Located within a municipality with a population of not less than six thousand three hundred seventy-five (6,375) nor more than six thousand four hundred (6,400), according to the 1980 or any subsequent federal census; and

(vi) Whose manager shall have been specifically approved by a majority of the legislative body of the municipality in which such licensee is located as being an individual of good moral character;

(F) A facility, whether open to the public or limited to members and guests of the development on which it is located, owned or operated, pursuant to a license by a homeowners or residential association, which

facility is kept, used and maintained as a place where meals are served and where meals are actually and regularly served, with adequate and sanitary kitchen facilities and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than forty-seven thousand (47,000) nor more than forty-seven thousand five hundred (47,500), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located on the premises of a planned, gated residential development of at least eighty (80) acres with at least nine thousand (9,000) lineal feet of water frontage on an established and designated navigable waterway; and

(iii) The facility must be located within the limits of a development which contains a marina and tennis court facilities;

(G) A club, either for profit or not for profit, which has been in existence for two (2) consecutive years during which time it has maintained a membership of at least three thousand (3,000) members and which maintains club facilities on or adjacent to property offering recreational services available to its members, which services shall include one (1) or more of the following:

(i) Golf course with at least eighteen (18) holes;

(ii) Tennis courts;

(iii) Marina facilities with a minimum of four hundred (400) slips.

Any such club whose club facilities are located on the premises of an area meeting the definition of a "premier type tourist resort" under this section may exercise its privileges authorized under this chapter anywhere within such area;

(H) A commercially operated recreational facility, whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand seven hundred sixty (34,760), according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located in a development containing no less than four hundred twenty (420) acres and no more than four hundred fifty (450) acres;

(iii) The facility must be located within limits of a development which contains an eighteen-hole golf course;

(iv) The facility must have no less than five thousand (5,000) enclosed square feet (5,000 sq. ft.);

(v) The facility must be located no less than one-half (½) mile from the right-of-way of an interstate highway; and

(vi) The facility must be located within the limits of a development which contains a lake of not less than twenty-eight (28) acres which is entirely within the limits of the development;

(I) A commercially operated recreational facility possessing each of the

following characteristics:

(i)*(a)* Ownership and development by a for profit corporation;

(b) Situated in a geographic area controlled by such entity and having not less than twenty-five (25) contiguous acres of land which is divided by a four-lane highway;

(c) Designed to contain picnic facilities, museum buildings, retail sales areas, retail food dispensing outlets, and restaurant areas;

(d) Maintenance of a limited access area containing a former residence, a swimming pool, a handball court, and stables where no pedestrian access is allowed and all guests entering must be carried by a motor vehicle; and

(e) Location within a county having a population of not less than seven hundred seventy thousand (770,000), according to the 1990 federal census or any subsequent federal census;

(ii) "Premier type tourist resort," as defined in this subdivision (27)(I), shall be authorized to sell or serve alcoholic beverages on the premises of such resort only at special functions, wherein attendance is limited to invited guests or groups and not to the general public;

(J) An entity operating a commercial golf related recreational facility, whether open to the public or limited to members and guests of an association or owners and guests of a development upon or adjacent to which the facility is located, which entity or facility meets all of the following criteria:

(i) The facility is located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand eight hundred (34,800), according to the 1990 federal census or any subsequent federal census;

(ii) The facility is operated in conjunction with an eighteen (18) hole golf course;

(iii) The facility is kept, used and maintained as a place where meals are actually and regularly served with such adequate and sanitary kitchen facilities as might be needed to meet the reasonable requirements of its patrons, members, or guests;

(iv) The entity does not discriminate or limit the use of the facilities solely on the basis of race, creed, sex, or national origin, and has provided to the commission a written certification of its policy;

(v) Such facility has enclosed clubhouse space of at least five thousand square feet (5,000 sq. ft.);

(vi) Such facility is located no less than seven (7) miles and no more than eight (8) miles from an interchange of an interstate highway; and

(vii) Such facility is located on a geographic area, owned or operated by the entity, which area contains not less than one hundred fifty-five (155) acres nor more than one hundred seventy (170) acres;

(K) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen-hole golf course, which facility is regularly kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must be located in or adjacent to a real estate development containing no less than one thousand one hundred (1,100)

acres and no more than two thousand (2,000) acres;

(ii) The facility must have no less than nine thousand (9,000) enclosed square feet;

(iii) The facility must be located within the limits of a development which is contiguous to a water reservoir operated and maintained by the United States army corps of engineers during 1998 or any subsequent years; and

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(a) Golf course of at least eighteen (18) holes;

(b) Swimming pool;

(c) Tennis court; and

(d) Walking trails;

(L) A resort containing all of the following characteristics:

(i) Has a restaurant, with a current overall seating capacity of two hundred eighty (280), including outside dining service, and which serves over seventy-five thousand (75,000) patrons per year;

(ii) Is located immediately adjacent to the Cherokee National Forest, the only national forest in Tennessee and the Cherohala Skyway, one of only twenty (20) highways in the country designated as a national scenic byway;

(iii) Is located along the scenic Tellico River, a tributary of the Little Tennessee River;

(iv) Currently operates nine (9) cabins, a river walk, and an open-air chapel and pavilion;

(v) After a proposed expansion will include at least thirty (30) cottages, a full-service health and wellness spa, a championship golf course, racquet club, adventure club for canoeing, kayaking, hiking, biking and other outdoor activities, an equestrian club, conference facilities, a hunt and fish club, crafts and education, and history tours; and

(vi) Is located within a county having a population of not less than thirty-eight thousand nine hundred (38,900) nor greater than thirty-nine thousand (39,000), according to the 2000 federal census or any subsequent federal census;

(M) A commercially or privately operated recreational facility containing all of the following characteristics:

(i) The facility is located within a platted housing subdivision of not less than four hundred (400) acres nor greater than five hundred twenty-five (525) acres;

(ii) The facility is located on or adjacent to an eighteen-hole golf course located within the development;

(iii) The facility is located within a development that operates a recreational swimming pool of at least sixty thousand gallons (60,000 gals.);

(iv) The facility operates and maintains tennis courts for use by homeowners, visitors, tourists, or guests;

(v) The facility operates a clubhouse for the use of homeowners, visitors, tourists, or guests of at least five thousand total square feet (5,000 sq. ft.) and the clubhouse houses a restaurant with seating at tables for at least forty (40) people and such restaurant has adequate

kitchen facilities;

(vi) The facility is located within a county with a population of not less than thirty-nine thousand fifty (39,050) nor more than thirty-nine thousand one hundred fifty (39,150), according to the 2000 federal census or any subsequent federal census; and

(vii) The facility shall have been providing some or all of the described recreational services for a continuous period of at least four (4) years at the time of licensing;

(N) A commercially operated recreational facility, located adjacent to a navigational river which contains all of the following characteristics:

(i) Such facility has direct access to a navigable waterway;

(ii) Such facility contains a minimum of two hundred (200) slips for boats;

(iii) Such facility provides boat fuel, boat rental and repair;

(iv) Such facility is located upon or adjacent to a public park or preserve, which park is at least one hundred (100) acres in size, and which park contains a swimming pool, tennis courts and at least a nine (9) hole golf course; and

(v) Such facility is located within a county with a population of at least three hundred eighty thousand (380,000), according to the 2000 federal census or any subsequent federal census;

(O) An entity granted a franchise for the operation of a restaurant or food and beverage services on the premises of the premier type tourist resort, and for such purposes a premier type tourist resort shall have the privilege of granting such franchises;

(P) A commercially operated facility which contains all of the following characteristics:

(i) Such facility was licensed as a health club on December 31, 2015;

(ii) Such facility only allows members and their invited guests;

(iii) Such facility has two (2) swimming pools with one pool having at least fifteen thousand square feet (15,000 sq. ft.) of water surface;

(iv) Such facility provides volleyball courts, a basketball court and a recreation area with food service;

(v) Such facility is located within fifteen (15) miles of an airport;

(vi) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Such facility is located within a county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eight-two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census;

(Q) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than three and one-half (3 ½) miles from the right of way of Interstate 40 and fronting on State Highway 92 and has a minimum of eight (8) acres of lake front property with a minimum of five thousand eight hundred feet (5,800′) of shore line;

(ii) Such facility has at least eighty (80) boat slips and forty-eight (48) dry slips, a boat launching ramp, a full service restaurant seating at least one hundred seventy-five (175) people inside with outside patio dining, a ships store offering boat supplies and gasoline, and an outdoor pavilion;

(iii) Such facility provides accommodations consisting of at least twenty (20) lakeside hotel/motel units in a building or buildings designed for such purposes;

(iv) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census; and

(v) Such facility shall also include any commercial boat for charter that departs from any such facility if the boat is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel and has adequate facilities and equipment for serving regular meals, on regular schedules, or charter trips, while moving through or docked in any county of the state;

(R) A commercially operated facility which at a minimum contains all of the following characteristics:

(i) Such facility is located within one (1) mile of the right-of-way of Interstate 40 and in an area zoned by the municipality as B-3; and

(ii) Such facility is located within a county having a population of not less than forty-four thousand (44,000) nor more than forty-four thousand nine hundred (44,900), according to the 2000 federal census or any subsequent federal census;

(S) A commercially operated facility which contains all of the following characteristics:

(i) Such facility is located no more than one-half (½) mile from the right of way of Interstate 75 and accessible to State Highway 68;

(ii) Such facility has at least nine thousand square feet (9,000 sq. ft.) of conference space;

(iii) Such facility provides accommodations consisting of at least one hundred twenty-five (125) hotel or motel rooms in a building or buildings designed for such purposes;

(iv) Such facility provides recreational facilities including an indoor swimming pool;

(v) Such facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Such facility is located within a county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more than thirty-nine thousand (39,000), according to the 2000 federal census or any subsequent federal census;

(T) A nine-hundred-sixty-acre peninsula gated community located on a lake with ten (10) miles of shoreline, and which facility contains all of the following characteristics:

(i) Has an eighteen-hole golf course and tennis courts;

(ii) Has a club house, restaurant, lounge, fitness center, and swimming pool;

(iii) Maintains a community garden, community and neighborhood docks and a boat ramp;

(iv) Has an equestrian facility with extensive riding trails;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in two (2) counties one (1) county having a population of not less than thirty-eight thousand nine hundred (38,900) nor more

than thirty-nine thousand (39,000) and the other county having a population of not less than thirty-nine thousand fifty (39,050), nor more than thirty-nine thousand one hundred fifty (39,150), both according to the 2000 federal census or any subsequent federal census;

(U) A facility which contains all the following characteristics:

(i) Has resort lodge condominiums, homes and vacation cottages;

(ii) Has an eighteen hole golf course and tennis courts with a pro shop;

(iii) Has a swimming pool;

(iv) Has rock climbing, hiking and biking trails;

(v) Has a full service spa;

(vi) Has banquet and dining services and a business service center;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(viii) Is located in a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(V) It is lawful for any establishment located in a premier type tourist resort as defined in § 67-6-103(a)(3)(B)(iii) which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(W) It is lawful for any establishment located in a municipality which:

(i) Has an approved Tourist Development Zone as set forth in title 7, chapter 88;

(ii) Has a AA minor league baseball team; and

(iii) Is located in a county with an amusement park, a ski resort, and a national park,

which is licensed to serve beer to also serve wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(X) A commercially operated recreational facility, located adjacent to a navigable river, that has all of the following characteristics:

(i) Contains at least one hundred (100) boating slips available for lease, rental, or use by guests;

(ii) Has one (1) or more restaurant facilities with a combined seating capacity of at least two hundred (200);

(iii) Has a lodge with at least fifteen (15) units available for transient lodging; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Y) A commercially operated facility that has all of the following characteristics:

(i) Is located no more than six (6) miles from Interstate 40 at exit 427, and on both sides of a county highway known as Harrison Ferry Road. The facility contains a minimum of one hundred forty-three (143) acres, and includes a minimum of twenty-two (22) acres of land zoned commercial for future development at the corner of Back Nine Drive and Mountain View Lane;

(ii) Has an eighteen-hole golf course, two (2) practice putting greens, a practice chipping green and a practice area for golf instruction. The facility also contains a large swimming pool, a boat ramp into Douglas

Lake, and two (2) tennis courts;

(iii) Has a clubhouse with a fully-equipped pro shop, a full-service restaurant seating at least one hundred fifty (150) persons inside, with an outside patio that seats at least seventy (70) persons;

(iv) Provides accommodations, consisting of at least twelve (12) hotel/motel units and at least nine (9) villa units; and

(v) Is located within an incorporated municipality having a population of less than five hundred (500), according to the 2000 federal census or any subsequent federal census, within a county having a population of not less than forty-four thousand two hundred (44,200) nor more than forty-four thousand three hundred (44,300), according to the 2000 federal census or any subsequent federal census; and

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(Z) An inn that has all of the following characteristics:

(i) Contains at least twelve (12) transient guest rooms in the main house;

(ii) Has a separate meeting lodge and facility that also houses at least four (4) new French country transient suites;

(iii) Has at least two (2) kitchens on the premises and offers at least two (2) meals daily;

(iv) Has an open-air, outdoor, sylvan chapel suitable for the accommodation of wedding ceremonies;

(v) Provides entertainment in the form of cooking demonstrations, storytelling and dulcimer playing;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(AA) A commercially operated facility that has all of the following characteristics:

(i) Is a full service colonial mansion located on an eighty-one-acre estate;

(ii) Contains no fewer than eight (8) transient rooms and seventeen (17) bathrooms;

(iii) Contains a dining room with capacity for fifty (50) persons that serves at least two (2) meals daily;

(iv) Has a heated swimming pool, a fitness center, a sauna, a tennis court and a billiard room;

(v) Has a system of hiking and walking trails;

(vi) Is listed in Distinguished Inns of North America, 16th Edition, by Select Registry; and

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(BB) A facility that has nine (9) acres of shoreline development on Watts Bar Lake and that has all of the following characteristics:

(i) Has one- to three-bedroom cottages;

(ii) Has a marina with two hundred fifty (250) slips, both wet and dry;

(iii) Has a restaurant and lounge;

(iv) Has a swimming pool;

(v) Has rental boats;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(CC) A development that has all the following characteristics:

(i) Has a well established marina with boat rentals, gasoline, guide services, etc., and a resort operating for more than fifty (50) years;

(ii) Includes more than two hundred (200) acres on Watts Bar Lake;

(iii) Has forty (40) cottages rented on a daily or weekly basis;

(iv) Has a restaurant;

(v) Has walking and nature trails;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than twenty-eight thousand three hundred fifty (28,350) nor more than twenty-eight thousand four hundred fifty (28,450), according to the 2000 federal census or any subsequent federal census;

(DD) Any facility located in a municipality that has a civil war battlefield:

(i) Of which more than one thousand four hundred (1,400) acres have been designated in the National Register of Historic Places;

(ii) For which a management contract has been entered into between the municipality and the Tennessee historical commission;

(iii) Which has a self-guided driving tour;

(iv) For which long-range plans include walking trails, interpretive signs and a visitor's center with a museum;

(v) At which, every two (2) years, a living history and reenactment of the battle fought in December, 1862 is presented;

(vi) That is famous for the southern general's order to his troops to "Charge them both ways"; and

(vii) Is located in a county having a population of not less than twenty-five thousand four hundred fifty (25,450) nor more than twenty-five thousand five hundred fifty (25,550), according to the 2000 federal census or any subsequent federal census;

(EE) A facility that has at least fourteen (14) acres located on a lake of at least eight thousand (8,000) acres and that has the following characteristics:

(i) Contains at least three hundred and fifty (350) boat slips;

(ii) Contains a dry storage facility;

(iii) Provides boat rentals;

(iv) Contains a marine store;

(v) Contains a full service restaurant with seating for at least one hundred fifty (150) people, as well as a private banquet facility;

(vi) Has motel rooms and cabins for rent;

(vii) Contains a swimming pool;

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(ix) Is located in a county having a population of not less than fifty-six thousand seven hundred (56,700) nor more than fifty-six thousand eight hundred (56,800), according to the 2000 federal census or any subse-

quent federal census;

(FF) A facility that has three hundred eighty-five (385) acres of development on J. Percy Priest Lake and that has all the following characteristics:

(i) Has a water park;

(ii) Has a marina with more than three hundred twenty (320) slips;

(iii) Has a recreational vehicle (RV) campground;

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(v) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(GG) A development that has all of the following characteristics:

(i) Has a well established marina with boat slip rentals, gasoline, etc.;

(ii) Includes three hundred eighty-five (385) acres on J. Percy Priest Lake;

(iii) Has a water park;

(iv) Has a recreational vehicle (RV) campground;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) Is located in a county having a population of not less than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(HH) A fully staffed overnight accommodations facility that:

(i) Is open twenty-four (24) hours a day, located on thirty-four (34) acres of land, that offers at least one (1) meal per day, along with hiking, a fitness facility, an event lawn, and a retail store;

(ii) Has twenty (20) one- and two-bedroom cabins that have kitchens or kitchenettes, wood-burning fireplaces, hot tubs, and high-speed internet access;

(iii) Has a one thousand five hundred square foot (1,500 sq. ft.) meeting facility with a capacity of up to one hundred twenty-five (125) persons, and a restaurant with a capacity of up to eighty-five (85) persons, both of which have high-speed internet access; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(II) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with approximately one hundred sixty-six (166) wet slips and approximately one hundred thirty-three (133) dry storage units;

(ii) The facility is located within a lake-resort, gated residential development of at least one thousand two hundred (1,200) acres having in excess of four hundred fifty (450) single family homes and condominium units;

(iii) The facility is located on a lake that has over eight hundred thirty-four (834) miles of shore line;

(iv) The facility will have a restaurant with a seating capacity of at least fifty (50) people, serving at least two (2) meals a day;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty-nine thousand eight hundred seventy-five (39,875), according to the 2000 federal census or any subsequent federal census;

(JJ)(i) A commercially-operated facility containing all of the following characteristics:

(a) The facility has on its premises a marina that has at least two hundred fifty (250) covered or uncovered wet slips and at least seventy-five (75) dry rack slips;

(b) The facility has on its premises property leased or available for lease to a boating, yachting or water-based recreational club;

(c) The facility has on its premises a restaurant, providing food service to the public or for private events, with seating in the restaurant for at least fifty (50) persons at tables, whether or not the seating is inside or on a deck or patio adjacent to the restaurant;

(d) The facility has the capacity to serve as a home berth location for a commercial vessel for hire or for public cruises of at least seventy-five feet (75′) in length;

(ii) When used in this subdivision (27)(JJ), the "facility" under subdivision (27)(JJ)(i) shall include any location within the property designated by the licensee;

(iii) A facility under this subdivision (27)(JJ) shall also include any passenger sternwheel paddleboat, licensed by the United States coast guard, with rated passenger capacity of not less than one hundred (100) passengers and which paddleboat shall be at least seventy-five feet (75′) in length, which may use the marina facilities as described in subdivision (27)(JJ)(i) for its home or principal secondary port dock. The authority conferred under this subdivision (27)(JJ)(iii), authorizing the sale or distribution of alcoholic beverages, including beer, on any qualified sternwheel paddleboat shall extend only so long as the paddleboat is located at the marina facility described in subdivision (27)(JJ)(i) or is within one hundred (100) miles of the marina facility;

(iv) For purposes of obtaining a license under this subdivision (27)(JJ), the commission shall be authorized to issue a license solely to the owner or operator of a sternwheel paddleboat, meeting the qualifications of subdivision (27)(JJ)(iii), whether or not the facility described in subdivision (27)(JJ)(i) receives a license under this chapter;

(KK) A commercially operated restaurant located within a county having a population of not less than thirty-nine thousand seven hundred fifty (39,750) nor more than forty thousand (40,000) and also located within the corporate limits of a municipality having a population of not less than seven thousand seven hundred fifty (7,750) nor more than eight thousand (8,000), according to the 2000 federal census or any subsequent federal census, and in addition to satisfying the requirements of subdivision (30)(A), also meets the following additional requirements:

(i) The facility is in a structure of not less than six thousand square feet (6,000 sq. ft.);

(ii) The facility has seating at tables, for at least two hundred (200) persons; and

(iii) The facility serves at least two (2) meals a day, five (5) days a week, with the exception of holidays, vacations and periods of

redecorating;

(LL) A commercially operated recreational facility containing all of the following characteristics:

(i) Owning and operating one (1) or more golf courses, that include practice putting greens, chipping greens and a driving range;

(ii) Operating a clubhouse facility, of at least eight thousand square feet (8,000 sq. ft.), containing a commercial quality kitchen and seating for at least one hundred (100) persons at tables;

(iii) Operating a private clubhouse of at least five thousand square feet (5,000 sq. ft.), with seating at tables for at least eighty (80) persons, and which private clubhouse contains a full service kitchen;

(iv) Located on a minimum of one hundred thirty-seven (137) acres; and

(v) Located within a county through which a major interstate passes, supports a Tennessee board of regents university of approximately nine thousand three hundred (9,300) students for the 2006 academic year and whose sports teams are nicknamed the golden eagles;

(MM) A facility operated either commercially or on a nonprofit basis as a club containing all of the following characteristics:

(i) A clubhouse having not less than approximately five thousand eight hundred square feet (5,800 sq. ft.);

(ii) An eighteen-hole golf course for use by its members and their guests;

(iii) A restaurant with a suitable kitchen, dining facilities and equipment serving two (2) meals daily and open six (6) days a week;

(iv) Is part of a planned unit development;

(v) Has at least one hundred (100) members regularly paying dues;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(NN) It is lawful for a facility providing full service dining to serve wine to be consumed on the premises, subject to the further provisions of this chapter, other than § 57-4-103, that contains the following characteristics:

(i) The facility provides seating at tables for not less than one hundred twenty-five (125) persons and is located on approximately three (3) acres;

(ii) The dining area is at least four thousand eight hundred square feet (4,800 sq. ft.);

(iii) The facility provides seating, on a deck or a patio, for at least forty (40) persons, weather permitting, which deck or patio is in close proximity to a river or waterway; and

(iv) The facility is located in a county with a population of not less than twenty-three thousand (23,000) nor more than twenty-three thousand two hundred (23,200), according to the 2000 federal census or any subsequent federal census;

(OO) A commercially operated facility containing all of the following characteristics:

(i) The facility has overnight accommodations for at least thirty-two (32) people in at least twelve (12) private guest rooms with en-suite bathrooms;

(ii) The facility has a main dining room which seats at least thirty-two (32) people;

(iii) The facility has meeting and conference space, including at least two (2) dedicated conference rooms;

(iv) The facility has a historic water-operated grist mill;

(v) The facility does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(PP) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least four hundred thirty-five (435) wet slips;

(ii) The facility has a minimum of four hundred twelve (412) paved single car parking spaces and in addition at least thirty (30) car/trailer paved parking spaces;

(iii) The facility has a restaurant with inside seating for at least seventy-eight (78) persons and patio dining for at least fifty-four (54) persons;

(iv) The facility is located within one great circle mile of Tennessee highway 56;

(v) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(vi) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(QQ)(i) A commercially operated facility containing all of the following characteristics:

(a) Owning and operating a golf course that is open to the public, that includes practice putting and chipping greens and a driving range;

(b) Operating a clubhouse facility of approximately four thousand square feet (4,000 sq. ft.), containing a commercial quality kitchen and seating for at least eighty-three (83) persons inside at tables;

(c) The facility is located at the intersection of State Highway 55 and Pete Sain Road;

(d) The facility does not discriminate against any patron on the basis of gender, race, religion or national origin; and

(e) The facility is located within a county having a population of not less than forty-eight thousand (48,000) nor more than forty-eight thousand one hundred (48,100), according to the 2000 federal census or any subsequent census;

(ii) The rights of any facility licensed under this subdivision (27)(QQ) as to activities permitted under this chapter may be held by the entity

that owns the facility, the entity that leases the facility, or an entity operating a restaurant pursuant to a written contract with the entity that owns or leases the facility;

(RR) A commercially operated recreational facility on at least ninety (90) acres of land that borders the Cherokee National Forest that offers lodging, recreation and restaurant packages to patrons containing all of the following characteristics:

(i) A rustic lodge with at least five (5) private overnight rooms that all possess a king-sized bed, mini-refrigerator, coffee maker, microwave, television, sitting area and private full bathroom, all of which have views of the mountains and are situated in a lodge with a shared great room and hot tub;

(ii) At least ten (10) cabins for overnight stays that sleep multiple persons, some of which are company-owned and some of which are privately-owned but rented by the company, and include the following amenities: television, outdoor hot tub on private deck, heat and air conditioning, gas grill, cookware, fireplace, linens and towels and large and small appliances including washer/dryer and all common kitchen appliances;

(iii) Riding stables with at least twenty-two (22) stalls for both horses owned by the resort and for overnight lease for or by guests, on-site guided trail rides provided by the owners, a horse arena with a bathroom, mountain biking, hiking, fishing including an on-site stocked pond and swimming in the guest swimming pool;

(iv) A dining restaurant that possesses a kitchen and is currently permitted to serve beer that is attached to a larger multi-purpose hall that hosts banquets, dining, dancing, music, live bands and other types of entertainment, all of which are connected to two (2) bars and at least one (1) private room and includes dining upstairs and downstairs and multiple outdoor seating decks, all of which possess a combined seating of at least two hundred (200) persons, that serves at least nine (9) meals on a weekly basis, with the exceptions of closures for private groups that include the year-round hosting of reunions, weddings and corporate workshops and seasonal closures, vacations, general maintenance and remodeling by the owners;

(v) A building that contains an administrative office and a general store complete with all sorts of merchandise for use on and off of the premises of the resort, a building that contains a tack store that sells all sorts of horse-related merchandise and a building that contains a game room;

(vi) An outdoor pavilion that possesses a grill and in which other outdoor cooking devices may be used and that is used to serve meals outdoors in combination with foods prepared in the kitchen;

(vii) A gazebo used for outdoor weddings;

(viii) When used in this subdivision (27)(RR), "facility" includes any location within the property designated by the licensee;

(ix) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(x) Is located within a county having a population of not less than thirty-three thousand five hundred twenty-five (33,525) nor more than thirty-three thousand six hundred (33,600), according to the 2000

federal census or any subsequent federal census;

(SS)(i) A commercially operated recreational facility, whether open to the public or limited to members and guests of a corporation, limited liability company, association or of the development in which it is located, owned and operated by a corporation, limited liability company or association, having all of the following characteristics:

(a) The facility must be located in or adjacent to a residential real estate development containing no less than one thousand (1,000) acres and no more than two thousand (2,000) acres, inclusive of the facility;

(b) The facility must have at least three (3) permanent structures, open to the public or to members and their guests, with the largest structure having at least thirty thousand square feet (30,000 sq. ft.) of enclosed space;

(c) The closest boundary of the real estate development in which the facility is located must be located no more than two thousand feet (2,000′) from the right-of-way of Interstate 840 and must be directly adjacent to Arno Road;

(d) The facility must maintain the following types of recreational amenities:

(1) A golf course having at least eighteen (18) holes;

(2) At least one (1) swimming pool;

(3) At least one (1) tennis court; and

(4) A fitness facility;

(e) The facility must have at least one (1) room or rooms that are regularly kept, used and maintained as a place where meals are regularly served, with adequate and sanitary kitchen facilities and seating at tables for at least seventy-five (75) persons;

(f) The facility must be located in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census; and

(g) The facility must not discriminate against any patron on the basis of age, gender, race, religion or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(SS) means any or all of the property that constitutes the facility, including swimming pools, tennis courts, golf courses, paths and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(TT)(i) A commercially operated recreational facility which contains each of the following characteristics:

(a) Is located within a county with a population of not less than seventeen thousand (17,000) nor greater than eighteen thousand (18,000), according to the 2010 federal census or any subsequent federal census;

(b) Has located on its premises, stables for the temporary or permanent stabling of horses with a capacity of at least two hundred twenty (220) horses;

(c) Consists of property of at least ten thousand (10,000) acres,

contiguous and noncontiguous;

(d) Has located upon its premises trails and horseback riding, wagon trails, campsites with electrical service, bathhouses and a pavilion for cookouts; and

(e) Has a restaurant facility for the preparation and serving of food and beverages to guests of the facility located at the facility;

(ii) The rights of the facility as to activities permitted under this chapter may be held by the entity which owns the facility, the entity which leases the facility, or an entity operating the restaurant pursuant to a written contract with the entity which owns or leases the facility;

(iii) The facility may be a contiguous parcel of property or may be noncontiguous; provided, that any part of the facility which is noncontiguous to any other part of the facility is separated only by a roadway or street; and

(iv) The entity excising the rights of the facility shall be authorized to engage in the activities permitted under this chapter anywhere on the premises of the facility as disclosed to the commission;

(UU) A privately owned facility possessing each of the following characteristics:

(i) Is located on at least twenty (20) acres;

(ii) Has a restaurant facility with at least one thousand two hundred square feet (1,200 sq. ft.) that seats at least one hundred (100) patrons at tables located both inside and outside the facility;

(iii) Has a marina with at least one hundred (100) slips and that provides house boat rentals of at least four (4) house boats;

(iv) Has at least four (4) cabins, seven (7) camping slots and at least three (3) RV slots;

(v) Has a boat repair shop and a store that carries boating and skiing type items;

(vi) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(vii) Is located within any county having a population of not less than seventeen thousand eight hundred (17,800) nor more than seventeen thousand eight hundred seventy-five (17,875), according to the 2000 federal census or any subsequent federal census;

(VV) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least two hundred forty (240) wet slips;

(ii) The facility has a minimum of nine (9) housing units for rent containing nineteen (19) bedrooms;

(iii) The facility has a campground with twelve (12) sites containing electric and sewer hookups;

(iv) The facility has a minimum of one hundred forty-seven (147) paved single car parking spaces;

(v) The facility has a restaurant with inside seating for at least twenty-eight (28) persons and patio dining for at least forty (40) persons;

(vi) The facility has an outdoor pavilion which seats one hundred fifty (150) persons;

(vii) The facility is located on Jefferson Road, approximately six and one tenth (6.1) miles from the intersection with Highway 288/Kelton-

burg Road and thirteen (13) miles from Highway 70;

(viii) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(ix) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(WW) A commercially operated facility containing all of the following characteristics:

(i) The facility has a minimum of eighty seven (87) parking spaces;

(ii) The facility has a restaurant open year-round with inside seating for at least sixty (60) persons and outside seating for at least one hundred nineteen (119) persons;

(iii) The facility is located on Highway 96 less than one (1) mile from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(XX) A commercially operated facility containing all of the following characteristics:

(i) The facility has a minimum of eighty five (85) parking spaces;

(ii) The facility has a restaurant open year-round at least six (6) days a week with inside seating for at least one hundred (100) persons and outside seating for at least one hundred twenty (120) persons;

(iii) The facility is located on Highway 70 less than three (3) miles from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(YY) A commercially operated facility containing all of the following characteristics:

(i) The facility owns and operates an eighteen (18) hole golf course that is open to the public, which includes putting greens and a driving range;

(ii) The facility operates a clubhouse facility of approximately five thousand square feet (5,000 sq. ft.), with seating at tables for at least eighty (80) persons and which clubhouse contains a full-service kitchen;

(iii) The facility operates a swimming pool;

(iv) The facility is located on a minimum of one hundred thirty-three (133) acres;

(v) The facility is located adjacent to old Highway 45W and is situated within a county having a population of not less than forty-eight thousand one hundred twenty-five (48,125) nor more than forty-eight thousand two hundred (48,200), according to the 2000 federal census or any subsequent federal census; and

(vi) The facility does not discriminate against any patron on the basis of gender, race, religion or national origin;

(ZZ) A commercially operated facility containing all of the following

characteristics:

(i) The facility has a marina with at least five hundred thirty (530) wet slips;

(ii) The facility has a minimum of two hundred fifty (250) paved single car parking spaces;

(iii) The facility has a restaurant with inside seating for at least eighty (80) persons and outside seating for at least sixty (60) persons;

(iv) The facility is located on a lake with at least eighteen thousand (18,000) acres of water and at least three hundred forty-two (342) miles of shore line; and

(v) The facility is located within a county having a population of not less than seventeen thousand four hundred (17,400) nor more than seventeen thousand four hundred fifty (17,450), according to the 2000 federal census or any subsequent federal census;

(AAA) A commercially operated facility containing all of the following characteristics:

(i) The facility includes a one hundred forty-seven thousand square foot (147,000 sq. ft.) boat and RV showroom and service center with retail sales of all types of camping and boating equipment as well as a boat and RV parts department;

(ii) The facility has a two hundred fifty (250) seat full service restaurant;

(iii) The facility has a two hundred fifty (250) site campground with two (2) swimming pools, cabins and a lodge;

(iv) The facility is a travel center with a store, pizzeria, delicatessen, fuel center;

(v) The facility has an arcade;

(vi) The facility is located at 2475 Westel Road; and

(vii) The facility is located within a county having a population of not less than forty-six thousand eight hundred (46,800) nor more than forty-six thousand nine hundred (46,900), according to the 2000 federal census or any subsequent federal census;

(BBB) A commercially operated facility containing all of the following characteristics:

(i) The facility has a marina with at least one hundred one (101) wet slips;

(ii) The facility has a minimum of sixty (60) paved single car parking spaces;

(iii) The facility has a restaurant with adequate and sanitary kitchen facilities with inside seating for at least forty (40) persons and outside seating for at least one hundred fifty (150) persons and is kept, used and maintained as a place where meals are served and where meals are actually and regularly served when the facility is opened for business; and

(iv) The facility is located within a county having a population of not less than thirty-one thousand one hundred (31,100) nor more than thirty-one thousand two hundred (31,200), according to the 2000 federal census or any subsequent federal census;

(CCC) A commercially operated facility which contains all of the following characteristics:

(i) Is a bed and breakfast homestay, as defined in § 68-14-502(1)(B),

that opened in 2008;

(ii) Has at least two (2) rooms available for overnight guests;

(iii) Is able to prepare on-site custom meals for up to thirty (30) persons;

(iv) Offers cooking classes; and

(v) Is located within any county having a population of not less than one hundred eighty-two thousand (182,000) nor more than one hundred eighty-two thousand one hundred (182,100), according to the 2000 federal census or any subsequent federal census;

(DDD) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned, and operated by an association or corporation and in connection with an eighteen-hole golf course which facility is regularly kept, used, and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must have a clubhouse with no less than six thousand enclosed square feet (6,000 sq. ft.);

(ii) The facility must be located within the limits of a development that is within five hundred yards (500 yds.) of a water reservoir operated and maintained by the United States Army corps of engineers during 1998 or any subsequent years;

(iii) The facility must be located within at least three (3) miles of an airport with lighted runway of at least three thousand feet (3000′) in length;

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(a) Golf course of at least eighteen (18) holes;

(b) Swimming pool; and

(c) Tennis court; and

(v) The facility is located within a county having a population of not less than twenty-nine thousand eight hundred (29,800) nor more than twenty-nine thousand nine hundred (29,900), according to the 2000 federal census or any subsequent federal census;

(EEE) A privately-owned resort and recreational facility possessing each of the following characteristics:

(i) Has at least ninety-five (95) acres located approximately five (5) miles south of Interstate 40 on Tennessee State Highway 13;

(ii) Is fronted on the west side by Tennessee State Highway 13 and bordered on the south side by a scenic river as defined in title 11, chapter 13, part 1;

(iii) Has at least four (4) cabins;

(iv) Has at least thirty (30) recreational vehicle pads and sites with full electrical, water and sewer hookups;

(v) Has at least a forty-seat restaurant which has been approved by the local health department that has an approved beer permit and has food available, with exceptions of closures for private groups or events, seasonal closures, vacations, general maintenance and remodeling by the owners;

(vi) When used in this subdivision (27)(EEE), the "facility" shall include any location within the property designated by the licensee;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(viii) Is located within any county having a population of not less than seven thousand six hundred (7,600) nor more than seven thousand seven hundred (7,700), according to the 2000 census or any subsequent federal census; and the legislative body of such county adopts a resolution endorsing such resort and recreational facility as a premier type tourist resort as defined in this subdivision (27);

(FFF) A commercially operated facility containing all of the following characteristics:

(i) Has a restaurant serving an upscale menu featuring lobster tail, crab legs and fresh cut steaks;

(ii) Is located on a lake by a marina;

(iii) Has a boat dock within walking distance of the restaurant;

(iv) Has indoor seating for approximately one hundred thirty (130) diners and outdoor dining on the patio with seating for approximately one hundred eighty (180);

(v) Offers live entertainment on the patio at its Tiki Bar; and

(vi) Is located in any county having a population of not less than forty-four thousand two hundred (44,200) nor more than forty-four thousand three hundred (44,300), according to the 2000 federal census or any subsequent federal census;

(GGG) A privately-owned resort and recreational facility possessing each of the following characteristics:

(i) Has a dock with marina which has at least one hundred seventy (170) boat slips which is located on or near the four hundred eighty-two (482) mile marker on the Tennessee River;

(ii) Has an outside gazebo which is used for various functions;

(iii) Has a restaurant with a dining room of at least four thousand two hundred square feet (4,200 sq. ft.), which seats at least two hundred (200) persons both indoors and outdoors, including an outdoor balcony; and which serves meals at least four (4) days on a weekly basis including Sunday brunch, with exceptions of closures for private groups or events; and seasonal closures, vacations, general maintenance and remodeling by the owners;

(iv) When used in this subdivision (27)(GGG), the "facility" shall include any location within the property designated by the licensee; and

(v) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(HHH) A commercially operated facility containing all of the following characteristics:

(i) Regularly serves meals at tables and continuously maintains adequate kitchen facilities;

(ii) Has indoor seating for approximately one hundred twenty (120) diners and outdoor seating for approximately one hundred thirty (130);

(iii) Is located on the banks of the Cumberland River;

(iv) Has a transient boat dock within walking distance of the restaurant;

(v) Specializes in serving catfish and is often referred to as "the Catfish Place under the bridge"; and

(vi) Is located in any county having a population of not less than thirty-nine thousand one hundred (39,100) nor more than thirty-nine thousand two hundred (39,200), according to the 2010 federal census or any subsequent federal census;

(III) A bed and breakfast possessing each of the following characteristics:

(i) The house is approximately ten thousand square feet (10,000 sq. ft.) and has rooms for approximately twelve (12) guests to stay overnight;

(ii) Has a smaller upper level patio and a larger, lower level patio;

(iii) Has a main dining room on the first floor which can accommodate approximately seventy (70) guests. The main dining room is one (1) large room with floor to ceiling windows providing one hundred eighty degrees (180°) of lakefront viewing;

(iv) Has accommodations for an additional forty (40) guests for outside dining;

(v) Is located in the Long Branch portion of Dale Hollow Lake;

(vi) The property on which the bed and breakfast is situated has space for weddings, family reunions and other large gatherings on the large outside portion of the property; and

(vii) Is located in any county having a population of less than seven thousand eight hundred fifty-one (7,851) nor more than seven thousand eight hundred sixty-five (7,865), according to the 2010 federal census or any subsequent federal census;

(JJJ) A hotel possessing all of the following characteristics:

(i) Contains at least twenty five (25) rooms for the sleeping accommodations of guests;

(ii) Is registered as a national historic landmark;

(iii) Is located within a central business improvement district; and

(iv) Is located in any county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census;

(KKK) A commercially operated recreational facility possessing each of the following characteristics:

(i) Is located at least two hundred feet (200′) from a natural lake that is located in or near a state park, which has waterfowl hunting and fishing is available year round;

(ii) Has a restaurant which has:

(a) A beer license;

(b) A commercial kitchen; and

(c) Seating for at least seventy-five (75); and

(iii) Has a boat ramp and boat dock;

(LLL) A commercially operated facility containing all of the following characteristics:

(i) The facility has a restaurant open year-round with inside seating for at least seventy-five (75) persons;

(ii) The facility has a minimum of eighty-five (85) parking spaces;

(iii) The facility is located on Highway 70 less than three (3) miles from Center Hill Lake; and

(iv) The facility is located within a county having a population of not less than eighteen thousand seven hundred (18,700) nor more than eighteen thousand seven hundred fifty (18,750), according to the 2010 federal census or any subsequent federal census;

(MMM)(i) A commercially operated recreational facility possessing all of the following characteristics:

(a) A golf course of at least eighteen (18) holes;

(b) Wooded trails for horseback riding;

(c) A fully stocked fishing pond;

(d) At least three (3) tennis courts;

(e) Located in 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; and

(f) Is located no more than two thousand feet (2,000′) from the right-of-way of Interstate 840 and must be directly adjacent to Arno Road;

(ii) The premises of any facility licensed under this subdivision (27)(MMM) means any or all of the property that constitutes the facility, including swimming pools, tennis courts, golf courses, paths, and road crossings. A license shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(NNN) A commercially owned marina containing all of the following characteristics:

(i) Operates as a marina on approximately forty-six (46) acres of land;

(ii) Has a restaurant with at least one hundred ten (110) seats;

(iii) Has approximately two hundred (200) boat slips;

(iv) Has seven (7) cabins; and

(v) Is located in a county having a population of not less than forty-four thousand five hundred (44,500) nor more than forty-four thousand six hundred (44,600), according to the 2010 federal census or any subsequent federal census;

(OOO) A commercially operated facility containing all of the following characteristics:

(i) Operates as a hunting lodge on approximately four hundred (400) acres of land;

(ii) Has adequate kitchen facilities and a dining area within the hunting lodge with seating of at least fifty (50) at tables;

(iii) Has capacity to sleep at least thirty (30) guests within the main hunting lodge and at least twenty (20) guests in a cabin located on the property; and

(iv) Is located off I-40 at Exit 311 in any county having a population of not less than fifty-six thousand (56,000) nor more than fifty-six thousand one hundred (56,100), according to the 2010 federal census or any subsequent federal census;

(PPP) A commercially operated facility open to the public for persons twenty-one (21) years of age or older that has all of the following characteristics:

(i) Is located within three (3) miles of Dale Hollow Lake;

(ii) Has a kitchen that serves food to customers;

(iii) Is licensed to sell beer;

(iv) Is located in an A frame building built in 1968;

(v) Has a deck of more than one thousand square feet (1,000 sq. ft); and

(vi) Is located in any county having a population of not less than seven thousand eight hundred fifty-one (7,851) nor more than seven thousand eight hundred sixty-five (7,865), according to the 2010 federal census or any subsequent federal census;

(QQQ)(i) A commercially operated resort, restaurant, marina and recreational facility possessing all of the following characteristics:

(a) Is located on at least five (5) acres but no more than seven (7) acres at day marker four (4) as designated by the Tennessee Valley authority on Norris Lake;

(b) Has a marina with at least one hundred forty-five (145) boat slips, most of which are contracted for use on an annual basis, but also includes use for drive-ups;

(c) Rents pontoon, ski, and house boats;

(d) Has a marina store;

(e) Has a restaurant with a full service kitchen with combined seating indoors and outdoors for at least one hundred (100) patrons;

(f) Has a restaurant that serves at least twelve (12) meals on a weekly basis with exceptions of closures for private groups or events, seasonal reasons, vacations, general maintenance and remodeling by the owners;

(g) Has special events and weddings inside and outside;

(h) Has at least fifty-five (55) condominiums with at least thirty (30) of the condominiums available for rental on a nightly or weekly basis;

(i) Has a restaurant that possesses a beer permit for on and off-premises consumption;

(j) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(k) Is located in a county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(ii) The facility licensed pursuant to this subdivision (27)(QQQ) shall make food available at any time when alcoholic beverages are being served.

(iii) When used in this subdivision (27)(QQQ), "facility" means any location within the property as designated by the licensee;

(RRR) A commercially operated marina, restaurant, and recreational facility possessing all of the following characteristics:

(i) Is located on at least thirty-two (32) acres of land located off Old Awalt Road;

(ii) Has a marina with at least two hundred fifty (250) wet slips located on Tims Ford Lake;

(iii) Has a restaurant with a dining room to accommodate at least two hundred (200) patrons;

(iv) Includes at least five (5) rental cabins and a motel with at least (5) rental units on its grounds; and

(v) Has a fuel dock with a stationary tank that holds at least six thousand gallons (6,000 gals.) of fuel;

(SSS) A commercially operated mountaintop resort and recreational facility possessing all of the following characteristics:

(i) Is located on at least one thousand two hundred (1,200) acres at an altitude of between two thousand five hundred feet (2,500′) and three thousand feet (3,000′);

(ii) Provides nightly lodging in at least eleven (11) furnished suites with balconies, all of which are located in at least two (2) buildings;

(iii) Has a restaurant with a full service kitchen with combined seating indoors and outdoors for at least one hundred (100) patrons; and which serves at least twelve (12) meals on a weekly basis with exceptions of closures for private groups or events; and seasonal closures, vacations, general maintenance and remodeling by the owners; provided, however, that food shall be made available at any time when alcoholic beverages are being served; and such restaurant shall already possess a beer permit for on-premises consumption;

(iv) Hosts special on-site events including weddings, receptions, reunions, corporate meetings, and club or group gatherings;

(v) Has a wooden walkway through chimney rock formations;

(vi) Has a heliport with at least two (2) landing pads;

(vii) When used in this subdivision (27)(SSS), "facility" includes any location within the property as designated by the licensee;

(viii) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(ix) Is located in a county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 census or any subsequent federal census;

(TTT) A commercially owned marina, resort, and recreational facility possessing each of the following characteristics:

(i) Includes a full service marina that includes at least one hundred thirty (130) boat slips with the capacity to have three hundred seventy-five (375) covered boat slips ranging in size from twenty-four feet (24′) to thirty feet (30′) deep; and which is located opposite the one hundred and thirty-three and one-third R (133.3R) mile marker on the Clinch River on Norris Lake;

(ii) Has a public pump station;

(iii) Has a restaurant with at least one hundred (100) seats both indoors and outdoors which serves at least six (6) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance, and remodeling by the owners;

(iv) Has a ship store;

(v) Has gas docks;

(vi) Has a marina campground with at least twenty (20) campsites with electric, water, and wastewater connections;

(vii) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(viii) The facility is located within a county having a population of not less than thirty-two thousand two hundred (32,200) nor more than

thirty-two thousand three hundred (32,300), according to the 2010 federal census or any subsequent federal census. When used in this subdivision (27)(TTT), "facility" includes any location within the property designated by the licensee;

(UUU)(i) A commercially or privately operated facility containing all of the following characteristics:

(a) Is located on Tellico Lake, containing a minimum area of six hundred fifty (650) contiguous acres;

(b) Has an information and sales center;

(c) Has public access walking trails;

(d) Has a championship golf course of at least eighteen (18) holes;

(e) Does not discriminate against any patron on the basis of age, gender, race, religion or national origin; and

(f) Is located within any county having a population of not less than forty-eight thousand five hundred (48,500) nor more than forty-eight thousand six hundred (48,600), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(UUU) shall mean any or all of the property that constitutes the facility, including, but not limited to, clubhouses, restaurants, gift and pro shops, marinas, swimming pools, tennis courts, golf courses, and paths and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises and such drawing may be amended by the licensee filing a new drawing;

(VVV) A commercially operated private tennis club possessing all of the following characteristics:

(i) Is located on at least thirteen (13) acres of land located off Racquet Club Way;

(ii) Has at least ten (10) indoor hard tennis courts located indoors;

(iii) Has at least five (5) hard tennis courts and at least twelve (12) clay tennis courts located outdoors; and

(iv) Includes a five thousand square foot (5,000 sq. ft.) club house on its grounds;

(WWW) A commercially operated recreational facility possessing all of the following characteristics:

(i) Has a banquet room that seats not less than seventy-five (75) people;

(ii) Has a semi-private golf course of at least eighteen (18) holes;

(iii) Has a club house, restaurant that serves food, and swimming pool;

(iv) Is located not less than one (1) mile from Interstate 40 and is adjacent to Golf Course Road;

(v) Is located in a county having a population of not less than thirty-five thousand six hundred (35,600) nor more than thirty-five thousand seven hundred (35,700), according to the 2010 federal census or any subsequent federal census;

(XXX) A commercially owned marina, resort and recreational facility possessing each of the following characteristics:

(i) Includes a full service marina that includes at least one hundred (100) covered boat slips, at least thirty-five (35) mooring line buoys, at least five (5) floating home rentals, and offers for rental at least fourteen

(14) watercraft of various types including ski-boats, single and double deck pontoons, jet skis, and standup paddle boats; and which is located at Big Creek Mile eight.zero L (8.0L), Whitman Hollow Branch Norris Reservoir;

(ii) Has a restaurant with at least seventy-five (75) seats combined indoors and outdoors, which serves at least ten (10) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance and remodeling by the owners; provided, however, that food shall be made available at any time that alcoholic beverages are being served;

(iii) Has at least seven (7) campsites;

(iv) Has at least two (2) vacation rental homes;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(vi) Is located in any county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(YYY) A commercially owned marina, resort and recreational facility possessing each of the following characteristics:

(i) Has a full service marina that includes at least three hundred (300) boat slips and is located on Norris Lake;

(ii) Has a restaurant with at least seventy-two (72) indoor seats and seventy-two (72) outdoor seats, which serves at least ten (10) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance and remodeling by the owners; provided, however, that food shall be made available at any time that alcoholic beverages are being served;

(iii) Has a motel with at least twenty-four (24) rooms;

(iv) Has at least two (2) vacation rental cabins and at least twenty-three (23) recreational vehicle (RV) slots;

(v) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(vi) Is located in any county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(ZZZ) A commercially operated facility possessing each of the following characteristics:

(i) Has adequate kitchen facilities and a dining area within the facility that has a seating capacity of at least fifty (50);

(ii) Is within four (4) miles of Douglas Lake;

(iii) Is located on the corner of Greenhill Road and Hwy 25-70 within one (1) mile of I-40 at Exit 415; and

(iv) Is located in a county having a population of not less than fifty-one thousand four hundred (51,400) nor more than fifty-one thousand five hundred (51,500), according to the 2010 federal census or any subsequent federal census;

(AAAA)(i) A privately owned resort and recreational facility possessing each of the following characteristics:

(a) Is located off U.S. Highway 421 in any county having a population of not less than eighteen thousand two hundred (18,200) nor more than eighteen thousand three hundred (18,300), according to the 2010 federal census or any subsequent federal census;

(b) Has a semi-private golf course of at least eighteen (18) holes;

(c) Has at least twenty (20) accommodation units;

(d) Has at least two (2) tennis courts;

(e) Has at least one (1) swimming pool;

(f) Has a restaurant that seats at least fifty (50) people; and

(g) Has a meeting facility;

(ii) The premises of any resort and recreational facility licensed under this subdivision (27)(AAAA) shall mean any or all of the property that constitutes the resort and facility, including, but not limited to, clubhouses, restaurants, gift and pro shops, swimming pools, tennis courts, golf courses, and paths and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, and such drawing may be amended by the licensee filing a new drawing;

(BBBB) It is lawful for any establishment located in a municipality having a population of not less than six hundred (600) nor more than six hundred ten (610), according to the 2010 federal census or any subsequent federal census, which is located in a county having a population of not less than two hundred sixty-two thousand six hundred (262,600) nor more than two hundred sixty-two thousand seven hundred (262,700), according to the 2010 federal census or any subsequent federal census, that is licensed to serve beer to also serve alcoholic beverages and wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(CCCC) A commercially owned marina, resort, and recreational facility possessing each of the following characteristics:

(i) Includes a full-service marina that includes at least one hundred fifty (150) boat slips and is located on Norris Lake;

(ii) Has at least eight (8) campsites;

(iii) Has a restaurant with at least eighty (80) seats, which serves at least ten (10) meals on a weekly basis, with exceptions of closures for private groups or events, and seasonal closures, vacations, general maintenance, and remodeling by the owners; provided, however, that food shall be made available at any time that alcoholic beverages are being served;

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(v) Is located in any county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census;

(DDDD) A commercially operated facility possessing each of the following characteristics:

(i) Is located within a one thousand foot (1,000′) radius from the intersection of U.S. Highway 41A and University Avenue/Lake O'Donnell Road on property owned by a private institution of higher education, the campus of which is at least ten thousand (10,000) acres;

(ii) Is located in any county having a population of not less than forty-one thousand (41,000) nor more than forty-one thousand one hundred (41,100), according to the 2010 federal census or any subsequent federal census;

(iii) Has prepared and served hot food for on-site dining with indoor seating for at least twenty-five (25) persons for at least twenty-four (24) months; and

(iv) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(EEEE) An entity that is authorized by the department of environment and conservation to operate a restaurant or other food and beverage service on the premises of a state park;

(FFFF) It is lawful for any establishment located in a municipality having a population of not less than four hundred ninety (490) nor more than four hundred ninety-nine (499), according to the 2010 federal census or any subsequent federal census, which is located in a county having a population of not less than thirty-two thousand two hundred (32,200) nor more than thirty-two thousand three hundred (32,300), according to the 2010 federal census or any subsequent federal census, that is licensed to serve beer to also serve alcoholic beverages and wine to be consumed on the premises, subject to the further provisions of this chapter other than § 57-4-103;

(GGGG) A commercially operated facility possessing each of the following characteristics:

(i) Is located in any county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) Regularly serves meals;

(iii) Contains an adequate and sanitary kitchen;

(iv) Has seating for not less than forty (40) people at tables;

(v) Is located on floatation devices on the Cumberland river in close proximity to a marina; and

(vi) May be seasonally closed;

(HHHH) A commercially operated recreational facility possessing each of the following characteristics:

(i) Is located:

(a) On at least two thousand five hundred (2,500) acres, approximately eight (8) miles from an interstate highway; and

(b) Along a waterway that flows into a river, a portion of which has been designated as a scenic river;

(ii) Has at least twelve (12) cabins and at least three hundred fifty (350) campsites;

(iii) Has a motor cross trail or trails and a horseback riding trail or trails;

(iv) Has a restaurant with seating for at least one hundred (100);

(v) Has a one thousand six hundred square foot (1,600 sq. ft.) stage at an amphitheater that seats approximately two thousand five hundred (2,500); and

(vi) Has least five (5) hotels or motels located near the facility;

(IIII) A commercially operated facility containing all of the following characteristics:

(i) Is located:

(a) On at least twenty-two (22) acres;

(b) Within a county having a population of not less than seventy-two thousand three hundred (72,300) nor more than seventy-two thousand four hundred (72,400), according to the 2010 federal census or any subsequent federal census; and

(c) At least two (2) miles north of the city of Cookeville, Tennessee;

(ii) Has been an LLC corporation since 2013;

(iii) Accommodates overnight lodging for up to fourteen (14) guests;

(iv) Is available for special events for up to five hundred (500) guests, including, but not limited to, weddings, receptions, corporate events, fundraisers, and reunions; and

(v) Has on-site parking for up to two hundred fifty (250) vehicles;

(JJJJ) A commercially operated facility possessing all of the following characteristics:

(i) Is located in a home built in 1892;

(ii) Is located on 3rd Avenue South;

(iii) Has eight thousand square feet (8,000 sq. ft.) of space including an outside courtyard;

(iv) Hosts on-site special events including weddings, receptions, and group gatherings;

(v) Has an adequate and sanitary kitchen; and

(vi) Is located in 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;

(KKKK) A commercially operated facility containing all of the following characteristics:

(i) The facility is located on at least two hundred fifty (250) acres;

(ii) The facility provides camping and additional overnight accommodations;

(iii) The facility serves at least one (1) meal per day in a dining room that seats at least fifty (50) persons; and

(iv) The facility must be located within a commercial district which contains a former state penitentiary that was in operation for a minimum of fifty (50) years;

(LLLL) A commercially operated facility possessing each of the following characteristics:

(i) Has been in operation as an inn since November 3, 2002;

(ii) Is located within one-half (½) mile of a city park;

(iii) Has a total of eight (8) guest rooms in the main house;

(iv) Has a separate cottage that also houses at least one (1) transient suite, as well as workspaces and storage;

(v) Has at least one (1) kitchen on the premises and offers at least one (1) meal daily;

(vi) Has an open-air, outdoor patio suitable for the accommodation of wedding ceremonies and other events;

(vii) Has been designated historically significant by a county historical commission; and

(viii) Is located in any county having a population of more than five hundred thousand (500,000), according to the 2010 federal census or any

subsequent federal census;

(MMMM) A commercially operated facility possessing all of the following characteristics:

(i) Has a restaurant open at least six (6) days a week with seating at tables for at least one hundred (100) persons;

(ii) Is licensed to sell beer;

(iii) Is located in a structure of not less than six thousand square feet (6,000 sq. ft.);

(iv) Is located on Drew Howard Road; and

(v) Is located in any county having a population of not less than fifty-six thousand (56,000) nor more than fifty-six thousand one hundred (56,100), according to the 2010 federal census or any subsequent federal census;

(NNNN) A commercially operated marina, resort, and recreational facility that:

(i) Is located between day markers fifteen (15) and sixteen (16) on Douglas Lake;

(ii) Operates not less than eighty-eight (88) covered slips, one hundred ten (110) open slips, twelve (12) transient slips, and six (6) house boat slips;

(iii) Operates a full-service store offering fuel, live bait and tackle, food, and beverages;

(iv) Is open not less than three hundred sixty-three (363) days per year;

(v) Rents pontoons, fishing boats, and paddle boards;

(vi) Operates a boat ramp that is open year-round;

(vii) Operates a recreational vehicle (RV) campground with not less than seventy (70) RV sites;

(viii) Operates not less than seven (7) rental properties; and

(ix) Is located in a county having a population of not less than fifty-one thousand four hundred (51,400) nor more than fifty-one thousand five hundred (51,500), according to the 2010 federal census or any subsequent federal census;

(OOOO) A commercially operated facility possessing each of the following characteristics:

(i) The facility operates a full service hotel;

(ii) The facility operates a restaurant with not less than thirty-two (32) seats in the dining room, eight (8) seats in the bar, and twenty-eight (28) outdoor seats located under a wrap-around porch;

(iii) The facility operates a nine-hole golf course and a golf lodge;

(iv) The facility serves as a wedding and events venue; and

(v) The facility is located within one (1) mile of Highway 41A and within two (2) miles of Lake O'Donnell in a county with a population of not less than forty-one thousand (41,000) and not more than forty-one thousand one hundred (41,100), according to the 2010 federal census or any subsequent federal census;

(PPPP) A commercially operated facility possessing all of the following characteristics:

(i) Has a restaurant open at least six (6) days a week with seating at tables for at least one hundred (100) persons and with additional seasonal seating on a patio for at least eighty (80) persons;

(ii) Is licensed to sell beer;

(iii) Is located in a structure of not less than two thousand five hundred square feet (2,500 sq. ft.);

(iv) Is located on Peavine Road; and

(v) Is located in any county having a population of not less than fifty-six thousand (56,000) nor more than fifty-six thousand one hundred (56,100), according to the 2010 federal census or any subsequent federal census;

(QQQQ)(i) A commercially operated facility having all of the following characteristics:

(a) The facility has approximately sixty-one thousand square feet (61,000 sq. ft.) of interior space;

(b) The facility is located not more than six thousand feet (6,000′) southwest of a federal interstate highway and not more than two hundred feet (200′) west of a federal highway;

(c) The property that the facility is located on is not less than five hundred seventy-five feet (575′) and not more than six hundred fifteen feet (615′) above sea level;

(d) The facility was originally constructed in 2017;

(e) The facility has one (1) permanent structure containing five (5) stories and includes at least one (1) commercial kitchen, an atrium with a glass ceiling having a height of at least thirty feet (30′) with live trees, and a rooftop deck with table service;

(f) The facility is located in or adjacent to a commercial real estate development containing approximately one hundred (100) specialty stores and eateries, and a movie theater;

(g) The facility is located within one hundred feet (100′) of a commercial bank that is a member of the federal deposit insurance corporation;

(h) The facility is approximately one thousand eight hundred twenty feet (1,820′) to the northeast of Sugartree Creek;

(i) The facility is approximately four hundred seventy feet (470′) to the northwest of the main building of a public high school that was originally constructed before 1939;

(j) The facility is approximately one thousand four hundred fifty feet (1,450′) to the southwest of a public library that was originally constructed before 2000;

(k) The facility is located within a county with a metropolitan form of government having a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census; and

(l) The facility must not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(QQQQ) means any or all of the property that constitutes the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(RRRR) An agritourism facility possessing all of the following characteristics:

(i) Is located on at least three hundred (300) owned or leased acres;

(ii) Is located within a county having a metropolitan form of government and a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(iii) Is bounded on one (1) side by at least three-quarters (¾) of a mile of the Cumberland River and on the other side by one-half (½) of a mile of a state scenic highway;

(iv) Has been certified as an organic farm for a period of at least three (3) years prior to the date of the initial application for a license;

(v) Is primarily zoned agricultural and operates an on-farm market on that site in addition to possessing substantial acreage of green space at the date of initial application for a license; and

(vi) Maintains meeting centers for community events;

(SSSS)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately six (6) acres of land that is adjacent to two (2) permanent structures which are owned by the same owner of the facility having approximately seventy thousand square feet (70,000 sq. ft.) of retail and office commercial space, and is located no more than three hundred feet (300′) from a federal highway;

(b) The facility has at least one (1) permanent structure with approximately sixty thousand square feet (60,000 sq. ft.) located no more than five hundred feet (500′) from a federal highway and less than two thousand five hundred feet (2,500′) south of a commercial railroad track. The structure is not less than five hundred twenty-five feet (525′) and not more than five hundred seventy-five feet (575′) above sea level. The structure was renovated in 2016 and 2017;

(c) The facility formerly housed a supermarket business that closed in 2012;

(d) The facility is approximately two thousand two hundred feet (2,200′) to the south of a facility that is accredited by the Association of Zoos and Aquariums that is open to the public;

(e) The facility is located no more than seven thousand feet (7,000′) from a railyard of a Class 1 railroad, as defined by the surface transportation board of the United States department of transportation; and

(f) The facility is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(SSSS) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(SSSS). The licensee and any other entity in the facility licensed under chapter 4 of this title may, upon filing notice with the commission, share a common licensed area on the premises of the facility. The commission shall enforce chapter 4 of this title against each licensee on the premises of the facility and shall not cite, penalize, or take any other adverse action

against a licensee for any violation committed by another licensee within a common licensed area on the premises of the facility. There is a rebuttable presumption of liability for a specific licensee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the licensee, the commission may determine which licensee to cite for an underage sale. If the commission is unable to determine which licensee committed a violation after conducting a reasonable investigation, the commission may issue a citation to one (1) or more licensees that share the common licensed area where the violation occurred;

(iii) The licensee and any other licensed entity in the facility that holds a license under this chapter may store beer and alcoholic beverages in a central storage location in the facility. Each licensed entity shall store its inventory of beer and alcoholic beverages in a separately locked cage or other storage area;

(iv) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(SSSS) means, for beer permitting purposes, any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one beer permit issued under chapter 5 of this title. The beer permittee and any other entity in the facility that holds a beer permit issued by the local beer board may, upon filing notice with the beer board, share a common permitted area on the premises of the facility. The beer board shall enforce chapter 5 of this title against each permittee on the premises of the facility and shall not cite, penalize, or take any other adverse action against a permittee for any violation committed by another permittee within a common permitted area on the premises of the facility. There is a rebuttable presumption of liability for a specific permittee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the permittee, the beer board may determine which permittee to cite for an underage sale. If the beer board is unable to determine which permittee committed a violation after conducting a reasonable investigation, the beer board may issue a citation to one (1) or more permittees that share the common permitted area where the violation occurred;

(v) Notwithstanding § 57-3-806(e), the owner of the facility may prohibit or restrict, through its lease or other agreements with other businesses, the on-premise sale of beer or alcoholic beverages by other businesses at the facility;

(vi) Notwithstanding § 57-4-101(n), table service is not required for the service of alcoholic beverages or beer as authorized by this subdivision (27)(SSSS); and

(vii) The facility, landlord, or any licensee shall provide periodic security for the entire licensed premises;

(TTTT)(i) A commercially operated recreational facility, whether open to the public or limited to members and guests of a corporation, limited liability company, or association, or of a development in which it is located, owned, and operated by a corporation, limited liability company,

or association, having all of the following characteristics:

(a) The facility is located in or adjacent to a residential real estate development containing between seven hundred (700) and eight hundred (800) acres, a portion of which was formerly the home of a music industry entertainer who began her career with a successful recording at the age of thirteen (13);

(b) The facility has at least one (1) permanent structure, open to the public or to members and their guests, having at least two thousand square feet (2,000 sq. ft.);

(c) The closest boundary of the real estate development in which the facility is located must be located no more than three thousand feet (3,000′) from the right-of-way of Interstate 840 and situated between Cox and Patton roads;

(d) The facility maintains a golf course having at least eighteen (18) holes, which has a current or past golf professional on staff at the golf course;

(e) The facility has at least one (1) room or rooms that are regularly kept, used, and maintained as a place where meals are regularly served, with adequate and sanitary kitchen facilities and seating at tables for at least thirty (30) persons;

(f) The facility is located on property with elevations that vary between less than seven hundred fifty feet (750′) above sea level to more than nine hundred fifty feet (950′) above sea level;

(g) The facility is located in a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census;

(h) The planning commission of a county in which the facility is located has approved of subdividing the property into more than four hundred (400) residential lots that can be offered for sale for home construction; and

(i) The facility does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(TTTT) shall mean any or all of the property that constitutes the facility, including swimming pools, tennis courts, golf courses, paths, and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(UUUU)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately twenty-seven (27) acres of land that is adjacent to a tributary of Arrington Creek and located along U.S. Route 96;

(b) The facility has at least one (1) permanent structure constructed in 2016 with at least eight thousand four hundred square feet (8,400 sq. ft.) of climate-controlled space;

(c) The facility is on property that has a lake with an island having approximately nine thousand square feet (9,000 sq. ft.) of space that contains outdoor amenities, including a sound system;

(d) The facility is located in a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census; and

(e) The facility does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(UUUU) means any or all of the property that constitutes the facility, including a barn, man-made island, paths, and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(VVVV)(i) A commercially operated facility possessing the following characteristics:

(a) The facility is located on at least twenty (20) acres;

(b) The facility provides overnight accommodations with no less than fifty (50) guest rooms;

(c) The facility serves at least one (1) meal per day in a dining room that seats at least seventy-five (75) persons;

(d) The facility is located on property that is within one-quarter (1/4) mile of the intersection of Carters Creek Pike and Southall Road; and

(e) The facility is located in a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) nor more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(VVVV) means any or all of the property that constitutes the facility, including restaurants, cabins, lodges, clubhouses, swimming pools, tennis courts, golf courses, paths, and road crossings. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(iii) Any facility licensed under this subdivision (27)(VVVV) may be issued one (1) or more licenses for consumption on the premises;

(iv) Any facility licensed under this subdivision (27)(VVVV) may seek an additional license as a caterer under § 57-4-102(6);

(v) Any facility licensed under this subdivision (27)(VVVV) may hold any of the licenses authorized under this subdivision (27)(VVVV) or may grant a franchise to one (1) or more entities for any or all such licenses;

(vi) Any facility licensed under this subdivision (27)(VVVV) may deliver sealed bottles to any area within the licensed premises of the facility;

(WWWW) A commercially operated facility possessing each of the following characteristics:

(i) The facility operates a restaurant with not less than fifty (50) seats in the dining room, not less than six (6) seats at the bar, and outdoor seating on the wrap-around porch;

(ii) The restaurant is equipped to serve breakfast, lunch, and dinner

and does so on a regular basis;

(iii) The facility operates an eighteen-hole golf course and has a large, log cabin style clubhouse with not less than seven thousand square feet (7,000 sq. ft.);

(iv) The facility serves as a wedding and event venue; and

(v) The facility is located not more than six (6) miles from Interstate 40 and Interstate 840 and is situated in a county having a population of not less than one hundred thirteen thousand nine hundred (113,900) and not more than one hundred fourteen thousand (114,000), according to the 2010 federal census and any subsequent federal census;

(XXXX) A facility operated either commercially or on a nonprofit basis that:

(i) Is a community theatre and event center that officially opened in 1934;

(ii) Was renovated and reopened in 1974;

(iii) As of April 12, 2018, operates as a 501(c)(3) nonprofit organization;

(iv) Is a historic community and private event venue; and

(v) Is located in a municipality with a population of not less than fifteen thousand sixty (15,060) and not more than fifteen thousand sixty-nine (15,069), according to the 2010 and any subsequent federal census;

(YYYY) A commercially operated facility that is:

(i) Located on approximately two hundred forty-seven (247) acres, subject to a conservation easement on approximately two hundred (200) of the acres;

(ii) Located on a peninsula adjacent to the Tennessee River;

(iii) Located on property across which an abandoned railroad bed lies;

(iv) A venue for weddings, meetings, and events; and

(v) Located in a county with a population of not less than one hundred twenty-three thousand one (123,001) nor more than one hundred twenty-three thousand one hundred (123,100), according to the 2010 or any subsequent federal census;

(ZZZZ) A commercially operated facility that:

(i) Is located on at least sixty (60) acres of land which came from an original land grant with a home on the property built in 1781;

(ii) Has a stream with a dam on the premises;

(iii) Has a restaurant that was primarily built from two wrecked barns, that serves a full menu of hot foods at least four (4) days per week, that possesses a full service kitchen, that has seating inside for at least sixty (60) persons at tables, and that has outdoor patio seats for at least twenty-five (25) persons;

(iv) Has a pavilion that seats at least one hundred twenty-five (125) persons;

(v) Hosts various events, including, but not limited to, weddings, civic and other club meetings, church groups, and car shows; and

(vi) Is located in a county with a population of not less than fifty-six thousand eight hundred (56,800) and not more than fifty-six thousand nine hundred (56,900), according to the 2010 or any subsequent federal census;

(AAAAA) A commercially operated facility that:

(i) Is located on approximately fifty-five (55) to seventy-five (75) acres;

(ii) Is located on the banks of the Powell River;

(iii) Has a restaurant that serves a full menu of hot foods at least four (4) days per week, that possesses a full service kitchen which includes at least a stove top, an oven, a refrigerator, and a freezer, that has at least three thousand five hundred square feet (3,500 sq. ft.) inside, that has an outdoor deck of at least one thousand five hundred square feet (1,500 sq. ft.), that has seating inside for at least eighty (80) persons at tables, and that has outside deck seating for at least eighty (80) persons at tables;

(iv) Possesses a beer license;

(v) Makes available kayaks and tubes for rent for floating on the Powell River; and

(vi) Is located in a county with a population of not less than thirty-two thousand two hundred (32,200) and not more than thirty-two thousand three hundred (32,300), according to the 2010 or any subsequent federal census;

(BBBBB)(i) A commercially operated facility that:

(a) Is located on at least one-half (½) acre of land with at least one hundred sixty feet (160′) of road frontage and is in a building with a convenience store with separate entrances;

(b) Has a restaurant with a license to serve beer, and which serves a full menu of hot foods at least five (5) days per week, except for seasonal closings and renovations, and possesses a full-service kitchen with seating in the main dining area for at least fifty (50) persons at tables, a bar seating area of at least forty (40) persons at the bar and tables, an outdoor patio area with seats and picnic tables for at least forty (40) persons, an outdoor tiki bar with seating for at least eight (8) persons at the bar, and a covered porch off the bar area with at least eight (8) seats, and which hosts live music on a regular weekly basis;

(c) Has an enclosed recreational and events building, with its own entrances, including garage doors, of at least two thousand three hundred square feet (2,300 sq. ft.), which is fully plumbed and in which pool, darts, and corn hole are played, and which hosts various private events and ticketed public events with an admission fee; and

(d) Is located in a county with a population of not less than thirty-two thousand two hundred (32,200) nor more than thirty-two thousand three hundred (32,300), according to the 2010 or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(BBBBB) means any and all of the property that constitutes the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(CCCCC)(i) A commercially operated facility that:

(a) Is located on at least one hundred seventy-five (175) acres of land that is situated on Pennington Bend adjacent to the Cumberland River;

(b) Serves as a venue for weddings, meetings, tournaments, and events;

(c) Includes an 18-hole golf course, a clubhouse with a restaurant that serves lunch and dinner with seating for at least sixty (60) guests, a golf shop, locker rooms, a covered outdoor pavilion with seating for at least two hundred (200) guests, and meeting rooms;

(d) Is located less than one (1) mile from a hotel containing at least two thousand eight hundred (2,800) rooms, six hundred forty thousand square feet (640,000 sq. ft.) of meeting space, and nine (9) acres of indoor gardens;

(e) Is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census; and

(f) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(CCCCC) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(CCCCC); and

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(CCCCC) means, for beer permitting purposes, any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one (1) beer permit issued under chapter 5 of this title;

(DDDDD)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately three hundred and sixty (360) acres of land that is adjacent to a reservoir of the Tennessee River created by Watts Bar Dam;

(b) The facility is located less than two (2) miles west of an area designated as a wildlife management area by the Tennessee fish and wildlife commission that is open to the public;

(c) The facility is located within five (5) miles of Highway 72 in a county with a population of not less than fifty-four thousand one hundred (54,100) and not more than fifty-four thousand two hundred (54,200), according to the 2010 federal census or any subsequent federal census;

(d) The facility is approximately twelve thousand feet (12,000′) southeast of a private airport identified by the federal aviation administration;

(e) The property that the facility is located on is not less than seven hundred twenty-five feet (725′) above sea level nor more than one thousand feet (1000′) above sea level;

(f) The facility includes a restaurant, day spa, tennis courts, barn, farmhouse, fish pond, boat dock, hiking trails, cottages, and a full service inn, with at least twenty (20) rooms for lodging;

(g) The facility serves as a venue for weddings, meetings, conferences, and events; and

(h) The restaurant at the facility serves breakfast and dinner and caters for events, with seating for at least two hundred (200) guests;

(ii) The premises of any facility licensed under this subdivision (27)(DDDDD) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(DDDDD);

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(DDDDD) means for beer permitting purposes any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one (1) beer permit issued under chapter 5 of this title; and

(iv) The requirements of § 57-5-105(b)(1) do not apply to any facility licensed under this subdivision (27)(DDDDD);

(EEEEE) A commercially operated facility having the following characteristics:

(i) The facility was built in 1894 and has been restored to represent its original features;

(ii) The facility has a seating capacity for approximately one hundred (100) persons;

(iii) The facility is a venue for weddings, receptions, reunions, and other similar events, and opened for business in January of 2017; and

(iv) The facility is located in a county with a population of not less than fifty-two thousand seven hundred (52,700) and not more than fifty-two thousand eight hundred (52,800), according to the 2010 or any subsequent federal census;

(FFFFF) A commercially operated facility possessing each of the following characteristics:

(i) The facility is a restaurant floating on Tims Ford Lake at a commercially operated marina on Sail Away Lane;

(ii) The facility is accessible by both water and land, with docking areas for watercraft and parking areas for vehicles;

(iii) The facility is licensed to sell beer; and

(iv) The facility is located in a county having a population of not less than forty-one thousand (41,000) and not more than forty-one thousand one hundred (41,100), according to the 2010 or any subsequent federal census;

(GGGGG)(i) A commercially operated recreational facility, whether operated by a corporation, limited liability company, or association, having all of the following characteristics:

(a) The facility is located on Cordell Hull Lake on property leased from the United States army corps of engineers;

(b) The facility has at least one hundred twenty (120) boat slips ranging in size up to sixty feet (60′) in length;

(c) The facility includes a full-service restaurant open to the public;

(d) The facility maintains at least four (4) two-bedroom cabins and at least four (4) hotel rooms available for rent to the public;

(e) The facility operates a full-service campground with at least twenty (20) campsites with septic, electric, and potable water hook-ups;

(f) The facility is located within a county having a population of not less than eleven thousand six hundred (11,600) nor more than eleven thousand seven hundred (11,700), according to the 2010 federal census or any subsequent federal census; and

(g) The facility does not discriminate against any patron on the basis of age, gender, sexual orientation, race, religion, or national origin;

(ii) The premises of any facility licensed under this subdivision (27)(GGGGG) includes all of the property constituting the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(HHHHH)(i) A commercially operated facility that:

(a) Has a full-service restaurant that stands alone, or is part of a larger building or complex, but has its own entrance;

(b) Has a full-service kitchen that possesses at least one (1) of each the following: a stove; an oven; a refrigerator; and a freezer;

(c) Is open at least five (5) days per week, and serves at least twelve (12) meals each week;

(d) Has seating for at least seventy-five (75) persons at tables and has seating in the bar area at the bar, on stools around tables, or chairs around tables;

(e) Is located on at least eighteen (18) acres; and

(f) Is located in a county having a population of not less than thirty-two thousand two hundred (32,200) and not more than thirty-two thousand three hundred (32,300), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(HHHHH) means any or all of the property that constitutes the facility; and

(iii) The property described under this subdivision (27)(HHHHH) may be divided into individual parcels or groups of parcels, and any commercial facility located on any of these parcels that meets the criteria in this subdivision (27)(HHHHH) is deemed to be a premier type tourist resort for purposes of obtaining a license;

(IIIII) A commercially operated facility possessing each of the following characteristics:

(i) The facility is located within six and one-half (6.5) miles of Interstate 24 in any county having a population of not less than thirteen thousand seven hundred (13,700) nor more than thirteen thousand seven hundred fifty (13,750), according to the 2010 federal census or any subsequent federal census;

(ii) The facility is located on Charlie Roberts Road;

(iii) The facility is licensed to sell beer; and

(iv) The facility is a music, concert, and entertainment venue located

in a cave that is home to a public television program;

(JJJJJ) A commercially operated restaurant that:

(i) Was built in 1892;

(ii) Has not less than one thousand two hundred ninety-five square feet (1,295 sq. ft.);

(iii) Has seating for not less than thirty-two (32) persons;

(iv) Is located not more than five hundred feet (500′) from Dobbins Branch; and

(v) Is located in a county with not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 or any subsequent federal census;

(KKKKK) A commercially operated facility that:

(i) Was built in 1977;

(ii) Operates a market and country store;

(iii) Is located on approximately three and one-half (3 ½) acres;

(iv) Is located not more than three thousand feet (3,000′) from the junction of the Harpeth River and Wilkie Branch;

(v) Serves prepared food on the premises; and

(vi) Is located in a county with not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 or any subsequent federal census;

(LLLLL) A commercially operated facility that:

(i) Operates as a community performing arts and civics center in a city with a population of not less than eighteen thousand six hundred fifty (18,650) and not more than eighteen thousand six hundred fifty-nine (18,659), according to the 2010 or any subsequent federal census;

(ii) Was originally built as a school in 1886;

(iii) Contains an auditorium with a full stage, a proscenium arch, and seating for not less than four hundred (400) persons; and

(iv) Contains conference and meeting rooms and a local history museum;

(MMMMM) A commercially operated facility that:

(i) Is a resort comprised of approximately four hundred sixty (460) acres adjacent to the Cumberland River;

(ii) Operates two (2) eighteen-hole championship golf courses;

(iii) Operates a restaurant that seats forty-six (46) persons;

(iv) Is utilized as a venue for weddings and similar events with garden seating for up to two hundred (200) persons, banquet room seating for up to one hundred fifty (150) persons, and gallery seating for up to sixty (60) persons;

(v) Was originally established in 1986; and

(vi) Is located in a county with a metropolitan form of government and a population of not less than five hundred thousand (500,000) persons, according to the 2010 or any subsequent federal census;

(NNNNN) A commercially operated facility that:

(i) Operates a restaurant with seating for approximately fifty (50) patrons, with an extended porch for additional seating;

(ii) Operates an event center that serves as a venue for weddings, concerts, and similar events;

(iii) Is located within one (1) mile of Dale Hollow Lake, and within one hundred feet (100') of the Dale Hollow Quarry;

(iv) Is located on approximately eighty-five (85) acres; and

(v) Is located in a county with a population of not less than seven thousand eight hundred fifty-one (7,851) and not more than seven thousand eight hundred sixty-five (7,865), according to the 2010 or any subsequent federal census;

(OOOOO)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately twenty-two (22) acres of land;

(b) The facility is located less than three (3) miles south of an area designated as a state park consisting of approximately nine hundred (900) acres that is open to the public and adjacent to a state forest having at least nine thousand (9,000) acres;

(c) The facility is located within five (5) miles of Interstate 840 in a county with a population of not less than one hundred thirteen thousand nine hundred fifty (113,950) and not more than one hundred forty thousand (140,000), according to the 2010 federal census or any subsequent federal census;

(d) The facility is approximately fifteen thousand feet (15,000 ft.) east of a private motor racing complex originally constructed in approximately 2001 with a seating capacity of more than ten thousand (10,000);

(e) The facility includes a cabin, pier, bridge, amphitheater, commercial kitchen, shop, pond, hall with an adjacent courtyard, a climate-controlled event center, and a manor constructed in the 1830s having at least seven (7) guest rooms for lodging;

(f) The facility serves as a venue for weddings, meetings, conferences, and events; and

(g) The restaurant at the manor serves breakfast and dinner, and caters for events, with seating for at least forty-five (45) guests. The facility has two (2) event centers that can accommodate at least two hundred (200) guests at each center;

(ii) The premises of any facility licensed under this subdivision (27)(OOOOO) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(OOOOO);

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(OOOOO) means for beer permitting purposes any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one (1) beer permit issued under chapter 5 of this title;

(iv) The requirements of § 57-5-105(b)(1) do not apply to any facility licensed under this subdivision (27)(OOOOO); and

(v) Any facility licensed under this subdivision (27)(OOOOO) may seek an additional license as a caterer pursuant to § 57-4-102(6);

(PPPPP)(i) A commercially operated facility having all of the following characteristics:

(a) Is located on Norris Lake;

(b) Has a marina with not less than one hundred seventy (170) slips;

(c) Has not less than seven (7) houses and twenty-two (22) floating houses available for rent;

(d) Has a restaurant with indoor and outdoor seating for at least one hundred seventy (170) patrons;

(e) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(f) Is located in any county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census or any subsequent federal census; and

(ii) The premises of any facility licensed under this subdivision (27)(PPPPP) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(PPPPP);

(QQQQQ)(i) A commercially operated facility having all of the following characteristics:

(a) Operates a hotel with sixteen (16) guest rooms, with each floor other than the first floor equipped with a chef's kitchen, living room with a fireplace, and dining table;

(b) Operates a catering kitchen for events on the premises;

(c) Has event space of over eight hundred square feet (800 sq. ft.) located on the first and fourth floors;

(d) Is a venue for weddings, dinner parties, business retreats, reunions, and similar events; and

(e) Is located in a city with a metropolitan form of government and a population of not less than five hundred thousand (500,000), according to the 2010 or any subsequent federal census; and

(ii) The premises of any facility licensed under this subdivision (27)(QQQQQ) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises are covered under one (1) license issued under this subdivision (27)(QQQQQ);

(RRRRR)(i) A commercially operated facility that:

(a) Is an event and music venue that holds concerts and hosts a farmers market;

(b) Is located in a building built in the early 1900s by David Hugh Corlette;

(c) Contains a specialty grocery store and offers fresh food service, with seating for approximately eighteen (18) patrons;

(d) Began operating in August of 2018;

(e) Has approximately three thousand three hundred square feet (3,300 sq. ft.) of commercial floor space;

(f) Sits adjacent to Horton Highway;

(g) Is within five hundred feet (500') of a community center and artsitorium; and

(h) Is located in a county with a population of not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 and any subsequent federal census; and

(ii) The premises of a facility licensed under this subdivision (27)(RRRRR) means any or all of the property that constitutes the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(SSSSS) A commercially operated facility possessing each of the following characteristics:

(i) Has a marina with at least eighty-five (85) boat slips on Dale Hollow Lake at the confluence of the East and West Forks of the Obey River;

(ii) Has a restaurant with seating for approximately eighty (80) patrons;

(iii) Has assorted boats and at least twelve (12) cabins available for rent; and

(iv) Is located in a county having a population of not less than five thousand (5,000) and not more than five thousand one hundred (5,100), according to the 2010 federal census or any subsequent federal census;

(TTTTT) A commercially operated facility possessing each of the following characteristics:

(i) Is located approximately one (1) mile from Dale Hollow Lake, containing an area of ninety (90) acres;

(ii) Has a six-thousand-square-foot barn with a commercial kitchen used for events;

(iii) Has at least two (2) cabins for rent; and

(iv) Is located on Bolestown Road in a county having a population of not less than five thousand (5,000) and not more than five thousand one hundred (5,100), according to the 2010 federal census or any subsequent federal census;

(UUUUU) A commercially owned marina containing all of the following characteristics:

(i) Is located on at least twenty-five (25) acres of land located off of Livingston Boat Dock Road in a county having a population of not less than seven thousand eight hundred fifty-one (7,851) and not more than seven thousand eight hundred sixty-five (7,865), according to the 2010 federal census or any subsequent federal census;

(ii) Has a two-story restaurant that seats at least one hundred eighty (180) people;

(iii) Has at least three hundred fifty-five (355) boat slips and a full-service marina on Dale Hollow Lake; and

(iv) Includes at least ten (10) rental cabins;

(VVVVV) A commercially owned marina containing all of the following characteristics:

(i) Is located on at least forty (40) acres of land located off of state highway 294 in a county having a population of not less than seven thousand eight hundred fifty-one (7,851) and not more than seven thousand eight hundred sixty-five (7,865), according to the 2010 federal census or any subsequent federal census;

(ii) Has a restaurant that seats at least fifty (50) people;

(iii) Has approximately three hundred fifty (350) boat slips and a full-service marina on Dale Hollow Lake; and

(iv) Includes at least eleven (11) rental cabins;

(WWWWW)(i) A commercially operated facility that:

(a) Is located on approximately two hundred seventy (270) acres of land and sits approximately nineteen (19) miles south of highway 24 in a county with a population of not less than forty-five thousand (45,000) and not more than forty-five thousand one hundred (45,100), according to the 2010 and any subsequent federal census;

(b) Is located on property that is separately licensed to produce, bottle, and store distilled spirits;

(c) Is located on property that offers tours and tastings, as well as the retail sale of merchandise and bottles of spirits and contains the global headquarters for a premium Tennessee whiskey company;

(d) Is located on property that includes a welcome center, three (3) tasting rooms, distillery building, barrel storage facilities, a pond, museum, bar, restaurant, commercial kitchen, miniature golf course, and live music venue;

(e) Is located on property that serves as a horse breeding and training facility;

(f) Is located on property that is a production site and a venue for weddings, meetings, conferences, concerts, and special events; and

(g) Has a restaurant that serves lunch and dinner, and caters for events with seating for at least forty-five (45) guests;

(ii) The commission and any beer board having jurisdiction over the facility may issue one (1) or more licenses to one (1) or more different persons or entities that meet the qualifications of this subdivision (27)(WWWWW) provided, that the persons or entities obtaining licenses under this subdivision (27)(WWWWW)(ii) and any manufacturer licensed under § 57-3-202 comply with the requirements of § 57-4-110;

(iii) The premises of a facility licensed under this subdivision (27)(WWWWW) means any or all of the property that constitutes the facility; provided, that the premises must not include the premises of a manufacturer licensed under § 57-3-202 or any other facility licensed under this subdivision (27)(WWWWW), except as authorized pursuant to § 57-4-101(p). The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing; and

(iv) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(WWWWW) means for beer permitting purposes any or all of the property that constitutes the facility; provided, however, that the premises must not include the premises of a licensee under § 57-3-202 or any other facility licensed under this subdivision (27)(WWWWW), except as authorized pursuant to § 57-4-101(p). The beer permittee

shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing;

(XXXXX) A commercially operated restaurant, resort, and boat dock with fuel having the following characteristics:

(i) Possesses at least twenty (20) acres of U.S. corps of engineers leased water and water frontage on Old Hickory Lake and two thousand feet (2000′) of river channel at the southeast corner of the confluence of Old Hickory Lake and State Highway 109;

(ii) Has operated for at least sixty (60) straight years on this site;

(iii) Possesses at least sixty-five (65) full service paved camp sites;

(iv) Possesses boat slips for at least two hundred fifty (250) boats; and

(v) Is located on at least ten (10) acres of real property at that site;

(YYYYY) A commercially operated facility that:

(i) Includes an eighteen-hole golf course, a seven-thousand-square-foot clubhouse with a pro shop, banquet room, and restaurant with seating for at least forty (40) patrons;

(ii) Contains at least one hundred (100) acres and less than two hundred (200) acres; and

(iii) Is located less than one (1) mile from Fort Loudon Lake on Kingston Pike in a county having a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census;

(ZZZZZ) A commercially operated independent and assisted living facility possessing the following characteristics:

(i) Is located in a county having a population of not less than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census;

(ii) Has both independent and assisted living facilities available and provides memory care and respite service;

(iii) Has several full-service restaurants and dining rooms to service the residents but that are also open to the public and that serve three (3) chef-prepared meals per day;

(iv) Has a complete wellness and fitness facility available that accommodates physical and occupational therapy;

(v) Has complete recreational facilities for its residents;

(vi) Has not less than one hundred thirty-five (135) individual living unit apartments for residents;

(vii) Does not discriminate against any patron on the basis of gender, race, religion, or national origin; and

(viii) Has a full-service barber and beauty salon;

(AAAAAA)(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately five hundred (500) acres of land;

(b) The facility is located less than three (3) miles north of an area designated as The South Cumberland State Park consisting of approximately thirty thousand (30,000) acres that is open to the public;

(c) The facility is located within five (5) miles of Interstate 24 in a county having a population of not less than thirteen thousand seven

hundred (13,700) nor more than thirteen thousand seven hundred fifty (13,750), according to the 2010 federal census or any subsequent federal census;

(d) The facility includes two (2) cabins, a tiny house, a stage, three (3) fishing ponds, a check-in facility, a bathhouse, fifty (50) RV hookups, multiple hiking trails, frisbee golf, and a wedding pavilion;

(e) The facility serves as a venue for weddings, meetings, and conferences; and

(f) The facility has two (2) event centers that can accommodate at least one hundred fifty (150) guests at each center;

(ii) The premises of any facility licensed under this subdivision (27)(AAAAAA) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises is covered under one (1) license issued under this subdivision (27)(AAAAAA);

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(AAAAAA) means, for beer permitting purposes, any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one (1) beer permit issued under chapter 5 of this title;

(iv) The requirements of § 57-5-105(b)(1) do not apply to any facility licensed under this subdivision (27)(AAAAAA); and

(v) Any facility licensed under this subdivision (27)(AAAAAA) may seek an additional license as a caterer under this chapter;

(BBBBBB) A commercially operated facility having the following characteristics:

(i) Contains a restaurant in a free-standing building with retail space and consisting of approximately three thousand square feet (3,000 sq. ft.); and

(ii) Is located at the intersection of state highways 46 and 100 in a county having a population of not less than twenty-four thousand six hundred seventy-six (24,676) nor more than twenty-four thousand seven hundred (24,700), according to the 2010 federal census or any subsequent federal census;

(CCCCCC) A commercially operated facility having the following characteristics:

(i) Contains a full-service restaurant with seating for at least twenty-nine (29) patrons inside and fourteen (14) patrons outside and that does not use a freezer or a fryer; and

(ii) Is located less than one thousand feet (1,000′) from a United States Post Office and approximately one mile (1 mi.) from a state natural area featuring a small remnant forest having old growth forest characteristics in a county having a population of not less than twenty-four thousand six hundred seventy-six (24,676) nor more than twenty-four thousand seven hundred (24,700), according to the 2010 federal census or any subsequent federal census;

(DDDDDD) A commercially operated facility having the following characteristics:

(i) Contains a full-service restaurant that features live music and that is adjacent to a custom motorcycle shop; and

(ii) Is located less than three hundred feet (300′) from a United States Post Office and approximately one mile (1 mi.) from a state natural area featuring a small remnant forest having old growth forest characteristics in a county having a population of not less than twenty-four thousand six hundred seventy-six (24,676) nor more than twenty-four thousand seven hundred (24,700), according to the 2010 federal census or any subsequent federal census;

(EEEEEE) A commercially operated facility possessing each of the following characteristics:

(i) Contains a restaurant that has been in operation since at least 2012 with at least forty-two (42) seats inside and seventy-five (75) seats outside;

(ii) Contains a banquet hall that is used for weddings, banquets, meetings, and other events and is at least three thousand square feet (3,000 sq. ft.); and

(iii) Is located approximately seven hundred (700) yards from state highway 641 South and is adjacent to a winery in a county having a population of not less than thirty-two thousand three hundred one (32,301) nor more than thirty-two thousand four hundred (32,400), according to the 2010 federal census or any subsequent federal census;

(FFFFFF) A commercially operated marina having the following characteristics:

(i) Has open and covered boat slips, a store, a restaurant, and a fuel dock;

(ii) Has cabins and RV campsites available for rent; and

(iii) Is located on Cordell Hull Lake approximately three thousand feet (3,000′) from the confluence of Defeated Creek and the Cumberland River in a county having a population of not less than nineteen thousand one hundred fifty-one (19,151) nor more than nineteen thousand two hundred (19,200), according to the 2010 federal census or any subsequent federal census;

(GGGGGG) A commercially operated restaurant having the following characteristics:

(i) Has a structure of not less than two thousand square feet (2,000 sq. ft.) that has seating at tables and at the bar for at least ninety-six (96) guests and serves at least one (1) meal a day seven (7) days a week, with the exception of holidays, vacations, and periods of redecorating; and

(ii) Is located approximately two thousand five hundred feet (2,500′) from two (2) islands in Old Hickory Lake in a county having a population of not less than one hundred thirteen thousand nine hundred (113,900) nor more than one hundred fourteen thousand (114,000), according to the 2010 federal census or any subsequent federal census;

(HHHHHH) A commercially operated marina possessing each of the following characteristics:

(i) Is located on Norris Lake in a county having a population of not less than forty thousand seven hundred (40,700) nor more than forty thousand eight hundred (40,800), according to the 2010 federal census

or any subsequent federal census;

(ii) Has at least sixty (60) covered boat slips and at least twelve (12) uncovered boat slips;

(iii) Has a ship store offering gasoline and other boating supplies and a restaurant with seating for at least eighty (80) patrons, including indoor and outdoor seating; and

(iv) Is located approximately one and one-half (1½) miles from a county-owned, public-use airport with a runway four thousand feet (4,000′) in length;

(IIIIII)(i) A commercially operated facility that:

(a) Has a limestone quarry that sits approximately one thousand seven hundred feet (1,700′) southeast of Interstate 65, two thousand seven hundred feet (2,700′) south of Interstate 840, and four and six-tenths (4.6) miles north of the junction of US 431 and State Route 247;

(b) Is a venue for live music, weddings, meetings, and other events;

(c) Serves or sells food to patrons;

(d) Has an outdoor amphitheater with a capacity for at least seven thousand (7,000) guests;

(e) Has exclusive or non-exclusive rights to possess or use a commercial kitchen or service kitchen where food is staged and served; and

(f) Is located in a county having a population of not less than one hundred eighty-three thousand one hundred (183,100) and not more than one hundred eighty-three thousand two hundred (183,200), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (27)(IIIIII) means any and all of the property that constitutes the facility, including all enclosed and outdoor areas of the property. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(iii) Any facility as described in this subdivision (27)(IIIIII), may hold any of the licenses authorized under this subdivision (27)(IIIIII) and shall have the privilege of granting a franchise to one (1) or more entities authorizing such an entity to provide food or beverages, including alcoholic beverages and beer, on its premises; provided, that any separate entity must apply to the commission for a separate license, except for an entity already licensed under subdivision (6). For purposes of this subdivision (27)(IIIIII)(iii), the licensee is not required to have exclusive control of a commercial kitchen or any service kitchen, where food is staged and served, as a condition of the license;

(iv) Any licensed entity that holds a license under this subdivision (27)(IIIIII) may store alcoholic beverages and beer at one (1) or more storage locations in the facility and in any commercial kitchen or service kitchen within the facility; provided, that each licensed entity shall store its inventory of alcoholic beverages and beer in a separately locked cage or other storage area;

(v) Notwithstanding § 57-4-101(p), any facility licensed under this subdivision (27)(IIIIII) may serve wine, high gravity beer and beer in its

original container, and spirit-based beverages in original containers that do not exceed three hundred seventy-five milliliters (375 ml) and an alcohol content that does not exceed fifteen percent (15%) by volume, or in unlabeled cups or glassware, or in labeled cups or glassware identifying the licensee as the entity selling the alcoholic beverages or beer for on-premise consumption anywhere within the facility. Any franchisee holding a license under this subdivision (27)(IIIIII) shall comply with the requirements of § 57-4-101(p); provided, however, that a sticker identifying the licensee, which is reasonably designed to stay affixed to a container, cup, or glassware, must comply with § 57-4-101(p);

(vi) The commission shall enforce chapter 4 of this title against each licensee under this subdivision (27)(IIIIII) and shall not cite, penalize, or take any other adverse action against a licensee for any violation committed by another licensee on the licensed premises. There is a rebuttable presumption of liability for a specific licensee for any underage sale or other violation based on the unlabeled or labeled container, or unlabeled or labeled cup or glassware, as required pursuant to subdivision (27)(IIIIII)(v), provided to the minor. In the absence of a container, glass, or cup identifying the licensee, the commission has the discretion to determine which licensee to cite for an underage sale or other such violation. If the commission is unable to determine which licensee committed the violation after conducting a reasonable investigation, the commission may issue a citation to one (1) or more licensees that share the premises where the violation occurred;

(vii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility described under this subdivision (27)(IIIIII) means, for the purpose of obtaining a beer permit, any and all of the property that constitutes the facility, including all enclosed and outdoor areas of the property. The beer permittee shall designate the premises to be licensed by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The beer board shall enforce chapter 5 of this title against each licensee as a beer permittee and shall not cite, penalize, or take any other adverse action against a licensee for any violation committed by another licensee on the licensed premises. There is a rebuttable presumption of liability for a specific licensee for any underage sale or other violation based on the unlabeled or labeled container, or unlabeled or labeled cup or glassware, as required pursuant to subdivision (27)(IIIIII)(v), provided to the minor. In the absence of a container, glass, or cup identifying the licensee, the local beer board has the discretion to determine which licensee to cite for an underage sale or other such violation. If the beer board is unable to determine which licensee committed the violation after conducting a reasonable investigation, the beer board may issue a citation to one (1) or more licensees that share the premises where the violation occurred;

(viii) Notwithstanding § 57-4-203(e)(1), any licensee licensed under this subdivision (27)(IIIIII) may sell and distribute wine in any unsealed container for consumption on the licensed premises;

(ix) Any licensee licensed under this subdivision (27)(IIIIII) may seek an additional license as a caterer under chapter 4 of this title, and is not required to comply with the requirements of § 57-4-102(6)(A) or show

exclusive control of a commercial kitchen or any service kitchen, where food is staged and served, as a condition of the license. Caterers licensed under this subdivision (27)(IIIIII)(ix) may store alcoholic beverages and beer in any shared commercial kitchen or service kitchen. The inventory of alcoholic beverages and beer must be stored in a separately locked cage or other storage area;

(x) Nothing in this subdivision (27)(IIIIII) may be construed to prevent a facility, as described under this subdivision (27)(IIIIII), from designating any area of its premises for purposes authorized under this subdivision (27)(IIIIII), or for the purposes of an entity licensed under this title; provided, that premises designated for use by another entity under this title are no longer part of the premises of any license issued under this subdivision (27)(IIIIII), except as provided in § 57-4-101(p); and

(xi) The facility, landlord, tenant, or any licensee located in the facility shall provide periodic security for the entire licensed premises;

(JJJJJJ)(i) A commercially operated recreational facility having all of the following characteristics:

(a) The facility is located approximately one mile (1 mi.) from the confluence of Clear Creek and the Obed River and is centrally located in one of this state's rock climbing meccas;

(b) The facility is located on approximately forty (40) acres;

(c) The facility provides at least forty (40) campsites and contains a restaurant and a brewery; and

(d) The facility is located in a county having a population of not less than twenty-one thousand nine hundred (21,900) nor more than twenty-two thousand (22,000), according to the 2010 federal census or any subsequent federal census; and

(ii) The premises of any facility licensed under this subdivision (27)(JJJJJJ) means any or all of the property that constitutes the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(KKKKKK) A commercially operated facility possessing each of the following characteristics:

(i) Has an outdoor waterpark site covering at least fifty (50) acres that has a wave pool and other water attractions that contain at least one million seven hundred thousand {1,700,000) gallons of water; and

(ii) Is located approximately five hundred feet (500′) south of a municipal convention center, approximately two thousand two hundred feet (2,200′) west of a state highway named in honor of a former governor of this state, and in a county having a population of not less than eighty-nine thousand eight hundred (89,800) nor more than eighty-nine thousand nine hundred (89,900), according to the 2010 federal census or any subsequent federal census;

(LLLLLL) A commercially operated facility that:

(i)*(a)* Serves as an event venue for weddings, a farmer's market, photography, birthdays, festivals, and similar events;

(b) Contains a small and large dog park with obstacle courses and a dog wash station;

(c) Contains a tree grove;

(d) Operates a facility that is greater than seventeen thousand square feet (17,000 sq. ft.) containing a dual convention space that can accommodate up to five hundred (500) people, and a restaurant with indoor and outdoor seating for approximately two hundred (200) guests;

(e) Offers scenic mountain overlook views; and

(f) Is located in a municipality with a population of not less than nine thousand eight hundred forty (9,840) and not more than nine thousand eight hundred forty-nine (9,849);

(ii) The premises of any facility licensed under this subdivision (27)(LLLLLL) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The designated premises may only include property owned or leased by the facility and that is contiguous to the property of the facility that is defined in this subdivision (27)(LLLLLL). The entire designated premises is covered under one (1) license issued under this subdivision (27)(LLLLLL); and

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (27)(LLLLLL) means, for beer permitting purposes, any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises is covered under one (1) beer permit issued under chapter 5 of this title;

(MMMMMM) A commercially operated facility that:

(i) Is an event and wedding venue located on fifty-three (53) acres containing:

(a) A space under roof of over thirteen thousand square feet (13,000 sq. ft.) equipped with heat and air conditioning year-round;

(b) Six thousand five hundred square feet (6,500 sq. ft.) of paver patio;

(c) Sixteen thousand square feet (16,000 sq. ft.) of barefoot cozy turf;

(d) A covered patio of one thousand seven hundred eighty-seven square feet (1,787 sq. ft.) adjacent to the main hall; and

(e) A one-thousand-eight-hundred-square-foot bridal suite, and a groom's lounge with a wet bar, foosball table, and a large television;

(ii) Contains an equestrian center that is seven thousand square feet (7,000 sq. ft.);

(iii) Contains a prep kitchen with two (2) stoves, two (2) ovens, a warming box, high-capacity ice maker, sinks, work stations, and drive-up load area;

(iv) Operates working equine facilities of six thousand five hundred square feet (6,500 sq. ft.), including an arena, and a workshop barn that is two thousand square feet (2,000 sq. ft.); and

(v) Is located in a county with a population of not less than one hundred thirteen thousand nine hundred (113,900) and not more than one hundred fourteen thousand (114,000), according to the 2010 or any subsequent federal census;

(28)(A) "Premises," when:

(i) Referring to an establishment licensed under this chapter;

(ii) Such establishment is located within an historical district which has been designated as a national historic landmark;

(iii) Such national historic landmark centers around a historic public street or right-of-way;

(iv) Such a public street or right-of-way is closed to motor vehicular traffic, whether permanently or on a regular basis; and

(v) But only to the extent that such premises are located and fronting upon such historic street and not located on or fronting upon another street or right-of-way within such national historic landmark;

includes the area encompassed by the boundaries of the historic district; provided, that the granting of a license for a business location within such historical district shall not preclude the granting of another license to another establishment located within the boundaries of the historic district. This subdivision (28) applies only to counties with a population of more than four hundred thousand (400,000), according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from this subdivision (28). In such county, only for the purposes of the hours of sale provided in § 57-4-203(d)(4), "premises" also includes any establishment located within four (4) blocks west of the western boundary of the historic district and on the same public street or right of way as the historic district; provided, that the requirement of closing the street or right-of-way to motor vehicular traffic on a regular basis shall not apply to the extension of the premises established by this sentence. Within the premises as defined in this subdivision (28)(A), and subject to the municipality's right of ownership and control and any conditions, rules, or regulations imposed by the city or its designee or by law, alcoholic beverages may also be served to customers seated at tables and chairs contiguous to the outside front wall of a licensee's building;

(B)(i) "Premises," when:

(a) Referring to an establishment licensed under this chapter;

(b) Such establishment is located within a central improvement district; and

(c) The central improvement district is located in a county having a metropolitan government that has a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

includes only the area located between a convention center, its designated convention center hotel, and a museum that is attached to the convention center hotel; and the one (1) block of public roadway on Fifth Avenue between Demonbreun Street and Korean Veterans Boulevard; and

(ii) This subdivision (28)(B) shall only be effective in any county upon the adoption of a resolution by a majority vote of the local legislative body approving the use of this definition of "premises";

(C) "Premises," when:

(i) Referring to one (1) or more establishments licensed under this chapter, or a manufacturer exercising the rights granted to it under § 57-3-202(i)(1); and

(ii) Such establishments are located:

(a) Within a home rule municipality in a county with a population of not less than three hundred thirty-six thousand four hundred (336,400) and not more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census; and

(b) Within or adjacent to an area that is a five hundred seventy-five foot (575′) paver lined street with a right of way that is approximately forty feet (40′) wide extending from Market Street on the western boundary to Rossville Avenue on the eastern boundary; that is bordered along its northern boundary by a historic railroad terminal station that has been listed on the National Register of Historic Places since 1974; and that is bordered along its northern boundary by property zoned for urban-industrial mixed use and along its southern boundary by property that is zoned for urban-commercial mixed use; includes the area described in subdivision (28)(C)(ii)(*b*). The granting of a license for a business located within or adjacent to the boundaries of the area described in subdivision (28)(C)(ii)(*b*) does not preclude the granting of another license to another establishment located within or adjacent to such area;

(29) "Public aquarium" means a facility which contains a collection of living aquatic animals whose sole or primary habitat is water and which facility provides for care and housing for public exhibition, and also possesses the following characteristics:

(A) The exhibits containing live aquatic animals for public viewing are housed in a building having at least one hundred thousand square feet (100,000 sq. ft.) of interior space;

(B) The exhibits containing live aquatic animals for public viewing contain a minimum total of five hundred thousand gallons (500,000 gals.) of water as the living environment of the animals; and

(C) The public aquarium is located in a county having a population in excess of two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census;

(30)(A) "Restaurant" means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least forty (40) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. An establishment shall be eligible for licensure as a restaurant in accordance with this part, if the establishment is open at least three (3) days a week, with the exception of holidays, vacations, periods of redecorating and seasonal closings, and more than fifty percent (50%) of the gross revenue of the restaurant is generated from the serving of meals. As used in this subdivision (30), "seasonal closing" means the period from November 1 to March 1 or a period of time, if different from such dates, as filed by the restaurant with the alcoholic beverage commission;

(B) "Restaurant" also means any bowling center that was licensed as of January 1, 1983, to sell alcoholic beverages for consumption on the premises;

(C) In counties with a population of more than three hundred nineteen thousand six hundred twenty-five (319,625), according to the 1980 census,

but excluding those counties having a metropolitan form of government:

(i) Within a national historic landmark district or urban park center, as defined by this section, or within an easement area granted to a municipality for commercial recreation and commercial recreation facilities from the Tennessee Valley authority in the Fort Loudoun Reservoir:

(a) Restaurant licensees shall not be required to meet any requirements of this section which make food service, maintenance of a kitchen, or a dining room a prerequisite to the issuance of a restaurant permit to serve liquor by the drink; and

(b) Notwithstanding any law to the contrary, restaurant licensees may enter into leases with municipal landowners in which gross sales, which may include or exclude liquor sales, are considered in the determination of a percentage rent or other rent calculation provision; and

(ii) Within a sports authority facility, as defined in this section, restaurant licensees shall not be required to meet any of the requirements of subdivision (30)(A) which make food service, maintenance of a kitchen, or a dining room a prerequisite for the issuance of a permit to serve liquor by the drink;

(D) Notwithstanding the minimum seating capacity established in subdivision (30)(A), for the purpose of a permit to serve wine, "restaurant" means any lodge or resort with sleeping accommodations where meals are served that is located on land which is owned by the United States department of the interior, is operated by the national park service or its agents or contractors and is located in a county with a population of not less than forty-one thousand four hundred (41,400) nor more than forty-one thousand five hundred (41,500), according to the 1980 federal census or any subsequent federal census;

(E) "Restaurant" also means a facility located in any municipality having a population in excess of one hundred thousand (100,000), according to the 1990 federal census, or any subsequent federal census, in which coffees, teas, pastries, and other foodstuffs are offered for sale for consumption on the premises, which facility has a seating capacity of at least thirty (30) seats and which facility obtains at least fifty percent (50%) of its annual gross sales from the sale of coffees, teas and pastries. Any restaurant licensed under this subdivision (30)(E) shall be authorized to sell alcoholic beverages for consumption on the premises only when such beverages are mixed with coffees, teas and other beverages. A restaurant licensed under this subdivision (30)(E) need not meet the requirement of subdivision (30)(A);

(F) "Restaurant" also means a facility:

(i) Located within one-half (½) mile of the railroad tracks in the unincorporated area of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census;

(ii) Whose primary source of income is from serving meals to its patrons, both indoors and out-of-doors, and has a total seating capacity of at least seventy-five (75) people at tables;

(iii) Located in a building having a total square footage of at least two thousand five hundred square feet (2,500 sq. ft.) which was constructed

prior to 1925; and

(iv) Which is located on a site used during the Civil War or within two (2) miles of two (2) or more Civil War sites, or is within one and one-half (1 ½) miles of a home that was built in 1884, and which is preserved as the area's best example of the Queen Anne and Eastlake architectural styles;

(G) "Restaurant" also means a facility:

(i) Located on Highway 243 in a county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census;

(ii) That has seating for not more than one hundred forty (140) people;

(iii) That has a music and entertainment orientation;

(iv) Whose primary source of income is derived from serving meals to its patrons;

(v) That has a historic working original malt and soda fountain;

(vi) That is located in a historical structure formerly used as a town hall as well as a practice venue for Grand Ole Opry hopefuls; and

(vii) That does not discriminate against any patron on the basis of age, gender, race, religion or origin;

(H)(i) Restaurant also means a facility that:

(a) Is owned, operated or leased by a for-profit organization organized under the laws of this state;

(b) Does not discriminate against any patron on the basis of gender, race, religion or national origin;

(c) Provides food service to the public or for private events and catering with seating capacity for at least two hundred fifty (250) persons at tables, whether or not the seating is inside or on a deck or patio;

(d) Is open at least five (5) days a week serving two (2) meals daily with the exception of holidays, vacations, seasonal conditions and periods of redecorating, with suitable kitchen, dining facilities and equipment;

(e) Is in the center of a full service marina and resort located on the Tennessee River at mile marker 477.5; which full service marina has at least six hundred (600) dry storage slips and wet slips up to eighty feet (80′) that offers two (2) cabins completely furnished and an inn with twelve (12) rooms that overlooks the Tennessee River; and

(f) Is located in any county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(ii) A restaurant under this subdivision (30)(H) must comply with all the requirements of this chapter and shall be subject to the restrictions imposed upon licenses other than § 57-4-103;

(I) "Restaurant" also means a facility:

(i) Located on State Route 46, Old Hillsboro Road, in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any

subsequent federal census;

(ii) Which is located 1.66 miles from the Natchez Trace Parkway Exit off of Pinewood Road;

(iii) Whose primary source of income is from serving meals to its patrons;

(iv) Which first opened as a restaurant in 1968;

(v) Which does not operate as a grocery store; and

(vi) Which does not discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(J) "Restaurant" also means a facility that:

(i) Is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) Is a twenty-four-hour-a-day diner;

(iii) Is located in a central business improvement district as of 2017;

(iv) Serves full meals and has a full-time kitchen staff, twenty-four (24) hours a day;

(v) Holds a valid license from the commission;

(vi) Is located in a separate, unattached building;

(vii) Does not permit live music or entertainment, nor share walls with any establishment offering live music or entertainment; and

(viii) Has six (6) floors and at least seventeen thousand square feet (17,000 sq. ft.); and

(K) "Restaurant" also means a facility that:

(i) Is located in a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(ii) Is situated to the east and to the west of the Cumberland River in Pennington Bend;

(iii) Is located approximately two thousand feet (2,000′) to the northwest of a resort and convention center;

(iv) Is a venue for live music;

(v) Has an outdoor deck that is approximately three thousand square feet (3,000 sq. ft.); and

(vi) Operates a restaurant that is approximately eight thousand square feet (8,000 sq. ft.) with a seating capacity of approximately two hundred fifty (250);

(L) "Restaurant" also means a facility that:

(i) Began operating on September 5, 2018;

(ii) Has a seating capacity for patrons of approximately one hundred forty (140);

(iii) Is located on Hixson Pike within one thousand five hundred feet (1,500') of Dallas Bay on the Tennessee River and within six thousand feet (6,000') of Chester Frost Park;

(iv) Is approximately two thousand square feet (2,000 sq. ft.); and

(v) Is located in a county with a population of not less than three hundred thirty-six thousand four hundred (336,400) and not more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census;

(31)(A) "Retirement center" means a facility that contains each of the following characteristics:

(i) The center is located in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census;

(ii) The center is located on a single parcel of land not less than forty eight (48) acres and not more than forty-nine (49) acres in area;

(iii) The center will consist of individual living unit apartments, individual living unit villas, an assisted living facility, a nursing home facility, a club house and common areas;

(iv) The center will have a club house that houses a health club, game room, lounge and a dining facility;

(v) The center's lounge in the club house will offer to the center's residents and their guests only food, nonalcoholic beverages, mixed alcoholic drinks, wine and beer, as well as make available in the dining facility and other areas within the center's property, for the center's residents and guests only, mixed alcoholic drinks, wine and beer; and

(vi) The center does not discriminate against any patron on the basis of gender, race, religion or national origin;

(B) "Retirement center" also means a facility that contains each of the following characteristics:

(i) The center is located in a 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;

(ii) The center will consist of recreational areas, a fitness center, a dining room with seating for at least one hundred fifty (150) people and a lounge area, and at least one hundred (100) individual living unit apartments;

(iii) The center will have a facility of at least one hundred five thousand square feet (105,000 sq. ft.) and is located on approximately eight (8) acres near the corner of Fort Henry Drive and Holston Hills Drive; and

(iv) The center's lounge area will offer, to the center's residents and their guests only, food, nonalcoholic beverages, mixed alcoholic drinks, wine, and beer, as well as make available in the dining room and other areas within the center's property, for the center's residents and guests only, mixed alcoholic drinks, wine, and beer;

(32) "Special historic district" means any area with specific boundaries that possesses the following characteristics:

(A) Was organized pursuant to a municipal urban planning and development board;

(B) Contains within such special historic district an historic district listed on the national register of historic places;

(C) Is located on a trolley line; and

(D) Is located in any county having a population of eight hundred thousand (800,000) or more, according to the 2000 federal census or any subsequent federal census;

(33)(A) "Special occasion license" means a license which the commission may issue to a bona fide charitable, nonprofit or political organization. Such license shall be issued for no longer than one (1) twenty-four-hour period, subject to the limitations of hours of sale which may be imposed by law or regulation, and such license may be issued in advance of its

effective date;

(B) If a bona fide charitable or nonprofit organization owns and maintains a permanently staffed facility which:

(i) Is used for the periodic showing or exhibition of animals;

(ii) Has a seating capacity of not less than twenty-five thousand (25,000) persons; and

(iii) Has a separate permanently constructed clubhouse or meeting room located on the grounds,

then a special occasion license may be issued for use at the clubhouse or meeting room for the duration of the particular show or exhibit for which application is made, and such organization shall not be subject to the numeric limitation contained in the last sentence of this subdivision (33). This license shall only be available upon the payment of the fee as required by law for each separate day of the show;

(C) Such license shall not be issued unless and until there shall have been paid to the commission for each such license a license fee of one hundred dollars ($100), and there shall have been submitted an application which designates the premises upon which alcoholic beverages shall be served. No such charitable, nonprofit or political organization shall be eligible to receive more than twelve (12) special occasion licenses in any calendar year;

(D) A special occasion license under this section may also be issued to a nonprofit historical society for the purpose of serving complimentary samples of homemade wine manufactured in the Swiss tradition by a society member or members, the complimentary samples not to exceed one ounce (1 oz.) per wine type per person to be served at an annual festival conducted by a society celebrating the Swiss heritage at a farm museum in any county having a population of not less than fourteen thousand three hundred (14,300) nor more than fourteen thousand four hundred (14,400), according to the 2000 federal census or any subsequent federal census;

(E) Any entity holding a special occasion license issued under this subdivision (33) or members of the licensee may transport wine and other alcoholic beverages to the location for which the special occasion license is issued;

(F) "Special occasion license" also means a license, issued by the commission, to a bona-fide charitable organization, recognized as exempt from taxation by the internal revenue service pursuant to § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), which organization has been in continuous operation as a tax-exempt entity for at least twenty (20) years, and which organization has an annual budget of at least one million dollars ($1,000,000). A special occasion license issued pursuant to this subdivision (33)(F) shall be authorized to sell wine in closed containers for consumption on or off the premises notwithstanding the restrictions of § 57-4-203. Any licensee holding a license issued pursuant to § 57-3-202, § 57-3-203, § 57-3-204, § 57-3-207, § 57-3-605 or § 57-4-101 may donate wine to an organization holding a special occasion license issued pursuant to this subdivision (33)(F) for an event conducted by the special occasion licensee. Any resident of Tennessee may donate wine, which brand of wine has been registered pursuant to § 57-3-301, to an organization holding a special occasion license issued pursuant to this subdivision (33)(F) for sale or consumption at an event conducted by the

special occasion licensee;

(G) A special occasion license under this section may also be issued to a bona fide charitable organization that benefits charities which support women and children in Middle Tennessee and which:

(i) Holds the event in a county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census, on property used as a veterinary clinic located on a six and sixty-five one hundredths (6.65) acre lot that shares a common boundary between a municipality and the unincorporated area of such county;

(ii) Jurisdictions within the boundaries of such county have by referendum adopted both the sale of alcoholic beverages at retail package stores and for consumption on the premises;

(iii) Is a one-day annual event restricted to persons twenty-one (21) years of age or older;

(iv) Holds a grape stomp contest with teams made up of four (4) stompers and one (1) swabbie, who collects the juice created by the stompers in a jar, with the team producing the most juice winning the contest;

(v) Includes numerous food vendors;

(vi) Has wine and spirits tastings; and

(vii) Where alcoholic beverages are served but not sold;

(H) A special occasion license under this section may also be issued to a nonprofit community association for the purpose of serving samples of wine to persons holding a presold ticket for an annual fundraiser, the samples not to exceed two ounces (2 oz.) per wine per person to be served at the annual fundraiser conducted by the community association in any county having a population of not less than one hundred twenty-six thousand six hundred (126,600) nor more than one hundred twenty-six thousand seven hundred (126,700), according to the 2000 federal census or any subsequent federal census. The fundraiser shall be an insured event with at least ten (10) wineries or restaurants participating in the event and food shall be available to attendees;

(34)(A) "Sports authority facility" means a facility possessing the following characteristics:

(i) The facility is owned or operated by a sports authority established under title 7, chapter 67, a public building authority or a governmental entity;

(ii) The facility is designed and used for presentation of professional sporting events and other activities, such as amateur sporting events, recreational activities and entertainment events and activities, and includes retail sales areas and retail food dispensing outlets, including, but not limited to, restaurant areas to accommodate liquor by the drink as well as food patronage;

(iii) A major or minor league professional baseball (American, National or Minor League), football (National Football League), basketball (National Basketball Association) or hockey (National Hockey League) franchise has entered into a long-term agreement to play its home games in the facility; and

(iv) The facility is located in a municipality or county having a population in excess of five hundred thousand (500,000), according to

the 1990 federal census or any subsequent federal census;

(B) "Sports authority facility" also means a facility possessing the following characteristics:

(i) The facility includes a stadium that was constructed in 1997 and that has a seating capacity of twenty thousand (20,000) or more;

(ii) The facility is designed and used for sporting and other municipal events;

(iii) The facility is located in a home rule municipality located in a county with a population of not less than three hundred thirty-six thousand four hundred (336,400) and not more than three hundred thirty-six thousand five hundred (336,500), according to the 2010 federal census or any subsequent federal census; and

(iv) The facility is located not more than one-half (1/2) mile from the Tennessee River;

(C) "Sports authority facility" also means any facility that is designed and used for school-sanctioned public sporting events on a public university campus located in any county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(D) "Sports authority facility" also means any facility that is designed and used for school-sanctioned public sporting events on a four-year public university campus located in any county having a population of not less than two hundred sixty-two thousand six hundred (262,600) nor more than two hundred sixty-two thousand seven hundred (262,700), according to the 2010 federal census or any subsequent federal census;

(E) "Sports authority facility" also means any facility on the campus of a public institution of higher education that is designed and used for sporting events sanctioned by the institution;

(F)(i) "Sports authority facility" also means a facility that:

(a) Is a professional motorsports speedway complex with a speedway approximately one-half (½) of a mile in length and a seating capacity of approximately one hundred sixty thousand (160,000);

(b) Includes a dragstrip complex adjacent to the speedway with a dragstrip approximately one-quarter (¼) of a mile in length and that contains stadium seating and at least twenty (20) suites; and

(c) Is located in a city with a population of not less than twenty-six thousand seven hundred (26,700) and not more than twenty-six thousand seven hundred nine (26,709), according to the 2010 federal census and any subsequent federal census; and

(ii) The premises of any facility licensed under this subdivision (34)(F) includes all of the property constituting the facility. A licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(G) "Sports authority facility" also means any facility located in any county with a metropolitan form of government that has a population of not less than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census, and that is equipped with two (2) or more ice rinks designed and used for various hockey and figure skating programs for children and adults that are supervised by a major or minor league professional hockey franchise;

(35) "Suite" means any room or group of rooms, leased by the operator of a sports authority facility or a convention center, physically located within such facility or center, where access to such room or rooms is restricted to the lessee or such lessee's guests;

(36) "Tennessee River resort district" means a club, hotel, motel, restaurant or limited service restaurant located within a jurisdiction that has elected Tennessee River resort district status pursuant to § 67-6-103(a)(3)(F); provided, that for the purposes of this chapter, such district shall only extend inland for three (3) miles from the nearest bank of the Tennessee River. No entity licensed to sell alcoholic beverages within the boundaries of any such resort district shall discriminate against any patron on the basis of age, gender, race, religion, or national origin;

(37) "Terminal building of a commercial air carrier airport" means a building, including any concourses thereof, used by commercial airlines and their customers for sale of airline tickets, enplaning and deplaning of airline passengers, loading and unloading of baggage and cargo, and for providing other related services for the convenience of airline passengers and others, located in any airport which is served by one (1) or more commercial airlines, and:

(A) Is operated by a board of commissioners whose membership is appointed by the legislative bodies of five (5) or more local governments or whose membership is appointed pursuant to § 42-4-105; or

(B) Is located in a municipality where this chapter has become effective in that municipality;

(38)(A) "Theater" means any establishment in which motion pictures are exhibited to the public regularly for a charge. Such theater shall have an area that is enclosed by glass and which is accessed through a set of double doors by patrons who must be twenty-one (21) years of age or older to enter. Such theater shall be part of a retail and entertainment complex located one (1) block from a historical district that has been designated as a national historic landmark that centers around a public street or right-of-way. Such theater shall be located in a county having a population of eight hundred thousand (800,000) or more, according to the 1990 federal census or any subsequent federal census;

(B) "Theater" also means any establishment in which motion pictures are exhibited to the public regularly for a charge and which possesses the following characteristics:

(i) Is a twelve (12) auditorium theater that is one hundred percent (100%) digital;

(ii) Is certified by the United States Green Building Council as the nation's first stand-alone theater boasting energy and environmental sensitive design;

(iii) Has one (1) auditorium restricted to patrons twenty-one (21) years of age or older; and

(iv) Is located downtown near a river in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census;

(C) "Theater" also means an establishment in which motion pictures are exhibited to the public regularly for a charge. The theater shall have a local beer permit for on-premises consumption. The theater shall

regularly serve prepared food to patrons and each auditorium in which alcoholic beverages may be consumed shall allow dining at each seat in the auditorium. Prior to making a sale of any alcoholic beverage, a valid, government-issued document, such as a driver license or other form of identification deemed acceptable to the license holder that includes a photograph and date of birth of the adult consumer attempting to make the purchase, shall be produced to the licensee. The theater shall also periodically visually monitor all auditoriums in which alcoholic beverages are permitted and each beverage containing an alcoholic beverage shall be distinct from any other container used to serve nonalcoholic beverages;

(39)(A) "Urban park center" means a facility or designated area possessing the following characteristics:

(i) The center is owned, operated, or leased by a municipal or county government, or any agency or commission thereof;

(ii) The center is designed to contain outdoor recreational facilities, public museum buildings, exhibition buildings, retail sales areas, retail food dispensing outlets including, but not limited to, sale of package alcoholic and malt beverages, and restaurant areas to accommodate liquor-by-the-drink as well as food patronage; and

(iii) The center is located in a municipality or county having a population in excess of six hundred thousand (600,000), according to the 1970 federal census or any subsequent census;

(B)(i) "Urban park center" also means an outdoor fixed structure amphitheater utilized as a performance venue, containing fixed seating for at least five thousand one hundred (5,100) persons. Such facility or designated area shall be secured by adequate perimeter fencing.

(ii) This subdivision (39)(B) applies in any county with a metropolitan form of government with a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(C) "Urban park center" also means a facility or designated area that possesses the following characteristics:

(i) Consists of at least two (2) theater spaces in which live theater, concerts, and films are presented;

(ii) Contains at least ten thousand square feet (10,000 sq. ft.);

(iii) Contains permanent fixed seating for at least three hundred forty-nine (349) persons;

(iv) Contains one (1) performance space constructed prior to 1930 that contains a stage with a fly tower for stage rigging with a height of at least thirty feet (30′);

(v) Is operated by a not-for-profit corporation that qualifies as tax exempt under the Internal Revenue Code, § 501(c)(3) (26 U.S.C. § 501(c)(3)), and such facility or designated area is not a religious organization or a secondary or elementary school;

(vi) A major street is located not more than one hundred feet (100′) from the nearest exterior wall of such facility or designated area; and

(vii) Is located within the jurisdictional limits of a county with a metropolitan form of government having a population of not less than five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census;

(D) "Urban park center" also includes a facility or designated area

possessing each of the following characteristics:

(i) Is owned, operated or leased by a municipal or county government, or any agency or commission thereof;

(ii) Has an outdoor fixed structure amphitheater utilized as a performance venue;

(iii) Provides or leases facilities for concerts, plays and programs of cultural, civic and educational interest; and

(iv) Is located in any municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, and the municipality has a population of not less than twenty-three thousand nine hundred twenty (23,920), nor more than twenty-three thousand nine hundred thirty (23,930), according to the 2000 federal census or any subsequent federal census;

(E) "Urban park center" also means a facility or designated area that possesses each of the following characteristics:

(i) Is owned and maintained by a bona fide charitable or nonprofit organization;

(ii) Is used for the periodic showing or exhibition of animals;

(iii) Has a seating capacity of not less than twenty-five thousand (25,000) persons;

(iv) Includes an arena and a permanently constructed clubhouse or meeting room located on the grounds; and

(v) Is located in any county having a population of not less than forty-five thousand (45,000) nor more than forty-five thousand one hundred (45,100), according to the 2010 federal census or any subsequent federal census;

(F)(i) "Urban park center" also means a facility or designated area possessing each of the following characteristics:

(a) Is located on a tract or tracts of land having at least five (5) contiguous acres;

(b) Is located directly adjacent to property owned or leased by an airport authority created under state law;

(c) Has an enclosed facility or designated area of at least twenty thousand square feet (20,000 sq. ft.) and one (1) room with more than fourteen thousand square feet (14,000 sq. ft.);

(d) Has an exterior garden or gardens with sculpture;

(e) Is leased or owned by a not-for-profit corporation that qualifies under § 501(c)(3) of the Internal Revenue Code; and

(f) Is located within a county having a metropolitan form of government with a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(ii) An urban park center licensed under this subdivision (39)(F) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of such franchise shall also be considered an urban park center under this subdivision (39)(F). The premises of an urban park center under this subdivision (39)(F) shall include all enclosed and outdoor areas of the property described in this subdivision (39)(F);

(G) "Urban park center" also includes a facility or designated area

possessing each of the following characteristics:

(i) Is located in a building constructed in 1883 that was originally used as a flour mill and eventually became a cannery;

(ii) Is an entertainment complex open to the public with three (3) facilities used for live music performances;

(iii) Serves or sells food to patrons;

(iv) Is approximately fifty-two thousand square feet (52,000 sq. ft.); and

(v) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(H) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located approximately two (2) blocks from Interstate 40;

(ii) Is located in a building constructed in the 1920s as an automobile factory;

(iii) Is located in a building remodeled in 2011 as a live music venue open to the public;

(iv) Serves or sells food to patrons; and

(v) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(I) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located in the historic Elliston Place neighborhood;

(ii) Is located approximately three (3) blocks from a private university and approximately one (1) block from a nonprofit hospital;

(iii) Serves or sells food to patrons;

(iv) Was opened to the public in 1971 as a live music venue;

(v) Has a stage that is four feet (4′) high and has an indoor balcony; and

(vi) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(J) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located on 8th Avenue approximately one (1) block from Interstate 65;

(ii) Is a live music venue that opened to the public in 2001;

(iii) Is located beneath an independent and nationally acclaimed record store;

(iv) Serves or sells food to patrons;

(v) Is approximately one thousand eight hundred square feet (1,800 sq. ft.); and

(vi) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(K) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located on Forrest Avenue across from a branch of a public library;

(ii) Is a live music venue that promotes local artists that opened to the public in 2003;

(iii) Serves or sells food to patrons;

(iv) Is approximately two thousand seven hundred square feet (2,700 sq. ft.) and has an enclosed exterior patio; and

(v) Is located within a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(L) "Urban park center" also includes a facility or designated area possessing each of the following characteristics:

(i) Is located on First Avenue South;

(ii) Is owned, operated, or leased by a governmental entity;

(iii) Is a facility or designated area designed and used for the presentation of live outdoor music and other events and includes retail sales areas and retail food dispensing outlets, including, but not limited to, restaurant areas to accommodate sales of alcoholic beverages and food; and

(iv) Is located in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census;

(M)(i) "Urban park center" also includes a facility possessing each of the following characteristics:

(a) Is located on a tract or tracts of land having at least fifty (50) contiguous acres;

(b) A state highway is not more than seven hundred fifty feet (750′) from the nearest property line;

(c) A commercial railroad track is not more than seven hundred fifty feet (750′) from the nearest property line;

(d) Is adjacent to a municipal park having over one thousand nine hundred (1,900) acres;

(e) Has an art museum that was originally constructed prior to 1935 as a private residence;

(f) Has exterior gardens with a stream or streams, pools, fountains, and a stone grotto;

(g) Has a woodland sculpture trail that is over one (1) mile in length;

(h) Is leased or owned by a not-for-profit corporation that qualifies as tax exempt under the Internal Revenue Code § 501(c)(3), (26 U.S.C. § 501(c)(3)); and

(i) Is located within a county having a metropolitan form of government and a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(ii) An urban park center licensed under this subdivision (39)(M) shall have the privilege of granting a franchise pursuant to a written contract for a period of not less than one (1) year for the provision of food or beverage, including alcoholic beverages, on the premises of the urban park center, and the holder of such franchise shall be disclosed to the commission consistent with the disclosures made by the licensee and shall also be considered an urban park center under this subdivision (39)(M). The premises of an urban park center licensed under this subdivision (39)(M) shall include all enclosed and outdoor areas of the

property described in this subdivision (39)(M);

(N)(i) "Urban park center" also includes a commercially operated facility having all of the following characteristics:

(a) The facility is located on approximately one and seven-tenths (1.7) acres of land and has approximately thirty-eight thousand one hundred thirty-five square feet (38,135 sq. ft.) of interior space;

(b) The facility is located no more than ten thousand one hundred feet (10,100′) from a federal interstate highway and less than three thousand two hundred feet (3,200′) west of a commercial railroad track. The structure must be not less than two hundred seventy feet (270′) and not more than three hundred feet (300′) above sea level. The structure must have been originally constructed in 2017;

(c) The facility is located on a property that is adjacent to the intersection of Madison Avenue and Cooper Street;

(d) The property that the facility is located on must have previously housed a structure used as a hotel business that was demolished in 2015;

(e) The facility must be approximately one thousand six hundred eighty feet (1,680′) to the south of a public park located on approximately three hundred forty-two (342) acres and that has a zoo that is accredited by the Association of Zoos and Aquariums that is open to the public;

(f) The facility consists of at least five (5) studio spaces in which live dance is performed, rehearsed, and instructed;

(g) The facility is operated by a not-for-profit corporation that qualifies as tax exempt under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), and such facility or designated area is not a religious organization or a secondary or elementary school; and

(h) The facility is located in a county with a charter form of government having a population of not less than nine hundred thousand (900,000), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (39)(N) shall mean any or all of the property that constitutes the facility, including all enclosed and outdoor areas of the property. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The entire designated premises shall be covered under one (1) license issued under this subdivision (39)(N);

(iii) Notwithstanding chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (39)(N) shall mean, for beer permitting purposes, any or all of the property that constitutes the facility, including all enclosed and outdoor areas of the property. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. The entire designated premises shall be covered under one (1) beer permit issued under chapter 5 of this title; and

(iv) An urban park center licensed under this subdivision (39)(N) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of such franchise shall also be considered an urban park center

under this subdivision (39)(N);

(O) "Urban park center" also means:

(i) A commercially operated facility having all of the following characteristics:

(a) The facility is located on land that is between one and one-half (1½) acres and that is adjacent to land owned by the electric power board of a county with a metropolitan form of government;

(b) The facility has at least two (2) permanent structures constructed before 1978 and at least twenty-five thousand square feet (25,000 sq. ft.) of climate controlled space;

(c) The facility formerly housed a custom car design business that had been serving the automotive community since 1968;

(d) The facility is located in a county with a metropolitan form of government having a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(e) The facility is approximately five thousand ninety feet (5,090′) to the northeast of a federal interstate highway;

(f) The facility is approximately five thousand nine hundred sixty feet (5,960′) to the northwest of a navigable waterway; and

(g) The facility is approximately three hundred fifty feet (350′) to the southwest from the main building of a high school that was originally constructed before 1933;

(ii) The premises of any facility described under this subdivision (39)(O) means any or all of the property that constitutes the facility, including all buildings and outdoor areas between and around those buildings. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. An urban park center, as described in subdivision (39)(O)(i), may grant a franchise to one (1) or more entities authorizing such an entity to provide food or beverages, including alcoholic beverages, on its premises. A franchisee is deemed to be an urban park center under this subdivision (39)(O) and shall apply for and hold a license under this subdivision (39)(O). The commission shall enforce chapter 4 of this title against each franchisee as a licensee under this subdivision (39)(O) and shall not cite, penalize, or take any other adverse action against a franchisee for any violation committed by another franchisee on the licensed premises. There is a rebuttable presumption of liability for a specific franchisee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the franchisee, the commission may determine which franchisee to cite for an underage sale. If the commission is unable to determine which franchisee committed the violation after conducting a reasonable investigation, the commission may issue a citation to one (1) or more franchisees that share the common space where the violation occurred;

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility described under this subdivision (39)(O) means, for the purpose of obtaining a beer permit, any or all of the property that constitutes the facility, including all buildings and outdoor areas between and around those buildings. The beer permittee

shall designate the premises to be licensed by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing. An urban park center, as described in subdivision (39)(O)(i), may grant a franchise to one (1) or more entities authorizing such an entity to provide food or beverages, including beer, on its premises. A franchisee is deemed to be an urban park center under this subdivision (39)(O) and shall apply for and hold a beer permit. The beer board shall enforce chapter 5 of this title against each franchisee as a beer permittee and shall not cite, penalize, or take any other adverse action against a franchisee for any violation committed by another franchisee on the licensed premises. There is a rebuttable presumption of liability for a specific franchisee for any underage sale based on the specific type of glass or the brand on the cup provided to the minor. In the absence of a glass or cup identifying the franchisee, the beer board may determine which franchisee to cite for an underage sale. If the beer board is unable to determine which franchisee committed the violation after conducting a reasonable investigation, the beer board may issue a citation to one (1) or more franchisees that share the common space where the violation occurred; and

(iv) The licensee described in subdivision (39)(O)(i) and any franchisee licensed under this subdivision (39)(O) may store beer and alcoholic beverages in a central storage location in the facility. Each licensee shall store its inventory of beer and alcoholic beverages in a separately locked cage or other storage area;

(P)(i) "Urban park center" also means a facility or designated area having all of the following characteristics:

(a) The easternmost corner of the structure that houses the facility is approximately one thousand four hundred feet (1,400′) southwest of a public park that is adjacent to a navigable waterway;

(b) The easternmost corner of the structure that houses the facility is approximately one thousand one hundred feet (1,100′) southeast of a public park that is adjacent to a public library constructed in 2001;

(c) The easternmost corner of the structure that houses the facility is approximately five hundred feet (500′) northwest of a public park that contains a walkway recognizing professionals in the music industry;

(d) The easternmost corner of the structure that houses the facility is approximately one thousand five hundred feet (1,500′) southwest of a railway station providing commuter rail service that employs standard gauge locomotives and coaches;

(e) The property that houses the facility is across a public street from a live performance venue that was originally constructed in 1892 as a religious facility;

(f) The property that houses the facility is adjacent to a facility originally constructed in 1925 that houses the Grand Lodge of Free and Accepted Masons of Tennessee;

(g) The facility is located in a mixed used development located at the intersection of a federal highway and a municipal street;

(h) The facility is owned, operated, or leased by a bona fide charitable or nonprofit organization;

(i) The facility occupies no less than fifty thousand square feet (50,000 sq. ft.) of commercial space used as a museum that offers

informational and educational programming to the community, features historical exhibits, live and pre-recorded music, and may be utilized for public and private occasions, weddings, community meetings, corporate functions, and other events;

(j) Does not discriminate against any patron on the basis of age, gender, race, religion, or national origin; and

(k) The facility is located in a county with a metropolitan form of government having a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (39)(P) means any or all of the property that constitutes the facility. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing;

(iii) Notwithstanding any provision of chapter 5 of this title to the contrary, the premises of any facility licensed under this subdivision (39)(P) means for beer permitting purposes any or all of the property that constitutes the facility. The beer permittee shall designate the premises to be permitted by the local beer board by filing a drawing of the premises, which may be amended by the beer permittee filing a new drawing; and

(iv) An urban park center licensed under this subdivision (39)(P) shall have the privilege of granting a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of the franchise is deemed to be an urban park center under this subdivision (39)(P);

(Q)(i) "Urban park center" also includes a facility possessing each of the following characteristics:

(a) Is owned, operated, or leased by a municipal or county government, or any agency or commission thereof;

(b) Has an outdoor fixed-structure stage utilized as a performance venue;

(c) Provides or leases facilities for concerts, plays, and programs of cultural, civic, and educational interest; and

(d) Is located in a municipality that has authorized the sale of alcoholic beverages for consumption on the premises, in a referendum in the manner prescribed by § 57-3-106, and that has a population of not less than four thousand fifty (4,050) and not more than four thousand fifty-nine (4,059), according to the 2010 federal census and any subsequent federal census; and

(ii) This subdivision (39)(Q) only applies in a city with a population of not less than four thousand fifty (4,050) and not more than four thousand fifty-nine (4,059), according to the 2010 federal census and any subsequent federal census upon the adoption of an ordinance by a two-thirds (2/3) vote of its governing body;

(R)(i) "Urban park center" also means a facility possessing each of the following characteristics:

(a) Provides or leases facilities for flea markets, fairs, exposition events, consumer shows, indoor and outdoor sports, meetings, and banquets;

(b) Has a paved motorsports racetrack that is at least one-half (½) mile in length with banking in the turns of eighteen (18) degrees;

(c) Is located on a tract of land having at least one hundred twenty-eight (128) acres;

(d) Has a one (1) acre dog park and other green space that is used for parking, public recreation, and events; and

(e) Is owned by, and located in, a county having a metropolitan form of government and a population of not less than six hundred thousand (600,000), according to the 2010 federal census or any subsequent federal census;

(ii) The premises of any facility licensed under this subdivision (39)(R) means any or all of the property that constitutes the facility, including all enclosed and outdoor areas of the property. The licensee shall designate the premises to be licensed by the commission by filing a drawing of the premises, which may be amended by the licensee filing a new drawing. The designated premises may be covered under multiple licenses issued under this subdivision (39)(R) for individual facilities within the urban park center;

(iii) An urban park center licensed under this subdivision (39)(R) may grant a franchise for the provision of food or beverage, including alcoholic beverages, on its premises, and the holder of such franchise is also considered an urban park center under this subdivision (39)(R); and

(iv) An urban park center licensed under this subdivision (39)(R) shall provide a report to the commission, on or before October 1 each year, that details the gross revenue the urban park center earned from the sale of alcoholic beverages and the amount retained by, or paid to, any franchisee of the urban park center for the sale of alcoholic beverages;

(40) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine; and

(41)(A) "Zoological institution" means a facility which contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is owned, operated, or leased by a municipal or county government;

(ii) The zoo is at least fifty (50) years old; and

(iii) The zoo is located in a county having a population in excess of seven hundred thousand (700,000), according to the 1980 federal census or any subsequent federal census.

(B) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property leased by a county having a metropolitan form of government and has been opened to the public on

that property at least since 1997;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census;

(C) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1937;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred seven thousand eight hundred (307,800) nor more than three hundred seven thousand nine hundred (307,900), according to the 2000 federal census or any subsequent federal census; and

(D) "Zoological institution" means a facility that contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(i) The zoo is operated on property owned by a city and has been opened to the public on that property at least since 1948;

(ii) The zoo has been accredited by and maintains the accreditation of the Association of Zoos and Aquariums (AZA); and

(iii) The zoo is located in a county having a population of not less than three hundred eighty two thousand (382,000) nor more than three hundred eighty two thousand one hundred (382,100), according to the 2000 federal census or any subsequent federal census.

57-4-202. Revocation or suspension of permits — Pilot project concerning local and municipal beer boards.

(a) The commission shall have authority to revoke or suspend any permit granted herein for the violations of any applicable provision of this chapter, and any person aggrieved by the action of this commission in revoking or suspending a permit, or in refusing to grant a permit, may have such action reviewed as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b)(1) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, if, pursuant to § 57-5-108(n), a local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (d), sends a certified letter, return receipt requested to the executive director of the alcoholic beverage commission providing notice that the beer board has suspended or revoked the permit of an establishment for a violation of chapter 5 of this title, upon receipt of the certified letter, the executive director of the alcoholic beverage commission shall:

(A) Schedule a show-cause hearing for the next regularly scheduled meeting of the commission to be held at least fourteen (14) days following

the date the executive director receives the certified letter to provide an opportunity for the licensee to appear and show cause why the license to sell alcoholic beverages on the premises should not be suspended or revoked for violations of this chapter based on actions taken by the beer board pursuant to § 57-5-108(n); and

(B) Notify the individual or business entity, which is listed as the licensee at the same location where the beer permit had been suspended or revoked, of the date and time of the show-cause hearing.

(2) If the alcoholic beverage commission finds that a sufficient violation or violations of this chapter have occurred at such location, then the commission shall suspend or revoke the license of the establishment to the same extent and at least for the same period of time as the beer board has suspended or revoked the permit of the establishment pursuant to § 57-5-108(n).

(3) If the licensee fails to appear or decides to surrender the license to the alcoholic beverage commission in lieu of appearing at the show-cause hearing, the license shall be suspended or revoked by the commission, and no license to sell alcoholic beverages on the premises shall be issued by the commission to any person for the location where the beer board suspended or revoked the license or permit pursuant to § 57-5-108(n) for the period of time included in the decision of the beer board.

(4) Notwithstanding § 57-1-201(b)(1), the alcoholic beverage commission shall not have the authority to and shall not issue a fine in lieu of suspending or revoking the license of an establishment whose license had been suspended or revoked by the beer board pursuant to § 57-5-108(n).

(5) The decision of the alcoholic beverage commission is final, and any party aggrieved thereby may appeal the decision of the commission in accordance with the Uniform Administrative Procedures Act.

(c)(1)(A) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, when the alcoholic beverage commission suspends the license to sell alcoholic beverages on the premises at any establishment within any county included within subsection (d), for any violation or violations, as defined in this chapter, the commission is authorized to notify the local or municipal beer board responsible for controlling the sale of beer or malt beverages within such county by certified mail, return receipt requested, of the action taken by the commission. Such notice shall include the record of evidence and the determination made by the alcohol beverage commission in suspending or revoking the license.

(B) Upon receipt of such notice, the local or municipal beer board shall take the actions required pursuant to § 57-5-108(o) with respect to violations as defined in chapter 5 of this title related to the permit for the sale of beer or malt beverages for consumption on the premises at the location where the violation of this chapter occurred.

(2) The suspension or revocation decision of the commission made pursuant to subdivision (c)(1)(A) is final, and any party aggrieved thereby may appeal the decision of the commission in accordance with the Uniform Administrative Procedures Act.

(d) The pilot project established by subsections (b) and (c) shall only apply in counties having a population, according to the 2010 federal census or any subsequent federal census, of:

not less than	nor more than
6,800	6,900
19,100	19,150
22,600	22,675
32,200	32,300
35,600	35,700
51,400	51,500
56,800	56,900
336,400	336,500
432,200	432,300

(e) [Deleted by 2020 amendment.]

57-4-306. Distribution of collections.

(a) All gross receipt taxes collected under § 57-4-301(c) shall be distributed by the commissioner of revenue as follows:

(1) Fifty percent (50%) to the general fund to be earmarked for education purposes; and

(2) The other fifty percent (50%) to be distributed to local political subdivisions as follows:

(A) Collections for privileges exercised in an incorporated municipality shall be distributed by the commissioner to the city recorder; and

(B) Collections for privileges exercised in an unincorporated area of the county shall be distributed by the commissioner to the county trustee.

(b) The proceeds received by a local political subdivision pursuant to subdivision (a)(2) must be distributed by the local political subdivision in the following manner:

(1) One-half (½) of the proceeds must be distributed as follows:

(A) If the county school system is the only LEA in the county, then to the county trustee for the county school system from the collection of taxes in the county or any city exercising the privilege authorized under § 57-4-301(c);

(B) If a city exercises the privilege authorized under § 57-4-301(c) and operates a kindergarten through grade twelve (K-12) school system, then to the city recorder, who shall retain the collections for the city school system;

(C) If a city exercises the privilege authorized under § 57-4-301(c) and operates a city school system that is not a kindergarten through grade twelve (K-12) school system, then to the city recorder:

(i) In the amount the percentage that the prior year's average daily attendance (ADA) of the students in the city school system is to the prior year's ADA of public school students residing in the city who attend either the city school system or the county school system with the remaining amount distributed to the county trustee for the county school system, if the city lies entirely in a single county; or

(ii) In the amount the percentage that the prior year's ADA of the students in the city school system is to the prior year's ADA of public school students residing in the city who attend either the city school system or a county school system with the remaining amount divided between the counties based on where the tax was collected and distributed to the county trustees for the county school systems, if the city lies

within two (2) or more counties;

(D) Notwithstanding § 49-3-315, if a city exercises the privilege authorized under § 57-4-301(c), but does not operate a city school system, then to the county trustee for the county school system;

(E) If a special school district lies, in whole or in part, within a city that exercises the privilege authorized under § 57-4-301(c), then to the appropriate official acting for the special school district in the amount the percentage the ADA of public school students residing in the city and attending the special school district is to the total ADA of city public school students who attend either the special school district or the county school system with any remaining amount distributed to the county trustee for the county school system;

(F) Notwithstanding § 49-3-315, if a county exercises the privilege authorized under § 57-4-301(c) and one (1) or more city school systems operate within the county, then to the county trustee for the county school system any tax revenues collected outside the boundaries of cities exercising the privilege authorized under § 57-4-301(c) that have city school systems; or

(G) If a city that lies in two (2) or more counties exercises the privilege authorized under § 57-4-301(c) but does not operate a city school system, then tax revenues collected in the city must be divided between the counties based on where the tax was collected and distributed to the county trustees for the county school systems;

(2) The other one-half (½) of the proceeds must be distributed as follows:

(A) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(B) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected; and

(3) As used in subdivision (b)(1), "average daily attendance" or "ADA" means:

(A) If the school system was in operation during the prior school year, the aggregate days' attendance of the school system during the prior school year divided by the number of days school was in session during the prior school year; or

(B) If the school system was not in operation during the prior school year, then the estimated expected attendance of the school system for the current school year as reported to the department of education.

(c) [Deleted by 2020 amendment.]

(d) Notwithstanding subdivision (a)(2), the fifty percent (50%) of the gross receipt taxes allocated to local political subdivisions by subdivision (a)(2) and collected in a municipality which is a premier tourist resort shall be distributed to and expended by such municipality for schools in such municipality.

(e) By August 1, 2014, every city or county that exercises the privilege authorized under § 57-4-301(c) shall provide written notice to each school system operating within its jurisdiction. This notice shall contain a statement that the local political subdivision exercises the privilege authorized under § 57-4-301(c), a statement that students within the jurisdiction attend a school or schools operated by the school system, a statement that the school system is authorized to receive a portion of the revenues collected, and a reference to this part. A city or county that, subsequent to July 1, 2014, elects to exercise the privilege authorized under § 57-4-301(c), shall comply with the notice provisions of this subsection (e) within thirty (30) days of the effective

date of the referendum.

(f) If the local political subdivision fails to remit the proceeds to the appropriate school fund, system, or systems as required under subsection (b) within sixty (60) days of receipt from the commissioner, then the aggrieved local school board shall notify the comptroller of the treasury who shall deliver by certified mail a written notice of such failure to the local political subdivision within five (5) business days of notice of the failure.

(g) In the event the local political subdivision fails to remit the proceeds within thirty (30) days of the receipt of such notice, the comptroller of the treasury shall direct the commissioner to withhold future distributions of proceeds to the local political subdivision authorized under subsection (b) until a final determination is made pursuant to subsection (h).

(h) Upon the commissioner withholding distributions of proceeds as authorized under subsection (g), an aggrieved local school board shall have the authority to pursue equitable relief against the local political subdivision in the chancery court; provided, however, that in the event that the state is a party or becomes a party to the suit, then such suit shall be filed or transferred to the chancery court of Davidson County. Upon receipt of a copy of the final judgment of the court, the commissioner shall distribute all withheld proceeds to the local political subdivision, which shall remit such proceeds to the aggrieved party pursuant to the judgment. If the amount of the judgment is not satisfied by the withheld proceeds, then the local political subdivision shall be solely responsible for remitting future proceeds to the aggrieved party pursuant to the judgment.

(i)(1) Subsections (a)-(h) shall not apply in counties having a population, according to the 2010 federal census or any subsequent federal census of:

not less than	nor more than
336,400	336,500
98,900	99,000

In such counties, all gross receipt taxes collected under § 57-4-301(c) shall be distributed by the commissioner of revenue as follows:

(A) Fifty percent (50%) to the general fund to be earmarked for education purposes; and

(B) The other fifty percent (50%) to be distributed to local political subdivisions as follows:

(i) Collections for privileges exercised in an incorporated municipality shall be distributed by the commissioner to the city recorder; and

(ii) Collections for privileges exercised in an unincorporated area of the county shall be distributed by the commissioner to the county trustee.

(2) The proceeds received in each local political subdivision pursuant to subdivision (i)(1)(B) shall be distributed by the local political subdivision in the following manner:

(A) One-half (½) of the proceeds shall be expended and distributed in the same manner as the county property tax for schools is expended and distributed; any proceeds expended and distributed to municipalities which do not operate their own school systems separate from the county are required to remit one-half (½) of their proceeds of the gross receipts liquor-by-the-drink tax to the county school fund; and

(B) The other one-half (½) of the proceeds shall be distributed as follows:

(i) Collections of gross receipts collected in unincorporated areas, to the county general fund; and

(ii) Collections of gross receipts in incorporated cities and towns, to the city or town wherein such tax is collected.

(j) **[Effective until July 1, 2023.]**

(1) Notwithstanding this section to the contrary, fifty percent (50%) of the event revenue from gross receipt taxes collected under § 57-4-301(c) for privileges exercised in an event venue during an event period that would not otherwise be earmarked for educational purposes shall be deposited in the event tourism fund.

(2) One and one hundred twenty-five thousandths percent (1.125%) of funds deposited in the event tourism fund shall be retained by the department of finance and administration to be used for costs associated with administering the fund and this section. The department of finance and administration shall cause to be paid to the department of revenue an amount to offset the department's costs in administering this section.

(3) As used in this subsection (j):

(A) "Event period" has the same meaning as defined in § 67-6-105;

(B) "Event revenue" has the same meaning as defined in § 67-6-105; and

(C) "Event venue" has the same meaning as defined in § 67-6-105.

57-5-103. Permit from county or city required — Online sale for curbside pickup — Classification of counties — Purchases of beer "for resale."

(a)(1) It is unlawful to operate any business engaged in the sale, distribution, manufacture, or storage of beer without a permit issued by the county or city where such business is located under the authority herein delegated to counties and cities.

(2) Permits shall be issued to the owner of the business or other entity responsible for the premises for which the permit is sought, whether a person, firm, corporation, joint-stock company, syndicate, association, or local governmental entity where the governing body has authorized such sales of beer.

(3) A permit shall be valid:

(A) Only for the owner to whom the permit is issued and cannot be transferred to another owner. If the owner is a corporation, a change in ownership shall occur when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner;

(B) Only for a single location, except as provided in subdivision (a)(4), and cannot be transferred to another location. A permit shall be valid for all decks, patios and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business; and

(C) Only for a business operating under the name identified in the permit application.

(4) Where an owner operates two (2) or more restaurants or other businesses within the same building, the owner may in the owner's discre-

tion operate some or all such businesses pursuant to the same permit.

(5) A business can sell beer for both on-premises and off-premises consumption at the same location pursuant to one (1) permit.

(6) A permit holder must return a permit to the county or city that issued it within fifteen (15) days of termination of the business, change in ownership, relocation of the business or change of the business's name; provided, that notwithstanding the failure to return a beer permit, a permit shall expire on termination of the business, change in ownership, relocation of the business or change of the business's name.

(7) In the case of beer wholesalers, as defined in § 57-6-102, no county or city shall require a permit from a wholesaler unless such wholesaler operates a warehouse in such county or city.

(8) Any person, firm, corporation, joint-stock company, syndicate, or association engaged in the sale, distribution, or manufacture of beer without the permit required by this part commits a Class A misdemeanor.

(9) Nothing in this chapter shall be construed as granting counties or cities the authority to require the periodic renewal of beer permits.

(10) After July 1, 2015, a city or county shall not issue a permit under this chapter unless the applicant has been a citizen or lawful resident of the United States for not less than one (1) year immediately preceding the date upon which the application is made to the city or county.

(11) A permit holder may sell beer online for curbside pickup at the permit holder's location. Purchased beer must be delivered to the customer's vehicle, and the vehicle must be located within a paved parking area adjacent to the place of business. Beer sold through an online curbside pickup service must be pulled from the inventory located at the permitted location of the retailer providing the service and may not be pulled from the inventory of another retailer or permitted location. Any employee bringing beer to a vehicle for online curbside pickup must confirm the individual receiving the beer is at least twenty-one (21) years of age.

(b) For the purpose of licensing, regulating and controlling the transportation, storage, sale, distribution, possession, receipt and/or manufacture of beer pursuant to this chapter, the counties of the state shall be classified in two (2) categories, one (1) of which is hereby designated Class A counties consisting of those counties not governed by metropolitan governments as defined in § 7-2-101, and the other category is hereby designated Class B counties consisting of those counties governed by metropolitan governments as defined in § 7-2-101.

(c) When either "county" or "counties" is used in this chapter, it means counties generally without reference to the classification of counties provided for in this section, and the use of "county" or "counties" shall cause the provision limited by the word "county" or "counties" to apply equally to Class A counties and to Class B counties. When "county legislative body" or "county legislative bodies" is used in this chapter, it means "metropolitan council" or "metropolitan councils" when applicable to Class B counties.

(d)(1) It is unlawful for any person to sell, distribute or manufacture beer without having a valid certificate indicating that purchases of beer by that person are "for resale" as that term is used in § 67-6-102(75)(A).

(2) Within ten (10) days after being issued a permit to sell, distribute or manufacture beer, a person shall file with the county or city issuing the permit and with each person from whom the person buys beer a copy of a

valid certificate indicating that the purchases of beer are "for resale" as that term is used in § 67-6-102(75)(A), and shall subsequently maintain at all times a valid resale certificate on file with the county or city issuing the permit and with each person from whom the person buys beer.

(e) A city or county is authorized to seek criminal history background or fingerprint checks on applicants. Criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The Tennessee bureau of investigation is authorized to assess fees for the searches in accordance with the fee schedule established by the bureaus.

(f) Notwithstanding any law to the contrary, no city or county shall deny the issuance or renewal of a permit upon the basis that the lease between the business and its municipal landlord includes a provision whereby gross sales, which may include or exclude liquor sales, are considered in the determination of a percentage rent or other rent calculation provision.

58-3-114. Suicide prevention training. [Effective on January 1, 2021.]

The department of veterans services shall provide training in suicide prevention to the employees of the department who directly interact with veterans. The training provided pursuant to this section must equip employees with the ability to recognize the warning signs of a potential suicide. The department may utilize resources from nonprofit organizations to provide the training required by this section.

61-1-105. Execution, filing, and recording of statements.

(a) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state in the manner and form prescribed by the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located, or transactions that occur, in this state.

(b) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office of the register of deeds has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least two (2) partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

61-1-1001. Application process — Registered limited liability partnership.

(a) To become a registered limited liability partnership, a partnership must file with the secretary of state an application stating the name of the partnership; the address of its principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office if the partnership's principal office is not located in this state; the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership is required to maintain; a brief statement of the business in which the partnership engages; other matters that the partnership determines to include; other information as required by the secretary of state; and that the partnership is applying for status as a registered limited liability partnership.

(b) The application must be executed by one (1) or more partners authorized to execute an application. The registration of a general partnership or limited partnership as a registered limited liability partnership must be approved by a majority of the partners or as otherwise provided in the partnership agreement, or in the case of a limited partnership, by all of the partners, notwithstanding any provision to the contrary in the limited partnership agreement, unless such limited partnership was formed after July 1, 1995, and the original agreement of limited partnership provided for a conversion or a procedure of conversion of the limited partnership to a registered limited liability partnership without the consent of all partners, in which case the approval or procedure under the original limited partnership agreement shall be sufficient.

(c) The application must be accompanied by a fee of fifty dollars ($50.00) for each partner on the date of filing, subject to a minimum of two hundred fifty dollars ($250) and a maximum of two thousand five hundred dollars ($2,500).

(d) The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed application with the required fee.

(e) A partnership registered under this section shall pay, in each year following the year in which its application is filed, on a date specified by the secretary of state, an annual fee of fifty dollars ($50.00) for each partner on the date of filing, subject to a minimum of two hundred fifty dollars ($250) and a maximum of two thousand five hundred dollars ($2,500). The fee must be accompanied by a notice, on a form provided by the secretary of state, of any material changes in the information contained in the partnership's application for registration.

(f) A partnership becomes a registered limited liability partnership at the time of the filing of the application, or at a later time as is specified in the application, if there has been substantial compliance with this chapter. Registration remains effective until:

(1) The secretary of state files a written withdrawal statement or other similar document:

(A) Executed and submitted by one (1) or more partners authorized to execute a withdrawal statement, which shall be accompanied by a fee of twenty dollars ($20.00); and

(B) Accompanied by a tax clearance for termination confirmation of good standing by the department of revenue; or withdrawal relative to

such registered limited liability partnership; or

(2) Sixty (60) days after the secretary of state mails to the partnership at its last address of record a notice that the partnership has failed to make timely payment of the annual fee specified in subsection (e), unless the fee is paid within the sixty-day period.

(g) The status of a partnership as a registered limited liability partnership and the liability of the partners of the partnership is not affected by:

(1) Errors in the information stated in an application under subsection (a) or a notice under subsection (e); or

(2) Changes after the filing of such an application or notice in the information stated in the application or notice.

(h) The secretary of state may require specific forms and filing methods for documents filed under this chapter.

(i) A partnership that registers as a registered limited liability partnership is not deemed to have dissolved as a result of such registration and is for all purposes the same partnership that existed before the registration and continues to be a partnership under the laws of this state.

(j) If a registered limited liability partnership dissolves and the business of the partnership is continued without winding up or liquidation of the partnership affairs, the partnership that continues the business of the dissolved partnership is a registered limited liability partnership and is not required to file a new application and is deemed to have filed any documents required or permitted under this chapter which were filed by the predecessor partnership.

(k) If a registered limited liability partnership dissolves and the business of the partnership is not continued, then during the wind up or liquidation period the partners of such partnership shall continue to be subject to § 61-1-306(c)-(f).

(*l*) lf a partnership registers as a registered limited liability partnership, a partner (in the case of a general partnership), or a general partner (in the case of a limited partnership) remains liable for an obligation incurred by the partnership before the partnership registered as a registered limited liability partnership. The partner's liability for obligations and liabilities of the registered limited liability partnership incurred after registration is as provided in § 61-1-306.

(m) The fact that an application or notice is on file in the office of the secretary of state is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the application or notice.

(n) A registered limited liability partnership may amend its registration by filing with the secretary of state a statement of amendment containing the name of the partnership, the address of its principal office or registered office in this state, and the amendment. The statement of amendment shall be accompanied by a fee of twenty dollars ($20.00).

(o) The secretary of state may furnish, upon request and payment of a fee of twenty dollars ($20.00), a certificate of good standing indicating confirmation that a registered limited liability partnership is registered active and in good standing.

61-2-201. Execution and filing of certificate of limited partnership.

(a) In order to form a limited partnership, one (1) or more persons, but not less than all of the general partners, must execute a certificate of limited

partnership. A certificate of limited partnership must be filed with the secretary of state, in the manner and form prescribed by the secretary of state, and set forth:

(1) The name of the limited partnership;

(2) The street address and zip code of the limited partnership's initial registered office, the county in which the office is located, and the name of its initial registered agent at that office as required to be maintained by § 61-2-104;

(3) The street address and zip code of the principal office of the limited partnership, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office;

(4) The name and the business, residence, or mailing address of each general partner;

(5) Any other matters not inconsistent with the partnership agreement that the partners determined to include; and

(6) Any additional information required by the secretary of state.

(b) The partnership agreement shall not be filed.

(c) A limited partnership is formed at the time of the filing of the initial certificate of limited partnership with the secretary of state or at any later date or time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. A limited partnership shall have a term of fifty (50) years unless the certificate of limited partnership provides otherwise.

61-2-1101. Requirements generally.

(a) The form and filing of a document must satisfy the requirements of this section, and of all other applicable sections or rules that add to these requirements, to be entitled to filing by the secretary of state.

(b) Parts 1, 2, and 9 of this chapter must require or permit filing the documents with the secretary of state.

(c) The document must contain the information required by parts 1, 2, and 9 of this chapter and any information required by rules promulgated by the secretary of state. The document may contain other information as well.

(d) The document must be capable of being printed in ink in a clear and legible fashion on one (1) side of letter size paper.

(e) The document must be in the English language. A limited partnership's name need not be in English if written in English letters, or Arabic or Roman numerals.

(f) The person executing the document must sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs.

(g) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee, and any corporate tax, license fee, interest, or penalty required by part 12 of this chapter.

(h) The secretary of state may promulgate appropriate rules establishing acceptable methods for execution of any document to be filed with the secretary of state.

(i) All documents submitted to the secretary of state for filing shall contain a statement that makes it clear that the documents are being filed pursuant to the chapter.

61-2-1102. Forms.

The secretary of state may prescribe, and shall furnish upon request, forms for documents required or permitted to be filed by all chapters of this title. If the secretary of state has prescribed a mandatory form for the document, then the document must be in or on the prescribed form or a conformed copy thereof.

61-2-1106. Filing procedure — Refusal — Effect.

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 61-2-1101, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with his name and official title and the date and time of receipt, on such document. After filing a document, the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign limited partnership or its representative in due course. A domestic or foreign limited partnership or its representative may present to the secretary of state an exact or conformed copy of the document presented for filing, together with such document, and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy filed, together with his name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the party filing the original of such document.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign limited partnership or its representative within a reasonable time after the document was received for filing, together with a brief, written explanation of the reason for his refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. His filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document;

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or

(4) Establish that a document purporting to be an exact or conformed copy pursuant to subsection (b) is an exact or conformed copy.

(e) Any limited partnership document that meets the requirements of parts 1, 2, and 9 of this chapter for filing and recording, and all applicable rules, must be received, filed, and recorded by the appropriate office, notwithstanding any contrary requirements found in any other laws of this state.

61-3-206. Filing requirements.

(a) To be filed by the secretary of state pursuant to this chapter, a record must be received by the secretary of state, comply with this chapter, and satisfy the following:

(1) The filing of the record must be required or permitted by this chapter;

(2) The record must be physically delivered in written form unless and to the extent the secretary of state permits or requires electronic delivery of the record;

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English

if written in English letters, or Arabic or Roman numerals;

(4) The record must be signed by a person authorized or required under this chapter to sign the record; and

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this chapter prohibits the disclosure by the secretary of state of information contained in a record delivered to the secretary of state for filing, then the secretary of state must file the record if the record otherwise complies with this chapter but may redact the information.

(c) When a record is delivered to the secretary of state for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the secretary of state or by that law.

(d) The secretary of state may require that a record delivered in written form be accompanied by an exact or conformed copy.

(e) The secretary of state may provide forms for filings required or permitted to be made by this chapter and may, by rule, require their use.

(f) The secretary of state may require that a cover sheet for a filing be on a form prescribed by the secretary of state.

(g) The secretary of state may promulgate appropriate rules establishing acceptable methods for execution of any document to be filed with the secretary of state.

61-3-211. Annual report for secretary of state.

(a) A limited partnership or registered foreign limited partnership shall deliver to the secretary of state for filing an annual report that states:

(1) The name of the limited partnership or foreign limited partnership;

(2) The name of its registered agent in this state;

(3) The street address and zip code of its registered office and the name of its registered agent at that office in this state;

(4) The name of at least one (1) general partner; and

(5) In the case of a foreign limited partnership, its jurisdiction of formation and any alternate name adopted under § 61-3-1006(a).

(b) Information in the annual report must be current as of the date the report is signed by the limited partnership or registered foreign limited partnership.

(c) Every limited partnership and registered foreign limited partnership shall file the annual report with the secretary of state on or before the first day of the fourth month following the close of the limited partnership's or registered foreign limited partnership's fiscal year or upon a date set by rule by the secretary of state.

(d) If an annual report does not contain the information required by this section, the secretary of state must promptly notify the reporting limited partnership or registered foreign limited partnership in a record and return the report for correction.

(e) If an annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is

considered a statement of change under § 61-3-116.

(f) If an annual report contains a street or mailing address for the principal office that differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is considered a statement of change under § 61-3-116.

61-3-1003. Registration.

(a) To register to do business in this state, a foreign limited partnership must submit to the secretary of state:

(1) An original copy executed by a general partner of an application for registration as a foreign limited partnership, setting forth:

(A) The name of the foreign limited partnership and, if different, the name under which the foreign limited partnership proposes to register and do business in this state;

(B) The jurisdiction where organized, the date of the foreign limited partnership's organization and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of the foreign limited partnership's organization;

(C) The street address and zip code of the foreign limited partnership's registered office in this state, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office; the county in which that office is located; and the name of the foreign limited partnership's registered agent at that office;

(D) The street address, including the zip code, of the foreign limited partnership's principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office;

(E) The name and business, residence, or mailing address and zip code of each of the general partners;

(F) The date on which the foreign limited partnership first did, or intends to do, business in this state; and

(G) Any additional information required by the secretary of state;

(2) With the completed application, a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of limited partnership records in the jurisdiction under whose law it is formed. The certificate must not bear a date of more than two (2) months prior to the date the application is filed in this state; and

(3) A fee as set forth in § 61-3-1205.

(b) If the secretary of state determines upon registration that a foreign limited partnership has been doing business in this state for a period of one (1) year or more prior to applying for registration, then the secretary of state must not file the registration until the foreign limited partnership submits a letter of good standing from the department of revenue.

62-5-305. Application for funeral director's license — Apprenticeship.

(a) Every person not previously licensed in this state as a funeral director, desiring to engage in the practice or business of funeral directing, shall make application to the board, along with a nonrefundable fee as set by the board.

(b) The application shall contain the name of the applicant, showing that

the applicant:

(1) Has attained eighteen (18) years of age;

(2) Is a citizen of the United States or an individual enumerated in 8 U.S.C. § 1622(b);

(3) Is of good moral character;

(4) Is properly protected against communicable diseases, either through immunization or education;

(5) Has graduated from a high school or has earned a GED® recognized by a state education department;

(6) Has successfully completed a program of study in funeral service education consisting of no less than thirty (30) semester hours, forty-five (45) quarter hours or the equivalent from a school accredited by the American Board of Funeral Service Education and evidenced by an official transcript; and

(7) Has completed two (2) years of apprenticeship in the presence of and under the direction and supervision of a licensed funeral director. An associate's degree from a college accredited by the American Board of Funeral Service Education may be substituted for one (1) year of apprenticeship.

62-5-310. Licenses to establishments operating before 1969.

(a)(1) [Deleted by 2020 amendment.]

(2) [Deleted by 2020 amendment.]

(3) Any person on February 8, 1951, who was employed as an embalmer by a funeral director in this state, shall be entitled to take the examination prescribed in this chapter upon application to the board, prior to July 1, 1972, notwithstanding any other requirement.

(b) Any person, partnership, firm, association or corporation actively engaged in the operation of a funeral establishment on or before December 31, 1968, shall be granted a license for the operation of a funeral home establishment upon application accompanied by payment of a fifteen dollar ($15.00) fee; provided, that the applicant has complied with every other provision of this chapter and rules and regulations that the board may adopt in pursuance of this chapter.

(c) Any person who on January 1, 1960, held a license granted by authority of this state to engage in the profession of embalming and who is no longer so licensed for the sole reason that the person voluntarily chose not to pay the license renewal fee shall not be required to submit to an examination but shall be entitled to receive a license upon the same terms and conditions as are provided in this chapter for the renewal of licenses of those who are licensed under this chapter; provided, that the person pays all license renewal fees that would have been required from the date the license was allowed to lapse until the date application for renewal pursuant to this subsection (c) is made.

62-5-312. Registration as an apprentice.

(a) When beginning the required apprenticeship, the person shall file an apprentice registration form with the board and shall pay a fee in the amount to be established by the board. The registration shall be valid for a period of three (3) years from the date of registration, or until the registrant has completed the apprenticeship requirements, whichever occurs first.

(b) The apprentice registration form shall contain the name of the regis-

trant, showing that the registrant:

(1) Has attained eighteen (18) years of age;

(2) Is a citizen of the United States or an individual enumerated in 8 U.S.C. § 1622(b);

(3) Is of good moral character;

(4) Has graduated from a high school or has earned a GED® recognized by a state education department; and

(5) Is a bona fide paid employee of an establishment working no less than forty (40) hours per week in the presence of and under the direction and supervision of a licensed funeral director or embalmer.

(c) All persons who are apprentice funeral directors, apprentice embalmers and mortuary school students registered by the board and who are in the process of fulfilling their apprenticeship and educational requirements on or before December 31, 2007, shall not be required to complete the apprenticeship requirements that become effective on January 1, 2008. The apprentices and mortuary school students shall complete all requirements to become licensed by the board as a funeral director or embalmer on or before June 30, 2011.

(d) When beginning the required course of study, the person shall file a student registration form with the board and shall pay a fee in the amount to be established by the board. The registration shall be valid for a period of three (3) years from the date of registration, or until the registrant has completed the apprenticeship requirements, whichever occurs first.

62-6-104. Board.

(a)(1) There is created a state board for licensing contractors, called the "board" in this part, to be appointed by the governor. The board shall be composed of nine (9) members, all of whom shall be residents of this state and at least three (3) of whom shall be actively engaged as residential contractors and shall compose the residential review board to consider and handle all informal conferences pertaining to residential construction, at least two (2) of whom shall be actively engaged as commercial building contractors, at least one (1) of whom shall be actively engaged as a mechanical contractor, at least one (1) of whom shall be actively engaged as an electrical contractor, at least one (1) of whom shall be actively engaged as a highway, railroad or airport contractor, and at least one (1) of whom shall be a person who is not engaged as a contractor in any county of this state and has no commercial or professional association with the residential contracting profession or industry, either directly or indirectly. All board members who are required to be in the business of contracting shall have been actively engaged in the business for a period of no less than ten (10) years immediately preceding their appointment and shall be licensed in the classification in which the member is serving upon the board. There shall be no more than one (1) board member in any specific classification provided in this subdivision (a)(1) residing within any one (1) grand division of this state and no more than three (3) board members residing in any one (1) grand division. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(2) The governor shall appoint the residential contractor members from lists of qualified persons submitted by interested home builder groups

including, but not limited to, the Home Builders Association of Tennessee, Inc. Appointments made pursuant to this subdivision (a)(2) shall be made by the governor following the expiration of the respective terms of the members serving on the board as of July 1, 2014. The governor shall consult with interested home builder groups to determine qualified persons to fill positions on the board.

(b)(1) Any member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year shall be removed as a member of the board.

(2) The executive director of the board shall promptly notify, or cause to be notified, the appointing authority of any member who fails to satisfy the attendance requirement as prescribed in subdivision (b)(1).

(c) All subsequent appointments of successor members shall be made by the governor at the expiration of the respective terms of the members in the way and manner provided by this part.

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

(A) Any person registered as a lobbyist pursuant to the registration requirements of title 3, chapter 6 who is subsequently appointed or otherwise named as a member of the board shall terminate all employment and business association as a lobbyist with any entity whose business endeavors or professional activities are regulated by the board, prior to serving as a member of the board. This subdivision (d)(1)(A) shall apply to all persons appointed or otherwise named to the board after July 1, 2010;

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

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

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

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

62-18-210. [Repealed.]

62-18-211. Duties of commissioner.

In addition to other powers and duties specified in this chapter, the commissioner shall:

(1) Promulgate rules and regulations necessary to carry out this part in compliance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Design and adopt an official seal for licensed professional soil scientists to be applied to all drawings, reports, maps, documents, or other papers involving practicing soil science as defined in this part, that have been prepared or approved by a licensed soil scientist or a subordinate employee under such soil scientist's direction for the use of or for delivery to any person or for public record within this state. Such drawings, reports, maps, documents, or other papers shall be signed by the licensee and impressed with the licensee's seal. Such acts shall indicate a licensee's responsibility for such drawings, reports, or other papers or documents;

(3) Set the amount of all fees required by this part;

(4) Promulgate rules requiring continuing education;

(5) Identify and approve continuing education programs for persons regulated by the commissioner under this part;

(6) Receive, administer, and account for all moneys derived under this part and transfer such funds to the state treasurer who shall keep such moneys in a fund, herein established, to be known as the "geologist and soil scientist regulatory fund". The fund shall be used to defray expenses incurred in the administration of the Geologist Licensure Act of 2007, compiled in chapter 36, part 1 of this title, and this chapter;

(7) Prepare, administer, and grade a nationally recognized soil scientist examination for the purposes of licensure as required by this part; and

(8) Have such other powers and duties as are necessary to effectuate this part.

62-18-213. Confidential information.

Except as otherwise provided by this part, the following shall be treated as confidential and may not be disclosed except by order of a court of competent jurisdiction or by permission of the applicant:

(1) Applications and other personal information submitted by applicants, except to the applicant, the commissioner, department, or its staff; and

(2) Information submitted by a reference concerning an applicant, except to the commissioner, department, or its staff.

62-21-102. Chapter definitions.

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

(1) "Adjuvant" means any substance that, when added to a pesticide, is intended to aid, modify or enhance its effectiveness by its properties of serving as a wetting agent, detergent, spreading agent, synergist, deposit builder, adhesive, surfactant, emulsifying agent, deflocculating agent, water modifier or similar agent, with or without toxic properties of its own, and when sold in a package or container separate from that of the pesticide with

which it is to be used;

(2) "Branch office" means any location other than the principal base of operation from which a pest control firm carries out its pest control activities. The maintenance of personnel and equipment at these locations where pest control activities are carried out constitutes a branch office under this chapter;

(3) "Category" means an area of licensing or certification for which commercial pest control operators or restricted use applicators are qualified;

(4) "Certification" means the authorization by the commissioner to use, supervise the use of, buy or sell restricted use pesticides or to issue a wood destroying insect infestation inspection report;

(5) "Certified applicator" means any individual who is certified by the commissioner as authorized to use, buy, sell or supervise the use of restricted use pesticides;

(6) "Charter" means an instrument issued by the department, authorizing a person, firm or corporation to engage in the business of commercial pest control operations;

(7) "Commercial pest control operator" means a person or business entity who engages in the custom application of pesticides or inspection of real property for the purpose of issuing a wood destroying insect infestation inspection report and who has demonstrated to the satisfaction of the commissioner the person's qualifications to design and direct pest control and inspection operations;

(8) "Commissioner" means the commissioner of agriculture;

(9) "Custom application of pesticides" means the application of pesticides for a fee;

(10) "Department" means the department of agriculture;

(11) "Labeling" means all labels and written, printed or graphic matter accompanying the pesticide or device at any time or to which reference is made on the label and the pesticide must be used consistent with the label;

(12) "Licensee" means any person duly licensed under this chapter;

(13) "Office" means point of headquarters or location of the principal operation of a pest control firm or a point or location where branch offices are supervised;

(14) "Pesticide" means any substance or mixture of substances or chemical intended for defoliating or desiccating plants or for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria, weeds or other forms of plant or animal life the commissioner declares to be a pest. This includes, but is not limited to, insecticides, fungicides, bacteriacides, herbicides, desiccants, defoliants, adjuvants or nematocides;

(15) "Prevention" means the prevention of conditions conducive to termite harborage or activity, or both, by advice of a licensed operator;

(16) "Private applicator" means an individual who uses, supervises the use of or buys any pesticide that is classified for restricted use for purposes of producing an agricultural commodity on property owned or rented by the individual or the individual's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the property of another person;

(17) "Recertification" means the reauthorization every three (3) years by the commissioner to use, supervise the use of, buy or sell restricted use pesticides;

(18) "Registration" means an instrument authorizing a person to act as solicitor, salesperson or agent for a chartered pest control business;

(19) "Restricted use applicator" means a person who uses or supervises the use of, sells or buys restricted use pesticides for any use or for use on any property other than as defined under private applicator or commercial pest control operator;

(20) "Restricted use pesticide" means any pesticide, the efficacy data on which indicates it may have adverse effect on people or the environment, or both;

(21) "Termite warranty without initial chemical treatment" means any agreement entered into between a chartered commercial pest control operator and any other person or entity for the purpose of termite prevention or control for any structure or building, regardless of any initial chemical application for prevention or control to the property;

(22) "Under the direct supervision" means any application or sale of a pesticide by a certified applicator acting under the instructions and control of a private applicator, commercial applicator or commercial pest control operator who is available if and when needed, if the applicator or operator is physically present or in direct communication by conventional means of communication; and

(23) "Wood destroying insect infestation inspection report" means a report written by a chartered commercial pest control operator employing a person licensed in the category of wood destroying organisms. The report shall indicate the presence or absence of visible wood destroying insects and the presence or absence of visible damage caused by the insects and shall be issued after an on-site inspection of the property.

62-21-104. Creation of board — Notification of vacancy — Termination due to vacancy.

(a) A seven-member pest control advisory board is created and established. The board shall consist of the commissioner or the commissioner's designated representative, the director of the division of plant industries, a member of the staff of a university of this state, two (2) licensed commercial pest control operators and two (2) Tennessee citizens who are not associated with the pest control industry.

(b)(1) The governor shall appoint the members of the board to serve four-year terms, and, in the event of a vacancy, the governor shall appoint an interim member to fill the unexpired portion of the previous member's term. If the board incurs a vacancy, it shall notify the appointing authority in writing within ninety (90) days after the vacancy occurs and shall provide a list of qualified persons to be appointed to the board and information regarding the qualified persons that is sufficient for the appointing authority to make an informed decision. All vacancies on the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and sufficient information is provided for the appointing authority to make an informed decision in regard to filling the vacancy. If the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration, the board shall report to the government operations committees of the house of representatives and the senate on why the vacancies have not been filled. If more than

one-half (½) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate; provided, that the board shall wind up its affairs pursuant to § 4-29-112. The board that is terminated pursuant to this subsection (b) shall be reviewed by the evaluation committees pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring or reestablishing the board. This subsection (b) shall only apply if the governor is authorized to make appointments to at least one-half (½) of the positions on the board.

(2) In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(c) With the exception of the commissioner, no proxies nor power to designate a representative to serve in the place of a board member shall be allowed.

(d) The department shall establish by written policy, rule or regulation, provisions relative to conflicts of interest of board members.

62-21-105. Board's advice to commissioner.

The board shall advise the commissioner as to the promulgation of rules, categories of licenses, qualifications of applicants, and examinations for licenses.

62-21-106. Office and branch office requirements — Employees.

(a)(1) Each person applying for or holding a charter shall have, for each office or branch office, a licensed commercial pest control operator for each category of service offered.

(2) The technical service work of each office or branch office shall be under the direct supervision of the licensed operator.

(3) The technical service work shall be performed by employees who meet the qualifications established by rule.

(b)(1) Each person chartered shall be required to have a commercial pest control operator for the main or supervisory office.

(2) Branch offices must be supervised by licensed operators.

(c) No licensed commercial pest control operator shall be permitted to supervise more than one (1) office or branch office. The commercial pest control operator for each office or branch shall be domiciled and resident at or near the office that the operator supervises and shall report to the office the operator supervises on a regular routine work basis.

62-21-112. Examination of license applicants — Fees.

(a) The cost for an initial examination of a license applicant is established by rule pursuant to § 43-1-703 for each category in which examination is requested.

(b)(1) When a license application has been examined and the applicant fails to meet the qualifications for licensure, the applicant may be examined at a subsequent date in accordance with rules promulgated by the commissioner.

Each application for reexamination is accompanied by a reexamination fee established by rule pursuant to § 43-1-703 for each category in which examination is requested.

(2) An applicant shall submit a separate application and reexamination fee each time a reexamination is requested for any category except the category of private pesticide applicator.

62-21-118. Powers and duties of commissioner.

(a) The commissioner has the power and duty to:

(1) Administer this chapter;

(2) Promulgate rules and regulations that are consistent with the requirements of the United States environmental protection agency implementing and supplementing this chapter and provide for its orderly administration;

(3) Issue licenses, collect appropriate fees and issue charters upon application and qualification as provided by this chapter;

(4) Determine requirements for and issue certification and recertification for users of restricted use pesticides;

(5) Promulgate rules and regulations concerning handling and usage of pesticides;

(6) Classify pesticides as to whether of general or restricted use;

(7) Hold hearings and deny, revoke, modify or suspend charters, licenses and certification, and/or impose civil penalties of up to one thousand dollars ($1,000) for each violation;

(8) The commissioner or the commissioner's designee may enter any place during normal business hours where pesticides are used or stored for the purposes of inspection, sampling or observation;

(9) Through rule and regulation require the maintenance or filing of records;

(10) Issue subpoenas for persons and records incidental to any hearing; and

(11) Inspect periodically the operation and conduct of a charter holder, licensee or certificate holder.

(b) The commissioner shall promulgate rules and regulations that may be requested by a two-thirds' (⅔) affirmative vote of the legislative body of any municipal or county government within any county having a population of less than two hundred fifty thousand (250,000), according to the 1990 federal census or any subsequent federal census, that have as their purpose the regulation of the use of pesticides in their specific area of jurisdiction. These regulations must be reasonable and not in conflict with state or federal law and regulations, but for good cause shown may be more stringent than those standards.

62-21-122. [Repealed.]

62-21-123. [Repealed.]

62-21-125. [Repealed.]

62-21-126. [Repealed.]

62-21-127. [Repealed.]

62-35-102. Chapter definitions.

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

(1) "Armed security guard/officer" means a security guard/officer who at any time wears, carries, possesses or has access to a firearm or any facsimile of any firearm that may leave the impression that the person is armed and who works in plainclothes or wears dress of a distinctive design or fashion or dress having any symbol, badge, emblem, insignia or device that identifies or tends to identify the wearer as a security guard/officer;

(2) "Branch manager" means the individual who is immediately responsible for the operation of a branch office;

(3) "Branch office" means any office of a contract security company within this state other than its principal place of business within this state;

(4) "Certified trainer" means any individual certified by the commissioner as qualified to administer and certify to successful completion of the minimum training requirements prescribed by this chapter for a security guard/officer;

(5) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;

(6) "Contract security company" means any person engaging in the business of providing or undertaking to provide a security guard and patrol service on a contractual basis for another person;

(7) "Licensee" means any contract security company licensed in accordance with this chapter;

(8) "Person" means any individual, firm, association, company, partnership, corporation, nonprofit organization, institution or similar entity;

(9) "Principal corporate officer" means the chief executive officer, president, vice president, treasurer, secretary or comptroller, as well as any other responsible officer or executive employee who performs functions for the corporation corresponding to those performed by the chief executive officer, president, vice president, treasurer, secretary or comptroller;

(10) "Proprietary security organization" means any person or department of the organization that employs a security guard/officer solely for the person in an employer/employee relationship;

(11) "Qualifying agent" means a principal corporate officer meeting the qualifications set forth in this chapter for operating a contract security company;

(12) "Qualifying manager" means an individual designated by a proprietary security organization to be responsible for compliance with this chapter on behalf of the organization;

(13) "Registrant" means an individual who holds a valid registration card;

(14) "Registration card" means a pocket card issued by the commissioner evidencing that the holder has met the qualifications required by this chapter to perform the duties of a security guard/officer in this state;

(15) "Security guard/officer" means an individual employed by a contract security company or a proprietary security organization whose primary duty is to perform any function of a security guard and patrol service;

(16) "Security guard and patrol service" means protection of persons or property, or both, from criminal activities, including, but not limited to:

(A) Prevention or detection, or both, of intrusion, unauthorized entry, larceny, vandalism, abuse, fire or trespass on private property;

(B) Prevention, observation or detection of any unauthorized activity on private property;

(C) Enforcement of rules, regulations or local or state laws on private property;

(D) Control, regulation or direction of the flow or movements of the public, whether by vehicle or otherwise on private property; or

(E) Street patrol service;

(17) "Street patrol service" means the utilization of foot patrols, motor patrols or any other means of transportation in public areas or on public thoroughfares in order to serve multiple customers or facilities. "Street patrol service" does not apply to:

(A) A management supervisor moving from one (1) customer or facility to another to inspect personnel; or

(B) A security guard/officer traveling from one (1) facility to another to serve the same customer with multiple facilities;

(18) "Sworn peace officer" means any individual who derives plenary or special law enforcement powers, such as the power of arrest, from, and is an employee of, a federal, state, or local governmental agency or instrumentality;

(19) "Unarmed security guard/officer" means a security guard/officer who never wears, carries or has access to a firearm or any facsimile of a firearm that may leave the impression that the person is armed with a firearm, but who may carry other nonlethal devices as prescribed in this chapter with the proper certification and who works in plainclothes or wears dress of a distinctive design or fashion or dress having any symbol, badge, emblem, insignia, or device that identifies or tends to identify the wearer as a security guard/officer; and

(20) "Undercover agent" means an individual hired by another person, through a contract security company to perform a job in or for that person, and while performing the job, to act as an undercover employee, independent contractor or operative of the person, but under the supervision of the contract security company.

62-35-105. Application for licenses — Filing — Form — Contents.

(a) An application for a contract security company license shall be filed with the commissioner on the prescribed form. The application shall include:

(1)(A) The full name and business address of the applicant;

(B) If the applicant is a partnership, the name and address of each partner; or

(C) If the applicant is a corporation, the name and address of the

qualifying agent;

(2) The name under which the applicant intends to do business;

(3) The address of the principal place of business and all branch offices of the applicant within this state;

(4) As to each individual applicant or, if the applicant is a partnership, as to each partner or, if the applicant is a corporation, as to the qualifying agent, the following information:

(A) Full name;

(B) Date and place of birth;

(C) [Deleted by 2020 amendment.]

(D) [Deleted by 2020 amendment.]

(E) One (1) set of classifiable electronic fingerprints; and

(F) [Deleted by 2020 amendment.]

(G) A list of all convictions and pending charges of commission of a felony or misdemeanor in any jurisdiction;

(5) If the applicant is a corporation, the following information:

(A) The correct legal name of the corporation;

(B) The state and date of incorporation;

(C) The date the corporation qualified to do business in this state;

(D) The address of the corporate headquarters, if located outside this state; and

(E) The names of two (2) principal corporate officers other than the qualifying agent and the business address, residence address and the office held by each in the corporation; and

(6) Other information the commissioner may reasonably require.

(b) The application shall be subscribed and sworn to:

(1) By the applicant, if the applicant is an individual;

(2) By each partner, if the applicant is a partnership; or

(3) By the qualifying agent, if the applicant is a corporation.

(c) Any individual signing the application must be at least twenty-one (21) years of age.

(d)(1) Notwithstanding any provision of this chapter to the contrary, a properly licensed contract security company may use temporary employees not registered with the department as temporary security guard/officers for special events upon the approval of a special event permit by the commissioner. A temporary security guard/officer used pursuant to this subdivision (d)(1) must:

(A) Be at least eighteen (18) years of age;

(B) Act as a temporary security guard/officer under a special event permit for no more than ten (10) days in a calendar year;

(C) Have no arrest authority; and

(D) Not be armed during the temporary employment.

(2) Applications for a special event permit must include:

(A) The names of the temporary employees;

(B) The addresses of the temporary employees;

(C) The birth dates of the temporary employees;

(D) The fee as set by subsection (e);

(E) The identity, location, and date of the special event or events for which the temporary employees are to be employed; and

(F) Other information as the commissioner may reasonably require.

(e) Applications for a special event permit must be submitted to the

commissioner at least five (5) days prior to the commencement of the special event and accompanied by a fee for each temporary employee or special event permit as set by rule. If the commissioner has not set a fee for registration of a temporary employee or special event permit by rule, then the fee shall be thirty-five dollars ($35.00) per temporary employee.

(f) A special event permit shall only be valid for the dates, locations, and events disclosed on the permit application. A new application for a special event permit must be filed for any additional dates or locations not authorized.

(g) The commissioner may decline to issue a special event permit if the commissioner, in the commissioner's sole discretion, determines that the issuance of such a permit is not in the best interest of the public based on the size of the event, the level of security required by the event, the number of permits previously issued to a contract security company during the past year, or other factors as the commissioner may reasonably consider.

(h) Prior to approving the request for a special event permit, the commissioner may require that any person requesting a permit provide a bond on a form acceptable to the commissioner in an amount set by the commissioner. The bond shall be for the benefit of any person who is damaged by a temporary security guard/officer acting under a special event permit.

62-35-116. Registration cards — Filing — Form — Fee — Contents — Change of registration status.

(a) An application for a registration card shall be filed with the commissioner on the prescribed form. The application shall be accompanied by nonrefundable and nonproratable fees for both armed and unarmed registrations. The commissioner shall establish the amounts of the fees in varying amounts for different types of registrations at reasonable levels. The applicant shall furnish the following information:

(1) Name and current residence address;

(2) Date and place of birth;

(3) Social security number;

(4) Telephone number, if any;

(5) [Deleted by 2020 amendment.]

(6) [Deleted by 2020 amendment.]

(7) One (1) set of classifiable electronic fingerprints;

(8) One (1) head-and-shoulder photograph taken within the last six (6) months;

(9) A general physical description;

(10) A list of all convictions and pending charges of commission of a felony or misdemeanor in any jurisdiction;

(11) A list of all names used by the applicant other than the name by which the applicant is currently known, with a statement explaining where, when and why the names were used;

(12) A statement whether the applicant has ever been issued or denied a registration card in any jurisdiction and whether the card, if issued, has ever been revoked or suspended;

(13) Type of military discharge; and

(14) Type of security guard/officer registration card, armed or unarmed, applied for. If the applicant seeks an armed registration card, the application shall also include a signed sworn statement that the applicant has had no

convictions in any state for a felony.

(b) Any applicant who has already submitted an application for registration or to whom a valid registration card has been issued may submit an application to change registration status from unarmed to armed or from armed to unarmed status. The commissioner may establish the amounts of the fees at levels lower than those required for an initial application for registration.

62-35-118. Registration cards — Training and examination of applicants.

(a)(1) Within fifteen (15) days of employment, an unarmed security guard/officer applicant must complete general training and pass an examination and an armed security guard/officer applicant must complete general training, pass an examination and complete the training in subsection (b) within sixty (60) days of employment.

(2) Both unarmed security guard/officer and armed security guard/officer applicants must complete at least four (4) hours of general training administered by a certified trainer and pass an examination, covering at least the following subjects:

(A) Orientation: one (1) hour;

(B) Legal powers and limitations of a security guard/officer: one (1) hour;

(C) Emergency procedures: one (1) hour; and

(D) General duties: one (1) hour.

(3) For applicants for private security guard/officer registration who will carry a club, stun gun, chemical spray, night stick or other less than lethal device, the commissioner shall require appropriate training specific to the device by a certified trainer who is certified to instruct for the specific device. It shall be the employers' responsibility to keep training records of their employees for each specific device. The security guard/officer shall also have in the person's possession a certification card issued by an instructor/trainer who is certified to instruct/train in the legal use of the specific device and shall exhibit the card upon demand by the commissioner, the commissioner's duly authorized agent or any full-time law enforcement officer.

(b) If applying for an armed security guard/officer registration card, before being issued a firearm, the applicant must also:

(1) Complete at least eight (8) additional classroom hours of firearms training administered by a certified trainer and pass an examination covering at least the following subjects:

(A) Legal limitations of the use of a firearm;

(B) Handling of a firearm; and

(C) Safety and maintenance; and

(2) Complete at least four (4) hours of marksmanship training administered by a certified trainer, and achieve a minimum of seventy percent (70%) on any silhouette target course approved by the commissioner.

(c) A certified trainer shall submit a statement to the commissioner certifying that an applicant has satisfactorily completed the required training within fifteen (15) days of training.

(d)(1) The requirements of subsection (a) do not apply to those applicants for registration as unarmed security guards/officers who have at least one (1)

year of experience as a security guard/officer as of July 1, 1988, or who have had no less than four (4) hours of training equivalent to that required in subsection (a) in the year prior to filing the application.

(2) The requirements of subsection (b) do not apply to those applicants for registration as armed security guards/officers who have had no less than twelve (12) hours of training equivalent to that required in subsection (b) in the year prior to filing the application.

(3) The requirements of subsections (a) and (b) do not apply to an applicant for registration who is a sworn peace officer and certified by the police officer standards and training commission. The commissioner may issue a temporary registration card to the officer upon the commissioner's verification of the officer's certification.

(4) The requirements of subsection (a) do not apply to an applicant for registration who is a state or local correctional officer or jailer; provided, that the state officer has successfully completed the appropriate basic training required by § 41-1-116 and is current on all annual refresher courses required by § 41-1-116 and the local officer or jailer has successfully completed comparable basic training and annual in-service training courses. The commissioner may issue a temporary registration card to the officer upon the commissioner's verification that the officer meets the requirements of this subdivision (d)(4).

62-35-119. Registration cards — Investigation of applicants — Issuance or denial of cards.

(a)(1) Upon receipt of an application for a registration card, the commissioner:

(A) Shall conduct an investigation to determine whether the statements made in the application are true;

(B) Shall cause the applicant's fingerprints to be compared with fingerprints filed with the Tennessee bureau of investigation; and

(C) If the application is for an armed security guard/officer registration card, shall, or if the application is for an unarmed security guard/officer registration card may, submit the applicant's fingerprints and photograph to the federal bureau of investigation for a search of its files to determine whether the applicant has any recorded convictions.

(2)(A) The department of commerce and insurance has the authority to query the Tennessee bureau of investigation's Tennessee criminal history records system for the following information:

(i) Tennessee criminal history records;

(ii) Tennessee repository for apprehension of persons (TRAP); and

(iii) State of Tennessee orders of protection files (STOP).

(B) The records may be used in lieu of fingerprint background checks for the issuance of unarmed security guard/officer registrations, if requested.

(b) Pending issuance, denial, or renewal of a registration card by the commissioner, the applicant may work as an unarmed security guard/officer, if the applicant submits a completed application form, one (1) set of classifiable electronic fingerprints, one (1) head-and-shoulder photograph taken within the last six (6) months, and the application fee to the commissioner, and the applicant keeps a copy of the completed application form on the applicant's person while on duty.

(c)(1) The commissioner shall issue to a qualified applicant a registration card for armed security guard/officer or unarmed security guard/officer registration upon receipt of the appropriate payment of fees and a statement from a certified trainer that the training required by this chapter has been completed. The commissioner shall establish the appropriate amounts for the fees required by this subsection (c).

(2) [Deleted by 2020 amendment.]

62-35-120. Registration cards — Possession and exhibition — Notice of arrest and conviction.

(a) The application or registration card shall be exhibited upon request of the commissioner, the commissioner's designee, a full-time law enforcement officer or an employer to verify that the security guard/officer is working pursuant to the requirements of this chapter.

(b) A security guard/officer shall provide written notice to the commissioner or the commissioner's designee and to the licensee or the proprietary security organization that employs the security guard/officer of any arrest and resulting conviction, except for minor traffic violations, within thirty (30) days of the arrest or conviction.

62-35-124. Registration cards — Notice concerning eligibility to hold.

(a) A licensee or proprietary security organization shall immediately notify the commissioner upon receipt of any information relating to a registrant's continuing eligibility to hold a registration card under this chapter.

(b) A licensee or proprietary security organization shall provide written notice to the commissioner or the commissioner's designee of any arrest or conviction, or both, except for minor traffic violations, within thirty (30) days of being notified or learning of the arrest or conviction, or both, of:

(1) The licensee or its qualifying agent; or

(2) Any person employed as a security guard/officer by the licensee or the proprietary security organization.

62-35-125. Carrying of weapons by security guards/officers.

An armed security guard/officer may carry only the types of firearms that the commissioner prescribes, by rules and regulations, in the performance of the person's duties. A security guard/officer may carry a firearm only if certified to carry the firearm. With proper certification, an unarmed or armed security guard/officer may carry any other type weapon, including, but not be limited to, clubs or batons, stun guns, the chemical spray known as mace or any other tool or weapon that the commissioner may prescribe.

62-35-128. Restrictions regarding military or police-style uniforms.

No security guard/officer shall wear any military or police-style uniform, except for rainwear or other foul-weather clothing, unless the uniform has:

(1) Affixed over the left breast pocket on the outermost garment and on any cap a badge or insignia distinct in design from that utilized by any law enforcement agency in this state, unless the licensed security guard/officer is in plain clothes; and

(2) Affixed over the right breast pocket on the outermost garment a name plate or tape with the name of the security guard/officer on it, unless the licensed security guard/officer is in plain clothes.

62-35-129. Administration and enforcement of chapter — Rules and regulations.

(a) The commissioner shall be responsible for administering and enforcing this chapter.

(b) The commissioner may promulgate rules that are reasonably necessary to effectuate the purposes of this chapter. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter or of any rule promulgated under this chapter. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond shall be required for the prosecution of the suit or for the issuance of an injunction.

(d) The commissioner or the commissioner's designee may at all reasonable hours conduct inspections/investigations of contract security companies, proprietary security organizations and security guards/officers to ensure compliance with this chapter.

62-35-130. Disciplinary powers of commissioner — Civil penalties.

(a) The commissioner may take disciplinary action against a licensee, registrant or applicant, deny an application for a license or registration or may suspend, revoke or refuse to issue or renew any certificate, certified trainer license, license or registration card under this chapter upon finding that the holder or applicant has:

(1) Violated this chapter or any rule promulgated under this chapter;

(2) Practiced fraud, deceit or misrepresentation;

(3) Knowingly and willfully made a material misstatement in connection with an application for a license or registration card;

(4) Been convicted by a court of competent jurisdiction of any felony or of a misdemeanor. However, an action taken under this subdivision (a)(4) shall be subject to the applicable provisions of the Fresh Start Act that are compiled in chapter 76, part 1 of this title;

(5) Committed any act that would have been cause for refusal to issue the license or registration card had it existed and been known to the commissioner at the time of issuance;

(6) Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(7) Willfully deceived or defrauded a member of the public being protected;

(8) Acted as a contract security company or proprietary security company without a currently valid license;

(9) Acted as an armed security guard/officer or unarmed security guard/officer on a registration card that has expired or without a valid registration card as this chapter requires;

(10) Violated any disciplinary order of the commissioner; or

(11) Failed or refused to cooperate with any inspection or investigation to determine compliance with this chapter or rules and regulations promul-

gated pursuant to this chapter.

(b) In addition to or in lieu of any other lawful disciplinary action under this section, the commissioner may assess a civil penalty of up to two thousand dollars ($2,000) for each statute or rule violation.

(c) The commissioner may assess a civil penalty of up to two thousand dollars ($2,000) per occurrence upon any person who operates without the proper license or other authorization required.

(d) A license or registration card shall be subject to expiration and renewal during any period in which the license or registration card is suspended.

(e) Whenever an armed or unarmed security guard/officer pleads guilty or is convicted of any offense enumerated in this chapter, the licensee must within thirty (30) days notify the commissioner of that conviction and provide the commissioner with certified copies of the conviction. The licensee's license shall automatically be revoked thirty (30) days after the licensee's conviction unless the licensee makes a written request to the commissioner for a hearing during the thirty-day period. Following any such hearing held pursuant to this section, the commissioner may impose upon that licensee any sanction or discipline permitted by this chapter.

62-35-134. Unlawful employments, publications and activities.

(a) It is unlawful for any person knowingly to employ as a security guard/officer any individual who does not hold a valid registration card of the appropriate type, except as provided in § 62-35-119(c).

(b) It is unlawful for any contract security company knowingly to publish any advertisement, letterhead, circular, statement or phrase of any sort that suggests that the company is a government agency or instrumentality.

(c) It is unlawful for any security guard/officer knowingly to:

(1) Fail to return immediately on demand, or within twenty-four (24) hours of termination of employment, a firearm issued to the security guard/officer by an employer;

(2) Fail to return immediately on demand, or within seven (7) days of termination of employment, any uniform, badge, device, insignia, credential, keys or other item of equipment issued to the security guard/officer by an employer;

(3) Carry a firearm or facsimile of any firearm or item that may leave the impression that the security guard/officer is armed with a firearm of any type in the performance of the security guard/officer's duties if not the holder of a valid armed security guard/officer registration card;

(4) Carry a firearm or facsimile of any firearm or item that may leave the impression that the security guard/officer is armed with a firearm of any type in performance of the security guard/officer's duties if not authorized to carry the firearm;

(5) Make any statement that would reasonably cause another person to believe that the security guard/officer functions as a sworn peace officer or other government official; or

(6) Divulge to anyone other than the security guard/officer's employer or to persons that the security guard/officer's employer may direct or as may be required by law any information acquired during the security guard/officer's employment that may compromise the security of any premises to which the security guard/officer has been assigned by the employer.

62-35-142. Private protective services in a restaurant licensed to sell alcohol.

(a)(1) Each licensee shall submit to the local law enforcement agency of any jurisdiction in which the licensee provides services for a restaurant, as defined in § 57-4-102, licensed to serve alcoholic beverages, wine or beer for consumption on the premises, a form promulgated by the commissioner notifying the local law enforcement agency that the licensee provides services within the agency's jurisdiction. The form shall include the name, license number and armed or unarmed status of each security guard/officer providing services for compensation to the licensee and the name and location of the licensee's clients within the agency's jurisdiction.

(2) Any licensee providing services for a restaurant, as defined in § 57-4-102, licensed to serve alcoholic beverages, wine or beer for consumption on the premises on January 1, 2010, shall submit the form required by this section to any applicable agency within fifteen (15) days of January 1, 2010. Otherwise, the licensee shall submit the form within fifteen (15) days of the date the licensee commences offering services in an agency's jurisdiction. The licensee shall ensure that the information submitted to the local law enforcement agency is kept current and shall notify the local law enforcement agency in writing of the substance of any change within fifteen (15) days of the date of the event necessitating the change.

(b) Any local law enforcement agency that has knowledge of a violation of this section or this chapter shall notify the commissioner. The commissioner shall communicate in writing to the local law enforcement agency any action taken in response to the notification.

(c) For purposes of this section, "local law enforcement agency" means:

(1) Within the territory of a municipality, the municipal police department;

(2) Within the territory of a county having a metropolitan form of government, the metropolitan police department; or

(3) Within the unincorporated territory of a county, the sheriff's office.

(d) The commissioner of commerce and insurance is authorized to promulgate rules to effectuate the purposes of this section. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

62-39-409. Appraisal management company ownership restrictions.

(a)(1) An appraisal management company applying for a registration in this state shall not be owned, in whole or in part, directly or indirectly, by:

(A) Any person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in any state for a substantive cause, as determined by the commission; or

(B) An entity that is more than ten percent (10%) owned by any person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of revocation in any state for a substantive cause, as determined by the commission.

(2) Each person who owns more than ten percent (10%) of an appraisal management company in this state shall:

(A) Be of good moral character, as determined by the commission; and

(B) Submit to a background investigation, as may be required by the commission.

(3) The commission may, in its discretion, issue a registration to an appraisal management company that is ineligible under subdivision (a)(1), but is otherwise qualified, if the license or certificate of the appraiser with an ownership interest in the appraisal management company or the owning entity was not revoked for a substantive cause, as determined by the commission, and has been reinstated by the state or states in which the appraiser was licensed or certified.

(b) Each appraisal management company applying for registration shall certify to the commission that it has reviewed each person with an ownership interest in the appraisal management company and that no person with an ownership interest in the appraisal management company has had an appraiser license or certificate to act as an appraiser refused, denied, cancelled, revoked, or surrendered in lieu of a pending revocation.

(c) Each appraisal management company shall notify the commission within thirty (30) days of a change in its controlling principal, agent of record, or ownership composition.

62-39-424. Removal of an appraiser from appraiser panel.

(a) An appraisal management company may not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an appraiser without:

(1) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company;

(2) If the appraiser is being removed from the panel for illegal conduct, violation of the USPAP, or a violation of state licensing standards, describing the nature of the alleged conduct or violation; and

(3) Providing an opportunity for the appraiser to respond to the notification of the appraisal management company.

(b) An appraiser who is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the USPAP, or violation of state licensing standards, may file a complaint with the commission for a review of the decision of the appraisal management company, except that in no case shall the commission make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company which is unrelated to the actions specified in subsection (a).

(c) If after notice and an opportunity for hearing and review, the commission determines that an appraiser did not commit a violation of law, a violation of the USPAP, or a violation of state licensing standards, the commission shall order that such appraiser be added to the appraiser panel of the appraisal management company.

(d) If the commission has found that the appraisal management company acted improperly in removing the appraiser from the appraiser panel, an appraisal management company may not refuse to make assignments for real estate appraisal services to an appraiser, or reduce the number of assignments, or otherwise penalize the appraiser.

63-1-120. Denial, withholding, suspending, limiting or restricting licensure, certification, permit, or authorization or otherwise disciplining holder of license, certificate, permit, or authorization — Disciplinary actions.

(a)(1) With respect to any person required to be licensed, permitted, certified or authorized by any board, council, committee, agency, or regulatory program created pursuant to chapters 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of this title and to title 68, chapter 140 attached to the division of health related boards, such board, council, committee or agency may:

(A) Deny an application for licensure, certification, permit or authorization;

(B) Permanently withhold issuance of licensure, certification, permit or authorization;

(C) Suspend, limit or restrict previously issued licensure, certification, permit or authorization; or

(D) Otherwise discipline a holder of a license, certificate, permit or authorization, if the applicant, licensee or certificate or permit holder has been disciplined by another state of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed, certified, permitted or authorized in this state.

(2) A certified copy of the initial order, final order or other equivalent document memorializing the disciplinary action from the disciplining state shall constitute prima facie evidence of a violation of this section and shall be sufficient grounds upon which to deny, restrict or condition the license, permit or certificate renewal or application, and/or otherwise to discipline a licensee licensed in this state.

(b) In disciplinary actions against individuals holding a license, certificate, permit or authorization in this state at the time of a disciplinary action in another reporting state, in the absence of justifying evidence to the contrary, there shall be a rebuttable presumption that the sanction proposed in any such proceeding will be comparable to that in the reporting state; however, no such presumption shall exist for those who are applying for licensure, certification, permit or authorization in this state during or after the time the disciplinary action in the other state is pending or has become final. If a board, council, committee, agency, or regulatory program created pursuant to chapters 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of this title or title 68, chapter 140 denies, restricts or conditions a licensure, certification, permit or authorization based on a disciplinary action in another state, the applicant shall, upon written request, filed within thirty (30) days of the date of the action on the application, be entitled to a contested case hearing.

63-1-139. Rules and regulations.

(a) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24, and title 68, chapter 140, part 3 shall notify each applicant for a license, certification or registration from such board, commission, committee, agency or other governmental entity where to obtain a copy of any statutes, rules, policies and guidelines setting forth the prerequisites for such license, certification or registration and shall, upon request, make available to the applicant a copy of such statutes, rules,

policies and guidelines.

(b) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall notify each holder of a license, certification or registration from the board, commission, committee, agency or other governmental entity of changes in state law that impact the holder and are implemented or enforced by the entity, including newly promulgated or amended statutes, rules, policies and guidelines. The notification required by this subsection (b) may be satisfied by the board, commission, committee, agency, or other governmental entity posting on its website 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. The website posting must be made within thirty (30) days of the effective date of the change and maintained on the website until at least two (2) years after the effective date of the change.

(c) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall establish and maintain a link or links on the entity's website to the statutes, rules, policies and guidelines that are implemented or enforced by the entity and that impact an applicant for, or a holder of, a license, certification or registration from the entity.

(d)(1) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall allow each holder of a license, certification or registration from the board, commission, committee, agency or other governmental entity to have the option of being notified by electronic mail of:

(A) Renewals of the holder's license, certification or registration;

(B) Any fee increases;

(C) [Deleted by 2020 amendment.]

(D) Any meeting where changes in rules or fees are on the agenda. For purposes of this subdivision (d)(1)(D), the electronic notice shall be at least forty-five (45) days in advance of the meeting, unless it is an emergency meeting then the notice shall be sent as soon as is practicable.

(2) Each board, commission, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall notify each holder of a license, certification or registration of the availability of receiving electronic notices pursuant to subdivision (d)(1) upon issuance or renewal of the holder's license, certification or registration.

(e) Each board, commission, committee, agency or other governmental entity created pursuant to this title, title 68, chapter 24 and title 68, chapter 140, part 3 shall have the authority to accept license applications and renewals electronically as if the same were submitted in hard copy format.

63-1-155. Telehealth services — Establishment of provider-patient relationship — Standard of practice — Applicability.

(a) For the purposes of this section:

(1) "Healthcare provider" means:

(A) An individual acting within the scope of a valid license issued pursuant to this title;

(B) Any state-contracted crisis service provider that is employed by a facility licensed under title 33; or

(C) Any alcohol and drug abuse counselor licensed under title 68, chapter 24, part 6; and

(2) Notwithstanding any restriction imposed by §§ 56-7-1002 and 56-7-1003, "telehealth," "telemedicine," and "provider-based telemedicine" mean the use of real time audio, video, or other electronic media and telecommunication technology that enables interaction between a healthcare provider and a patient, or also store-and-forward telemedicine services as defined in § 56-7-1002, for the purpose of diagnosis, consultation, or treatment of a patient at a distant site where there may be no in-person exchange between a healthcare provider and a patient.

(b) For the purposes of this section, a healthcare provider-patient relationship with respect to telemedicine or telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the provider. The consent by the patient may be expressed or implied consent; however, the provider-patient relationship is not created simply by the receipt of patient health information by a provider unless a prior provider-patient relationship exists. The duties and obligations created by the relationship do not arise until the healthcare provider:

(1) Affirmatively undertakes to diagnose or treat the patient; or

(2) Affirmatively participates in the diagnosis or treatment.

(c)(1)(A) A healthcare provider who delivers services through the use of telehealth is held to the same standard of professional practice as a similar licensee of the same practice area or specialty that is providing the same healthcare services through in-person encounters, and nothing in this section is intended to create any new standards of care.

(B) Notwithstanding subdivision (c)(1)(A), telehealth services must be provided in compliance with the guidelines created pursuant to part 4 of this chapter.

(2) The board or licensing entity governing any healthcare provider covered by this section shall not establish a more restrictive standard of professional practice for the practice of telehealth than that specifically authorized by the provider's practice act or other specifically applicable statute, including this chapter or title 53, chapter 10 or 11.

(3) This section does not apply to pain management clinics, as defined in § 63-1-301, chronic nonmalignant pain treatment, or those individuals licensed pursuant to chapter 12 of this title.

(d) Sections 63-6-231 and 63-6-214(b)(21) do not apply to the practice of telemedicine under this section.

(e) This section does not apply to or restrict the requirements of § 63-6-241.

(f) Section 63-6-204(a) also applies to telemedicine.

(g)(1) Except as provided in subdivision (g)(2), to practice under this section a healthcare provider must be licensed to practice in this state under this title.

(2) A physician must be licensed to practice under chapter 6 or 9 of this title in order to practice telemedicine pursuant to § 63-6-209(b), except as otherwise authorized by law or rule.

(h) **[Subsection (h) repealed effective April 1, 2022.]**

(1) Notwithstanding subsection (a), for the purposes of this section "healthcare provider" means:

(A) Any provider licensed under this title;

(B) Any state-contracted crisis service provider that is employed by a

facility licensed under title 33; or

(C) Any alcohol and drug abuse counselor licensed under title 68, chapter 24, part 6.

(2) This subsection (h) is repealed on April 1, 2022.

63-1-164. Restrictions and limitations on treating patient with opioids. [Effective until July 1, 2023.]

(a) As used in this section:

(1) "Alternative treatments" includes, but is not limited to, treatments such as chiropractic care, physical therapy, nonopioid medicinal drugs or drug products, occupational therapy, acupuncture, interventional procedures or treatments, and other such treatments that relieve pain without the use of opioids;

(2) "Encounter" means a single visit where an opioid is administered or an opioid prescription is issued or dispensed;

(3) "Healthcare practitioner" means a person licensed under this title who has the authority to prescribe or dispense controlled substances in the course of professional practice;

(4) "ICD-10 code" means the code established in the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) adopted by the federal centers for medicare and medicaid services, or the code used in any successor classification system adopted by the federal centers for medicare and medicaid services, that corresponds to the diagnosis of the condition being treated;

(5)(A) "Informed consent" means consent voluntarily given in writing by the patient or the patient's legal representative after sufficient explanation and disclosure by the healthcare practitioner of the subject matter involved to enable the person whose consent is sought to make a knowing and willful decision. This explanation and disclosure by the healthcare practitioner to the patient or the patient's legal representative before consent may be obtained must include, at a minimum:

(i) Adequate information to allow the patient or the patient's legal representative to understand:

(a) The risks, effects, and characteristics of opioids, including the risks of physical dependency and addiction, misuse, and diversion;

(b) What to expect when taking an opioid and how opioids should be used; and

(c) Reasonable alternatives to opioids for treating or managing the patient's condition or symptoms and the benefits and risks of the alternative treatments;

(ii) A reasonable opportunity for questions by the patient or patient's legal representative;

(iii) Discussion and consideration by the patient or the patient's legal representative and the healthcare practitioner of whether the patient should take an opioid medication; and

(iv) If the patient is a woman of childbearing age and ability, information regarding neonatal abstinence syndrome and specific information regarding how to access contraceptive services in the community. For purposes of this section, childbearing age is between the ages of fifteen (15) and forty-four (44);

(B) Nothing in subdivision (a)(5)(A) limits other requirements imposed on healthcare practitioners by law or applicable licensing authority;

(6) "Morphine milligram equivalent dose" means the morphine milligram equivalent calculation for the amount of a prescribed opioid, multiplied by the days of treatment;

(7) "Palliative care" means specialized treatment for patients facing serious illness, which focuses on providing relief of suffering through a multidisciplinary approach in order to maximize quality of life for the patient. As used in this subdivision (a)(7), "serious illness" means a health condition that carries a high risk of mortality and negatively impacts a patient's daily bodily functions; and

(8) "Treat" means prescribe, dispense, or administer.

(b) Except as provided in this section, a healthcare practitioner shall not treat a patient with more than a three-day supply of an opioid and shall not treat a patient with an opioid dosage that exceeds a total of one hundred eighty (180) morphine milligram equivalent dose. A healthcare practitioner shall not be required to include an ICD-10 code on any prescription for an opioid of a three-day supply or less and an opioid dosage of less than one hundred eighty (180) morphine milligram equivalent.

(c)(1) A patient shall not be treated with an opioid more frequently than every ten (10) days; provided, however, that if the patient has an adverse reaction to an opioid, a healthcare practitioner may treat a patient with a different opioid within a ten-day period under the following circumstances:

(A) The healthcare practitioner is employed by the same practice that initially treated the patient with the opioid that caused the adverse reaction;

(B) The healthcare practitioner personally evaluates the patient, assesses the patient's adverse reaction, and determines a different course of treatment is more medically appropriate;

(C) The healthcare practitioner confirms with the dispenser that the remainder of the initial prescription has been cancelled by the dispenser;

(D) The healthcare practitioner counsels the patient to appropriately destroy any remaining opioids that were previously dispensed to the patient; and

(E) The healthcare practitioner's treatment of the patient conforms to the requirements of this section.

(2) Notwithstanding subdivision (c)(1), where the treatment provided by a healthcare practitioner is prescribing an opioid, the healthcare practitioner may authorize the prescription to be dispensed by partial fill by placing "partial fill" or "PF" on the prescription.

(d)(1)(A) A healthcare practitioner may treat a patient with more than a three-day supply of an opioid if the healthcare practitioner treats the patient with no more than one (1) prescription for an opioid per encounter and:

(i) Personally conducts a thorough evaluation of the patient;

(ii) Documents consideration of non-opioid and non-pharmacologic pain management strategies and why the strategies failed or were not attempted;

(iii) Includes the ICD-10 code for the primary disease in the patient's chart, and on the prescription when a prescription is issued; and

(iv) Obtains informed consent and documents the reason for treating

with an opioid in the chart.

(B) A healthcare practitioner who is dispensing pursuant to a prescription written by another healthcare practitioner for more than a three-day supply of an opioid is not required to satisfy subdivisions (d)(1)(A)(i)-(iv) when filling a prescription that contains an ICD-10 code; provided, that the healthcare practitioner shall not dispense more than one (1) prescription for an opioid to a patient per encounter.

(2) If a healthcare practitioner treats a patient with more than a three-day supply of an opioid, the healthcare practitioner may treat the patient with no more than a ten-day supply and with a dosage that does not exceed a total of a five hundred (500) morphine milligram equivalent dose.

(3) Notwithstanding subdivision (d)(2), in rare cases where the patient has a condition that will be treated by a procedure that is more than minimally invasive and sound medical judgment would determine the risk of adverse effects from the pain exceeds the risk of the development of a substance use disorder or overdose event, a healthcare practitioner may treat a patient with up to a thirty-day supply of an opioid and with a dosage that does not exceed a total of a twelve hundred (1200) morphine milligram equivalent dose.

(4) Notwithstanding subdivision (d)(2), in rare cases after trial and failure of reasonable, appropriate, and available non-opioid treatments for the pain condition or documenting the contraindication, inefficacy, or intolerance of non-opioid treatments, where medical necessity and sound medical judgment would determine the risk of adverse effects from the pain exceeds the risk of the development of a substance use disorder or overdose event, a healthcare practitioner may treat a patient with up to a thirty-day supply of an opioid and with a dosage that does not exceed a total of a one thousand two hundred (1,200) morphine milligram equivalent dose. The healthcare practitioner must include the phrase "medical necessity" on the prescription for any prescription issued pursuant to this subdivision (d)(4).

(e) The restrictions of this section do not apply to the following; provided, that where a prescription is issued pursuant to this subsection (e), the prescription contains the ICD-10 code for the primary disease documented in the patient's chart and the word "exempt":

(1) The treatment of patients who are undergoing active cancer treatment, undergoing palliative care treatment, or are receiving hospice care;

(2) The treatment of patients with a diagnosis of sickle cell disease;

(3) The administration of opioids directly to a patient during the patient's treatment at any facility licensed under title 68, chapter 11, or any hospital licensed under title 33, chapter 2, part 4;

(4) Prescriptions issued by healthcare practitioners who are:

(A) Pain management specialists, as that term is defined in § 63-1-301, or who are collaborating with a pain management specialist in accordance with § 63-1-306(a)(3); provided, that the patient receiving the prescription is personally assessed by the pain management specialist, or by the advanced practice registered nurse or physician assistant collaborating with the pain management specialist; or

(B) Treating patients in an outpatient setting of a hospital exempt under § 63-1-302(2) that holds itself out to the public as a pain management clinic.

(5) The treatment of patients who have been treated with an opioid daily for ninety (90) days or more during the three hundred sixty-five (365) days

prior to April 15, 2018, or those who are subsequently treated for ninety (90) days or more under one (1) of the exceptions listed in subdivision (d)(4) or this subsection (e);

(6) The direct administration of, or dispensing of, methadone for the treatment of an opioid use disorder to a patient who is receiving treatment from a healthcare practitioner practicing under 21 U.S.C. § 823(g)(1);

(7) The treatment of a patient for opioid use disorder with products that are approved by the U.S. food and drug administration for opioid use disorder by a healthcare practitioner under 21 U.S.C. § 823(g)(2);

(8) The treatment of a patient with a product that is an opioid antagonist and does not contain an opioid agonist; or

(9) The treatment of a patient who has suffered a severe burn or major physical trauma and for whom sound medical judgment would determine the risk of adverse effects from the pain exceeds the risk of the development of a substance use disorder or overdose event. As used in this subdivision (e)(9), "severe burn" means an injury sustained from thermal or chemical causes resulting in second degree or third degree burns. As used in this subdivision (e)(9), "major physical trauma" means a serious injury sustained due to blunt or penetrating force which results in serious blood loss, fracture, significant temporary or permanent impairment, or disability.

(f) The commissioner of health, in consultation with the regulatory boards created pursuant to this title that license healthcare practitioners, shall study and analyze the impact and effects of the restrictions and limitations set forth in this section. No later than November 1, 2021, the commissioner shall issue a report relative to the impact and effects of the restrictions and limitations to the governor, the health and welfare committee of the senate, and the health committee of the house of representatives. The report may include recommendations for revisions to the restrictions on the prescription of opioids.

(g) This section applies only to the treatment of human patients.

(h) This section does not apply to opioids approved by the food and drug administration to treat upper respiratory symptoms or cough. However, a healthcare practitioner shall not treat a patient with more than a fourteen-day supply of such an opioid.

63-1-501. Short title.

This part shall be known and may be cited as the "Health Care Empowerment Act."

63-1-502. Part definitions.

As used in this part:

(1) "Direct medical care agreement" means a written contractual agreement between a direct medical care provider and an individual patient, or the patient's legal representative, in which:

(A) The direct medical care provider agrees to provide medical care services to the individual patient for an agreed fee over an agreed period of time;

(B) The direct medical care provider will not bill third parties on a fee-for-service basis;

(C) Any per-visit charges under the agreement will be less than the monthly equivalent of the periodic fee;

(D) The agreement describes the scope of the medical care service that is covered by the periodic fee;

(E) The agreement contains the following disclosures, or substantially similar disclosures, that are conspicuously visible in the agreement in bold font:

(i) The agreement does not constitute health insurance under the laws of this state;

(ii) An uninsured patient that enters into a direct medical care agreement may be subject to tax penalties under the Patient Protection and Affordable Care Act, Public Law 111-148, for failing to obtain insurance;

(iii) Patients insured by health insurance plans that are compliant with the Patient Protection and Affordable Care Act already have coverage for certain preventative care benefits at no cost to the patient;

(iv) Payments made by a patient for services rendered under a direct medical care agreement may not count towards the patient's health insurance deductibles and maximum out-of-pocket expenses;

(v) A patient is encouraged to consult with the patient's health insurance plan before entering into the agreement and receiving care; and

(vi) A direct medical care provider who breaches the agreement may be liable for damages and subject to discipline by the appropriate licensing board;

(F) The agreement specifies the duration of the agreement, including automatic renewal periods; and

(G) The patient is not required to pay more than twelve (12) months of the fee in advance. However, the contracted fee may be paid on a payment schedule agreed to by the direct medical care provider and patient that may be due on a monthly, quarterly, or yearly basis;

(2) "Direct medical care provider":

(A) Means an individual or legal entity that is licensed, registered, or otherwise authorized to provide medical care services in this state under this title, and who chooses to enter into a direct medical care agreement; and

(B) Includes an individual medical care provider or other legal entity, alone or with others professionally associated with the provider or other legal entity;

(3) "Medical care service" includes the screening, assessment, diagnosis, and treatment for the purpose of promotion of health or the detection and management of disease or injury within the competency and training of the direct medical care provider; and

(4) "Medical products" include medical drugs and pharmaceuticals.

63-1-503. Purchase and payment of medical services or products outside of insurance plan or outside of TennCare or medicare program not prohibited.

(a)(1) Nothing in state law prohibits a patient or a legal representative of a patient from seeking care outside of an insurance plan, or outside of the TennCare or Medicare program, and paying for that care.

(2) Nothing in state law prohibits a medical care provider licensed under this title, or a healthcare facility, licensed under title 33 or 68, from accepting

payment for services or medical products outside of an insurance plan.

(3) Nothing in state law prohibits a medical care provider licensed under this title, or a healthcare facility, licensed under title 33 or 68, from accepting payment for services or medical products provided to a TennCare or Medicare beneficiary.

(b) A patient or legal representative does not forfeit insurance benefits, TennCare benefits, or Medicare benefits by purchasing medical services or medical products outside the system.

(c) The offer and provision of medical services or medical products purchased and provided under this part is not an offer of insurance and is not regulated by the insurance laws of this state.

63-1-504. Direct medical care agreement.

(a) A direct medical care agreement is not insurance and is not subject to regulation by the department of commerce and insurance.

(b) Entering into a direct medical care agreement is not the business of insurance and is not subject to regulation under title 56.

(c) A direct medical care provider, or the agent of a direct medical care provider, is not required to obtain a certification of authority or license under the Tennessee Insurance Producer Licensing Act of 2002, compiled in title 56, chapter 6, to market, sell, or offer to sell a direct medical care agreement.

(d) A direct medical care agreement is not a discount medical plan.

(e) A direct medical care agreement must:

(1) Allow either party to terminate the agreement upon written notice to the other party;

(2) Provide that fees are not earned by the direct medical care provider until the month paid by the periodic fee has been completed; and

(3) Provide that, upon termination of this agreement by the individual patient, all unearned fees are to be returned to the patient.

63-5-108. Practice of dentistry and dental hygiene defined.

(a) Dentistry is defined as the evaluation, diagnosis, prevention and/or treatment, by nonsurgical, surgical or related procedures, of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body, provided by a dentist within the scope of such dentist's education, training, and experience, in accordance with the ethics of the profession and applicable law.

(b) Any person is deemed to be practicing dentistry who, either gratuitously or for a salary, fee, money or other remuneration, paid or to be paid, directly to the operator or to any person or agency:

(1) Diagnoses, prescribes for or treats any disease, pain, deformity, deficiency, injury, disorder and condition of the oral cavity, maxillofacial area and the adjacent and associated structures and their impact on the human body. Such diagnosis and treatment may include the use of a complete or limited physical evaluation of patients by a board eligible or board certified oral and maxillofacial surgeon or a resident in an approved oral and maxillofacial surgery program practicing in a hospital setting;

(2) Extracts human teeth;

(3) Repairs or fills cavities in human teeth;

(4) Corrects malformations of human teeth or of the jaws;

(5) Performs any oral and maxillofacial surgery;

(6) Subject to subsection (d), takes an impression of the human tooth, teeth or jaws, leading to either:

(A) The fabrication of a model upon which will be constructed a replacement of natural teeth by artificial substitutes; or

(B) The fabrication of a cosmetic metal apparatus to be worn in the human mouth, whether or not the apparatus features silver, gold or platinum caps, jeweled inlays or any other cosmetic features;

(7) Furnishes, supplies, constructs, alters, reproduces or repairs any prosthetic denture, bridge, crown, appliance or any other structure to be used or worn in the human mouth as a substitute for natural teeth, except on the written work order of a licensed and registered dentist;

(8) Places or adjusts such appliance or structure in the human mouth;

(9) Delivers the same to any person other than the licensed and registered dentist upon whose written work order the work was performed;

(10) Offers to the public by any method to furnish, supply, construct, reproduce, reline, repair or otherwise process any prosthetic denture, bridge, appliance or other structure to be worn in the human mouth;

(11) Gives interpretations of dental radiographs;

(12) Administers an anesthetic, except for a topical anesthetic in connection with a dental operation; provided, however, that a duly licensed dentist may delegate the administration of local anesthetic to dental hygienists who possess a permit to do so issued by the board. The board shall establish the qualifications, criteria and curricula required for issuance of permits to administer local anesthetic, by infiltration or by block, to duly licensed dental hygienists;

(13) Uses the words, "Dentist," "Dental Surgeon," "Oral Surgeon," "Oral and Maxillofacial Surgeon," or letters "D.D.S.," "D.M.D.," or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe or operate for any disease, pain, deformity, deficiency, injury, disorder, and condition of the oral cavity, maxillofacial area and the adjacent and associated structures and their impact on the human body;

(14) States, or permits to be stated by any means or method whatsoever, that the person can or will attempt to perform dental operations or services or to render diagnosis in connection therewith;

(15) Is the operator of a place where dental operations or dental services are performed; or

(16) Authorizes the practice of "teledentistry" which, as used in this section, means the delivery of dental health care and patient consultation through the use of telehealth systems and technologies, including live, two-way interactions between a patient and a dentist licensed in this state using audiovisual telecommunications technology, or the secure transmission of electronic health records and medical data to a dentist licensed in this state to facilitate evaluation and treatment of the patient outside of a real-time or in-person interaction. Dentists who are licensed in this state and who deliver services using teledentistry shall establish protocols for the practice that should include proper methods of keeping the patient fully informed; proper safeguards ensuring that all state and federal laws and regulations relative to the privacy of health information are followed; proper documentation of all services or treatment rendered via teledentistry; proper

procedures to ensure the referral of those patients requiring treatment beyond what can be provided via teledentistry to a dentist licensed in this state; and any such requirements as prescribed by the board of dentistry. Any and all services provided via teledentistry shall be consistent with the in-person provision of those services. Any and all services provided via teledentistry shall comply with this chapter and shall be provided in accordance with the rules of the board of dentistry.

(c)(1) A dental hygienist is an individual who has graduated from a dental hygiene program accredited by the American Dental Association's Commission on Dental Accreditation (CODA) and is licensed under this chapter to practice dental hygiene.

(2) The practice of dental hygiene means the performance of preventive, educational, and therapeutic services including the removal of all hard and soft deposits and the stain from the human teeth to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, performing clinical examination of teeth and surrounding tissues for diagnosis by the dentist, and performing other procedures that may be delegated by the dentist, under the supervision of a licensed dentist.

(3) No person shall practice dental hygiene in a manner that is separate or independent from a supervising dentist, or establish or maintain an office or a practice that is primarily devoted to the provision of dental hygiene services.

(4) A dental hygienist shall perform, under direct supervision only, root planing, subgingival curettage, administering nitrous oxide, and local anesthesia.

(5) Under general supervision a dental hygienist may provide to patients, for not more than fifteen (15) consecutive business days, all other dental hygiene services not otherwise limited to direct supervision by this chapter or rules adopted by the board, if all of the following requirements are met:

(A) The dental hygienist has at least one (1) year, full-time, or an equivalent amount of experience practicing dental hygiene;

(B) The dental hygienist complies with written protocols for emergencies that the supervising dentist establishes;

(C) The supervising dentist examined the patient not more than eleven (11) months prior to the date the dental hygienist provides the dental hygiene services;

(D) The dental hygienist provides dental hygiene services to the patient in accordance with a written treatment plan developed by the supervising dentist for the patient; and

(E) The patient is notified in advance of the appointment that the supervising dentist will be absent from the location and that the dental hygienist cannot diagnose the patient's dental health care status.

(d) Any duly licensed and registered dentist may assign to duly licensed and registered dental hygienists, registered dental assistants and/or practical dental assistants, as defined by the board in rules and regulations, any tasks or procedures to be performed in the dentist's office for which a licensed and registered dentist exercises direct supervision and full responsibility, except those procedures requiring the professional judgment or skill of a dentist; provided, that duties involving the removal of hard and soft deposits by scaling or curretage from the surfaces of human teeth are assigned only to duly licensed and registered dental hygienists. The board has the authority to

permit registered dental assistants to apply sealants to and to polish human teeth, and the board has the discretion to establish criteria and curricula as necessary to ensure that such registered dental assistants are qualified to apply sealants and perform polishing. For eligibility to perform polishing, passage of a clinical and didactic examination is required. The board is authorized to permit licensed and registered dental hygienists and registered dental assistants to insert, pack, carve and finish amalgam and intracoronal nonmetallic restorations and take final impressions for fixed and removable prosthetic appliances, under the direct supervision and full responsibility of a licensed dentist, and the board shall establish such criteria and curricula as it determines in its discretion are necessary or appropriate to ensure that such hygienists and assistants are qualified to perform such procedures. Tasks and procedures assignable to licensed and registered dental hygienists shall include those enumerated in the board's regulations as of January 1, 1990, and such other additional tasks and procedures as the board may deem appropriate in the future. Procedures requiring professional judgment or skill not assignable to such dental hygienists and dental assistants include the following:

(1) Diagnosis and treatment planning; oral surgery, the cutting of hard and/or soft tissues, excluding any cutting of such tissues involved in subgingival scaling, root planing and gingival curettage, and any intra-oral procedures that would affect the function and/or efficiency of an appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and that could result in tissue irritation or injury;

(2) The placing of permanent fillings or restorations in or on teeth except as provided in this subsection (d); and

(3) Administration of a general or local anesthetic, except for a topical anesthetic in connection with a dental operation; provided, however, that dental hygienists who possess a permit issued pursuant to subdivision (b)(12) may administer a local anesthetic but only under the direct supervision of a licensed and registered dentist who is physically present at the same office location and time and in accordance with rules and regulations of the board.

(e) Notwithstanding any provision of law to the contrary, a dental hygienist may administer nitrous oxide analgesia if directed by a dentist to do so, in accordance with rules and regulations of the board of dentistry, under the direct supervision of a licensed and registered dentist. Patients who have been administered nitrous oxide shall be monitored appropriately.

(f)(1) Except as provided in subdivision (f)(2), a licensed dentist shall not allow, under general supervision, more than three (3) dental hygienists to work at any one (1) time.

(2) A dentist may supervise, under direct supervision, no more than ten (10) dental hygienists while the dentist and each hygienist is providing dental services on a volunteer basis through a nonprofit provider of free mobile clinics in this state.

(g) Any duly licensed and registered dentist who uses general anesthesia, deep sedation or conscious sedation in that dentist's practice, at a level to be determined by the board, must secure a permit from the board by meeting the standards as set in rules and regulations and by paying fees set by the board. Such permit is subject to renewal at intervals upon payment of a fee as set by the board in rules and regulations. Any dental facility in which general anesthesia, deep sedation or conscious sedation is administered by such dentist is subject to standards as may be specified in rules and regulations of

the board, including, but not limited to, a facility permit.

(h)(1) Notwithstanding any law to the contrary, the practice of dental hygiene also includes prescriptive authority limited to fluoride agents, topical oral anesthetic agents, and nonsystemic oral antimicrobials that:

(A) Are not controlled substances under state and federal drug laws; and

(B) Do not require a license from the federal drug enforcement agency.

(2) Prescriptive authority under this section must be:

(A) Exercised under the general supervision of a licensed dentist;

(B) Pursuant to rules promulgated by the board; and

(C) In compliance with all applicable laws concerning prescription packaging, labeling, and record keeping requirements.

(3) A prescription written by a dental hygienist under this part must be reviewed by a dentist within thirty (30) days.

(4) The board shall determine by rule the educational and training requirements necessary for a dental hygienist to exercise prescriptive authority pursuant to this section.

(5) The board shall determine by rule the percentage of fluoride or any other active ingredient in any medication that may be prescribed by a dental hygienist under this subsection (h).

63-6-204. "Practice of medicine" defined — Construction.

(a)(1) Any person shall be regarded as practicing medicine within the meaning of this chapter who treats, or professes to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity of another.

(2) Nothing in this section shall be construed to apply to the administration of domestic or family remedies in cases of emergency or to the laws regulating the practice of dentistry.

(3) This chapter shall not apply to surgeons of the United States army, navy, air force, or marine hospital service regardless of the hospital or practice site; provided, that the surgeon's practice is part of the surgeon's authorized military service or training. This chapter shall also not apply to any registered physician or surgeon of other states when called in consultation by a registered physician of this state, or to midwives, veterinary surgeons, osteopathic physicians, or chiropractors not giving or using medicine in their practice, or to opticians, optometrists, chiropodists, or Christian Scientists.

(b) Nothing in this chapter shall be so construed as to prohibit service rendered by a physician assistant, registered nurse, a licensed practical nurse, or a pharmacist pursuant to a collaborative pharmacy practice agreement, if such service is rendered under the supervision, control and responsibility of a licensed physician or to prohibit the provision of anesthesiology services in licensed health care facilities by a dentist licensed in this state who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977.

(c) Nothing in this section shall be construed to prohibit a person, corporation, organization or other entity from employing a physician to treat only the entity's full-time, part-time and contract employees, the entity's retirees and dependents of the entity's employees or retirees; provided, however, that the

employment relationship between the physician and the person, corporation, organization or other entity is evidenced by a written contract, job description or documentation, containing language which does not restrict the physician from exercising independent medical judgment in diagnosing and treating patients. Under this section, such person, corporation, organization or other entity shall not be deemed to be engaged in the practice of medicine.

(d) Nothing in this section shall be construed to prohibit a community mental health center as defined in § 33-1-101 from employing a physician; provided, that the employment relationship between the physician and the community mental health center is evidenced by a written contract, job description or documentation, containing language which does not restrict the physician from exercising independent medical judgment in diagnosing and treating patients; provided, for the purposes of this subsection (d), "physician" does not include an anesthesiologist, an emergency department physician, a pathologist or a radiologist.

(e)(1) Nothing in this section prohibits a federally-qualified health center or rural health clinic from employing a physician if the employment relationship between the physician and the federally-qualified health center or rural health clinic is evidenced by a written contract, job description, or documentation containing language that does not restrict the physician from exercising independent medical judgment in diagnosing and treating patients.

(2) As used in this subsection (e):

(A) "Federally-qualified health center" has the same meaning as defined under §§ 1861(aa) and 1905 of the federal Social Security Act (42 U.S.C. §§ 1395x and 1396d, respectively);

(B) "Physician" does not include an anesthesiologist, an emergency department physician, a pathologist, or a radiologist; and

(C) "Rural health clinic" has the same meaning as defined under §§ 1861(aa) and 1905 of the federal Social Security Act (42 U.S.C. §§ 1395x and 1396d, respectively).

(f)(1) Notwithstanding this section, nothing shall prohibit a hospital licensed under title 68, chapter 11, or title 33, chapter 2, or an affiliate of a hospital, from employing licensed physicians other than radiologists, anesthesiologists, pathologists, or emergency physicians, to provide medical services, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician referral decisions unless:

(i) The physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses any such restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (f)(1)(A) or (B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as follows:

(A) For physicians from whom the employing entity has made a bona fide purchase of the physician's practice, the employing entity may impose reasonable geographic restrictions upon the employed physician's practice; provided, that:

(i) The maximum allowable area of the restriction is the greater of:

(a) The county in which the primary practice site is located; or

(b) A ten (10) mile radius from the primary practice site;

(ii) The duration of the restriction is two (2) years or less, unless a longer period, not to exceed five (5) years, is determined by mutual agreement of the parties in writing to be necessary to comply with federal statutes, rules, regulations, or IRS revenue rulings or private letter rulings;

(iii) Any employment agreement or medical practice sale agreement restricting the right of a physician to practice shall:

(a) Allow the physician to buy back the physician's medical practice for the original purchase price of the practice, or, in the alternative, if the parties agree in writing, at a price not to exceed the fair market value of the practice at the time of the buy back, at which time any such restriction on practice shall be void; and

(b) Not require that the physician give more than thirty-day's notice to exercise the repurchase option; provided, that this provision shall not otherwise affect the contract termination notice requirements; and

(iv) If the buy back provision is dependent upon a determination of the fair market value of the practice, the contract shall specify the method of determining fair market value by independent appraisal, in the event that the parties cannot agree as to the fair market value. The contract shall also include the following language:

"In the event that the employing entity and the physician cannot agree upon the fair market value of the practice within ten (10) business days of the physician's notice of intent to repurchase the practice, the physician may remove any contractual restrictions upon the physician's practice by tendering to the employing entity the amount that was paid to the physician for the practice. The employing entity or the physician may then seek a determination of the fair market value of the practice by the independent appraisal method specified by contract."

(B) For physicians employed independently of a bona fide practice purchase, employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by § 63-1-148 or any successor section.

(3) Notwithstanding the foregoing, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by the employee, any such restrictions shall be void.

(4) In any event, nothing in this section shall prohibit any of the following from employing physicians:

(A) A licensed physician; or

(B) A group of licensed physicians, including, but not limited to, either of the following:

(i) A physicians' professional corporation registered under title 48, chapter 101; or

(ii) A domestic nonprofit public benefit corporation:

(a) That is recognized as exempt under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), or any successor section;

(b) A purpose of which is to engage in medical education and medical research in conjunction with a college or university operating an accredited medical school in Tennessee;

(c) Whose physician-employees are restricted to the medical faculty of such a college or university; and

(d) Which operates as a "faculty practice plan" for purposes of Title XVIII of the federal Social Security Act (42 U.S.C., Chapter 7, subchapter XVIII), and regulations promulgated in connection therewith;

Provided, that with respect to any such domestic nonprofit public benefit corporation, physician employees of any such faculty practice plan who practice in the specialties of radiology, pathology, anesthesiology and/or emergency medicine shall be restricted to practice as faculty practice plan employees in those health care institutions, including but not limited to hospitals or surgery centers, in which they were practicing as employees of the nonprofit public benefit corporation on May 30, 1997.

(5) A hospital affiliate that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities, or the ownership of property and facilities used in the provision of health care services. An affiliate of a hospital that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under either title 68, chapter 11, or title 33, chapter 2 in connection with employment of physicians. Any violation of this statute by an affiliate shall subject any hospital at which the physician has staff privileges, and that controls or is under common control with the affiliate to the penalties and sanctions applied to hospitals that employ physicians.

(6)(A) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a hospital or an affiliate of a hospital, and no hospital or an affiliate of a hospital, may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, that a physician may be employed to provide emergency medical services if such physician is employed to provide other medical services.

(B) Notwithstanding subdivisions (f)(6)(A) and (f)(1), a "research hospital," as defined in this section, may employ radiologists, anesthesiologists, or pathologists under the same terms and conditions as other physicians.

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

(A) "Affiliate" of a hospital means an entity that directly or indirectly is controlled by, or is under common control with, a hospital licensed under title 68, chapter 11 or title 33, chapter 2. "Affiliate" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(B) "Anesthesiologist" is a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including, without limitation, nerve block, pain management, cardiac and

respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances, or a dentist licensed in the state who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977;

(C) "Emergency physician" is a physician who has either completed a residency in emergency medicine, or practiced emergency medicine full time for a three year period, and whose practice is limited to emergency medicine. "Emergency physician" does not include, however, a physician who has been previously employed to provide nonemergent medical services who, over a period of twelve (12) months or more, becomes a full time emergency physician and who remains employed by mutual agreement;

(D) "Employing entity" means a hospital licensed under title 68, chapter 11, or title 33, chapter 2, or an affiliate of such an entity, that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(E) "Pathologist" is a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including, without limitation, anatomic and clinical pathology;

(F) "Physician" means a person licensed pursuant to chapter 6 or 9 of this title;

(G) "Psychiatrist" means a physician who has completed a residency in psychiatry and whose practice is primarily limited to psychiatry.

(H) "Radiologist" is a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including, without limitation, diagnostic radiology, radiation therapy, and radiation oncology; and

(I) "Research hospital" means a hospital at which fifty percent (50%) or more of the inpatients treated during the previous calendar year were treated pursuant to research protocols.

(g)(1) Notwithstanding this section, nothing shall prohibit a renal dialysis clinic licensed under title 68, chapter 11 or an affiliate of a renal dialysis clinic from employing licensed physicians other than radiologists, anesthesiologists, pathologists or emergency physicians to provide medical services, subject to the following conditions:

(A) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions;

(B) Employing entities shall not restrict or interfere with physician referral decisions unless:

(i) The physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed;

(ii) The restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(iii) The employing entity discloses the restrictions to the patient; and

(C) In the event that there is any dispute relating to subdivision (g)(1)(A) or (g)(1)(B), the employing entity shall have the burden of proof.

(2) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as allowed by § 63-1-148 or any successor section.

(3) Notwithstanding § 63-1-148 or any successor section, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for

reasons other than breach by the employee, the restrictions shall be void.

(4) In any event, nothing in this section shall prohibit any of the following from employing physicians:

(A) A licensed physician; or

(B) A group of licensed physicians, including, but not limited to, either of the following:

(i) A physicians' professional corporation registered under title 48, chapter 101; or

(ii)*(a)* A domestic nonprofit public benefit corporation:

(1) That is recognized as exempt under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) or any successor section;

(2) A purpose of which is to engage in medical education and medical research in conjunction with a college or university operating an accredited medical school in Tennessee;

(3) Whose physician-employees are restricted to the medical faculty of such a college or university; and

(4) That operates as a faculty practice plan for purposes of Title XVIII of the federal Social Security Act (42 U.S.C. chapter 7, subchapter XVIII) and regulations promulgated in connection therewith.

(b) Provided, that, with respect to the domestic nonprofit public benefit corporation, physician employees of the faculty practice plan who practice in the specialties of radiology, pathology, anesthesiology or emergency medicine shall be restricted to practice as faculty practice plan employees in those health care institutions, including, but not limited to, hospitals or surgery centers, in which they were practicing as employees of the nonprofit public benefit corporation on May 30, 1997.

(5) An affiliate of a renal dialysis clinic that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities or the ownership of property and facilities used in the provision of health care services or a tissue bank or organ procurement agency. An affiliate of a renal dialysis clinic that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under title 68, chapter 11, in connection with employment of physicians. Any violation of this subdivision (g)(5) by an affiliate shall subject any renal dialysis clinic at which the physician has staff privileges and that controls or is under common control with the affiliate to the penalties and sanctions applied to renal dialysis clinics that employ physicians.

(6) No radiologist, anesthesiologist, pathologist or emergency physician may be employed by a renal dialysis clinic or an affiliate of a renal dialysis clinic, and no renal dialysis clinic or an affiliate of a renal dialysis clinic may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists or emergency physicians; provided, that a physician may be employed to provide emergency medical services if the physician is employed to provide other medical services.

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

(A) "Affiliate" of a renal dialysis clinic means an entity that directly or indirectly is controlled by or is under common control with a renal dialysis clinic licensed under title 68, chapter 11. "Affiliate" does not mean, however, a health maintenance organization licensed under title 56,

chapter 32;

(B) "Anesthesiologist" is a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including, without limitation, nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances or a dentist licensed in this state who completed a residency program in anesthesiology at an accredited medical school in years 1963 through 1977;

(C) "Emergency physician" is a physician who has either completed a residency in emergency medicine or practiced emergency medicine full-time for a three year period and whose practice is limited to emergency medicine. "Emergency physician" does not include, however, a physician who has been previously employed to provide nonemergent medical services who, over a period of twelve (12) months or more, becomes a full-time emergency physician and who remains employed by mutual agreement;

(D) "Employing entity" means a renal dialysis clinic licensed under title 68, chapter 11 or an affiliate of such an entity that employs one (1) or more physicians. "Employing entity" does not mean, however, a health maintenance organization licensed under title 56, chapter 32;

(E) "Pathologist" is a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including, without limitation, anatomic and clinical pathology;

(F) "Physician" means a person licensed pursuant to chapter 6 or 9 of this title; and

(G) "Radiologist" is a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including, without limitation, diagnostic radiology, radiation therapy and radiation oncology.

(h)(1) The general assembly finds that there are special facts above and beyond ordinary competition that would give an unfair advantage to a physician when competing with the physician's former employer, if the former employer is a faculty practice plan. The existence of such special facts warrants protection of the faculty practice plan through restrictive covenants and prohibitions against an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship. The general assembly further finds that the faculty practice plan's right to be free of unfair competition from a former employed physician outweighs any financial hardship to the former employed physician resulting from the operation of any such restrictive covenants or prohibition. The general assembly further finds that restrictive covenants and prohibitions against an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship with a faculty practice plan are reasonable and not inimical to the public interest, subject to the temporal and geographic limitations set forth in subdivision (h)(2).

(2) A faculty practice plan may impose restrictions or prohibitions upon an employed physician's right to practice medicine upon the termination or conclusion of the employment relationship provided that:

(A) The maximum area of the restrictions or prohibitions is the greater of:

(i) The county in which the primary practice site is located; or

(ii) A ten (10) mile radius from the primary practice site; and

(B) The maximum duration of the restrictions or prohibitions is two (2) years.

(3) As used in this subsection (h), "faculty practice plan" means a domestic nonprofit public benefit corporation as defined in subdivision (f)(4)(B)(ii).

(4) As used in this subsection (h), "primary practice site" includes any health care institution, including, but not limited to, a hospital, clinic, surgery center, or physicians' office, that the faculty practice plan or its affiliated college or university owned, leased, or operated within two (2) years before the termination or conclusion of the employment relationship between the physician and the faculty practice plan and at which the employed physician practiced medicine within such period of two (2) years.

(5) This subsection (h) shall not apply:

(A) To any physician employee of a faculty practice plan who practices in the specialties of ophthalmology, pathology, anesthesiology and/or emergency medicine; or

(B) With respect to any physician employee of a faculty practice plan who practices as a primary care physician or in the specialties of obstetrics or general pediatrics in a health resources shortage area as determined in the health access plan most recently published by the department of health.

(6) The requirements of this subsection (h) shall not be construed to preclude the enforceability of any restrictive covenant or prohibition exceeding the requirements or conditions of this subsection (h) that is reasonable and not inimical to the public interest under the common law principles governing restrictive covenants.

(i) Notwithstanding the restrictions contained in this section, a nursing home or affiliate of a nursing home may employ a physician pursuant to § 68-11-205.

(j)(1) Nothing in this section shall be construed to prohibit a charitable clinic from employing or contracting with a physician; provided, that the contractual relationship between the physician and the charitable clinic is evidenced by a written contract, job description, or documentation, containing language that does not restrict the physician from exercising independent professional medical judgment in diagnosing and treating patients.

(2) For the purposes of this subsection (j), the term "charitable clinic" means an entity that meets the following standards:

(A) Has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3) or is a distinct part of an entity that has received such a determination of exemption;

(B) Has clinical facilities located in this state;

(C) Has a primary mission to provide health care or dental care services to low-income, uninsured, or underserved individuals;

(D) Provides one (1) or more of the following services for free or at a discounted rate:

(i) Medical care;

(ii) Dental care;

(iii) Mental health care; or

(iv) Prescription medications;

(E) Utilizes volunteer healthcare professionals and nonclinical volunteers; and

(F) Is not required to be licensed under § 68-11-202(a)(1).

(3) For the purposes of this section, the term "employing" shall not allow the employing of those physicians exempted in subdivision (e)(3).

(k) This section does not prohibit a licensed nonresidential office-based opiate treatment facility, as defined in § 33-2-402, from employing or contracting with a physician if the facility has a physician in the ownership structure of its controlling business entity and the employment relationship between the physician to be employed or contracted with and the nonresidential office-based opiate treatment facility is evidenced by a written contract or employment agreement containing language that does not restrict the physician from exercising independent professional medical judgment in diagnosing and treating patients.

63-7-128. Certificate to practice as a registered nurse first assistant.

(a) As used in this section, "registered nurse first assistant" means a person who:

(1) Is licensed as a registered nurse in this state;

(2)(A) Is certified in perioperative nursing; or

(B)(i) Is certified as an advanced practice registered nurse; and

(ii) Is qualified by education and training to perform tasks involved in perioperative nursing, as determined by the board; and

(3) Has successfully completed a registered nurse first assistant education program that meets the education standard of the Association of periOperative Registered Nurses for a registered nurse first assistant.

(b) Registered nurses holding the education and practice credentials of a registered nurse first assistant may apply to the board of nursing for a certificate to practice as a registered nurse first assistant, including authorization to use the title "registered nurse first assistant" or the abbreviation "RNFA." No other person shall assume such title or use such abbreviation or any other words, letters or signs to indicate that the person using the same is a registered nurse first assistant.

(c) An applicant for a certificate to practice as a registered nurse first assistant shall pay an initial fee as set by the board as well as a biennial renewal fee as set by the board.

63-13-103. Chapter definitions.

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

(1) "ACOTE" means the Accreditation Council for Occupational Therapy Education, a nationally recognized accrediting agency for professional programs in the field of occupational therapy;

(2) "AOTA" means the American Occupational Therapy Association;

(3) "Board" means:

(A) As used in part 2 of this chapter, the board of occupational therapy; and

(B) As used in part 3 of this chapter, the board of physical therapy;

(4) "Competence" is the application of knowledge, skills, and behaviors required to function effectively, safely, ethically, and legally within the context of the patient's role and environment;

(5) "Division" means the division of health related boards of the department of health;

(6) "Dry needling" means a skilled intervention that uses a thin filiform needle to penetrate the skin and stimulate underlying neural, muscular, and connective tissues for the management of neuromusculoskeletal conditions, pain, and movement impairments;

(7) "NBCOT" means the National Board for Certification in Occupational Therapy;

(8) "Occupational therapist" means a person licensed to engage in occupational therapy practice under this chapter;

(9) "Occupational therapy assistant" means a person licensed to assist in occupational therapy practice under the supervision of an occupational therapist;

(10)(A) "Occupational therapy practice" means the therapeutic use of everyday life activities (occupations) for the purpose of enabling individuals or groups to participate in roles and situations in home, school, workplace, community and other settings. Occupational therapy addresses the physical, cognitive, psychosocial and sensory aspects of performance in a variety of contexts to support engagement in occupations that affect health, well-being and quality of life. "Occupational therapy practice" includes, but is not limited to:

(i) The screening, evaluation, assessment, planning, implementation and discharge planning of an occupational therapy program or services in consultation with the client, family members, caregivers and other appropriate persons;

(ii) Selection and administration of standardized and nonstandardized tests and measurements to evaluate factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation, including:

(a) Body functions and body structures;

(b) Habits, routines, roles and behavior patterns;

(c) Cultural, physical, environmental, social and spiritual context and activity demands that affect performance; and

(d) Performance skills, including motor, process and communication/interaction skills;

(iii) Methods or strategies selected to direct the process of interventions, such as:

(a) Modification or adaptation of an activity or the environment to enhance performance;

(b) Establishment, remediation or restoration of a skill or ability that has not yet developed or is impaired;

(c) Maintenance and enhancement of capabilities without which performance in occupations would decline;

(d) Health promotion and wellness to enable or enhance performance and safety of occupations; and

(e) Prevention of barriers to performance, including disability prevention;

(iv) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation, including:

(a) Therapeutic use of occupations, exercises and activities;

(b) Training in self-care, self-management, home management and community/work reintegration;

(c) Development, remediation or compensation of physical, cognitive, neuromuscular and sensory functions and behavioral skills;

(d) Therapeutic use of self, including an individual's personality, insights, perceptions and judgments as part of the therapeutic process;

(e) Education and training of individuals, family members, caregivers and others;

(f) Care coordination, case management, discharge planning and transition services;

(g) Consulting services to groups, programs, organizations or communities;

(h) Assessment, recommendations and training in techniques and equipment to enhance functional mobility, including wheelchair management;

(i) Driver rehabilitation and community mobility; and

(j) Management of feeding and eating skills to enable feeding and eating performance;

(v) Management of occupational therapy services, including the planning, organizing, staffing, coordinating, directing or controlling of individuals and organizations;

(vi) Providing instruction in occupational therapy to students in an accredited occupational therapy or occupational therapy assistant educational program by persons who are trained as occupational therapists or occupational therapy assistants; and

(vii) Administration, interpretation and application of research to occupational therapy services;

(B) Occupational therapy services are provided for the purpose of promoting health and wellness to those clients who have, or are at risk of developing, illness, injury, disease, disorder, impairment, disability, activity limitation or participation restriction and may include:

(i) Training in the use of prosthetic devices;

(ii) Assessment, design, development, fabrication, adaptation, application, fitting and training in the use of assistive technology and adaptive and selective orthotic devices;

(iii) Application of physical agent modalities with proper training and certification;

(iv) Assessment and application of ergonomic principles; and

(v) Adaptation or modification of environments, at home, work, school or community, and use of a range of therapeutic procedures, such as wound care management, techniques to enhance sensory, perceptual and cognitive processing and manual therapy techniques, to enhance performance skills, occupational performance or the promotion of health and wellness;

(C) Occupational therapy practice may occur in a variety of settings, including, but not limited to:

(i) Institutional inpatient settings, such as acute rehabilitation facilities, psychiatric hospitals, community and specialty hospitals, nursing facilities and prisons;

(ii) Outpatient settings, such as clinics, medical offices and therapist offices;

(iii) Home and community settings, such as homes, group homes, assisted living facilities, schools, early intervention centers, daycare centers, industrial and business facilities, hospices, sheltered workshops, wellness and fitness centers and community mental health facilities;

(iv) Research facilities; and

(v) Educational institutions;

(D) "Occupational therapy practice" includes specialized services provided by occupational therapists or occupational therapy assistants who are certified or trained in areas of specialization that include, but are not limited to, hand therapy, neurodevelopmental treatment, sensory integration, pediatrics, geriatrics and neurorehabilitation, through programs approved by AOTA or other nationally recognized organizations;

(11) "Occupations" means everyday life activities, named, organized and given value and meaning by individuals and their culture. "Occupations" includes everything that people do to occupy their time, including caring for their needs, enjoying life and contributing to the social and economic fabric of their communities;

(12) "Onsite supervision" means the supervising physical therapist or physical therapist assistant must:

(A) Be continuously onsite and present in the department or facility where assistive personnel are performing services;

(B) Be immediately available to assist the person being supervised in the services being performed; and

(C) Maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel;

(13) "Physical therapist" or "physiotherapist" means a person who is licensed pursuant to this chapter to practice physical therapy;

(14) "Physical therapist assistant" means a person who meets the requirements of this chapter for licensure as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist;

(15) "Physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this chapter;

(16) "Physical therapy assistive personnel":

(A) "Other assistive personnel" means other trained or educated health care personnel not defined in subdivisions (14) and (16)(B), who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, "other assistive personnel" or "other support personnel" may be identified by the title specific to their training or education; and

(B) "Physical therapy aide," inclusive of the terms "aide," "technician" and "transporter," means a person trained by and under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks;

(17) "Practice of physical therapy" means:

(A) Examining, evaluating and testing individuals with mechanical, physiological and developmental impairments, functional limitations and

disability or other health and movement-related conditions in order to determine a physical therapy treatment diagnosis, prognosis, a plan of therapeutic intervention and to assess the ongoing effect of intervention;

(B) Alleviating impairments and functional limitations by designing, implementing, and modifying therapeutic interventions that include, but are not limited to, therapeutic exercise, functional training, manual therapy, therapeutic massage, assistive and adaptive orthotic, prosthetic, protective and supportive equipment, airway clearance techniques, debridement and wound care, physical agents or modalities, dry needling, mechanical and electrotherapeutic modalities and patient-related instruction;

(C) Reducing the risk of injury, impairments, functional limitation and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations; and

(D) Engaging in administration, consultation, education and research;

(18) "Restricted physical therapist assistant license" means a license on which the committee has placed any restrictions due to action imposed by the committee;

(19) "Restricted physical therapy license" means a license on which the committee places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status or type of condition of patient to whom the licensee may provide services;

(20) "Supervision" of the physical therapist assistant means the supervising physical therapist will be readily available to the physical therapist assistant being supervised. When the physical therapist assistant is practicing in an offsite setting, the supervising physical therapist will be immediately accessible by telecommunications. Patient conferences will be regularly scheduled and documented and supervisory visits will be made as further outlined in the rules and regulations; and

(21) "Unlicensed person working in occupational therapy" means a person who performs specific supportive tasks related to occupational therapy practice under the direct supervision of an occupational therapist or an occupational therapy assistant and whose activities do not require professional or advanced training in the basic anatomical, biological, psychological and social sciences involved in the provision of occupational therapy services. Such persons are often referred to as aides, technicians, transporters or support staff.

63-13-301. License requirement.

(a)(1) A physical therapist, or physiotherapist, licensed under this chapter is fully authorized to practice physical therapy.

(2) A physical therapist, or physiotherapist, is not licensed under this chapter unless the individual holds a degree from a professional physical therapy program accredited by a national accreditation agency recognized by the United States department of education and by the board of physical therapy.

(b) No person shall practice or in any manner claim to be engaging in the practice of physical therapy or designate as being a physical therapist unless duly licensed as a physical therapist in accordance with this chapter.

63-13-303. Exceptions to referral requirements.

(a) The practice of physical therapy must be under the written or oral referral of a referring practitioner who is a licensed doctor of medicine, chiropractic, dentistry, podiatry, or osteopathy, except a licensed physical therapist may:

(1) Conduct an initial patient visit without referral;

(2) Provide physical assessments or instructions, including a recommendation of exercise to an asymptomatic person, without the referral of a referring practitioner;

(3)(A) In emergency circumstances, including minor emergencies, provide assistance to a person to the best of a physical therapist's ability without the referral of a referring practitioner. Except as provided in subdivision (a)(4), the physical therapist shall refer the person to the appropriate healthcare practitioner, as indicated, immediately after providing assistance;

(B) For the purposes of subdivision (a)(3)(A):

(i) "Emergency circumstances" means instances where emergency medical care is required; and

(ii) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(a) Placing the patient's health in serious jeopardy;

(b) Serious impairment to bodily functions; or

(c) Serious dysfunction of any bodily organ or part; and

(4) Treat a patient without a referral when, within the scope of practice of physical therapy, the following are met:

(A) The patient's physician, as defined in § 63-6-204(f)(7) has been notified;

(B) If the physical therapist determines, based on clinical evidence, that no progress has been made with respect to that patient's condition within thirty (30) days, immediately following the date of the patient's initial visit with the physical therapist, then the physical therapist shall not provide any additional physical therapy services and shall refer the patient to a healthcare practitioner who qualifies as a referring practitioner;

(C) Physical therapy services must not continue beyond ninety (90) days without consulting with the patient's appropriate healthcare practitioner;

(D) If the patient was previously diagnosed by a licensed physician with chronic, neuromuscular, or developmental conditions, and the evaluation, treatment, or services are being provided for problems or symptoms associated with one (1) or more of those previously diagnosed conditions, then subdivisions (a)(4)(B) and (a)(4)(C) do not apply; and

(E) A physical therapist shall refer patients under the physical therapist's care to appropriate healthcare practitioners, if, at any time, the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond the scope of practice of a physical therapist, reasonable therapeutic progress is not being achieved for the patient, or physical therapy treatment is contraindicated.

(b) No person shall practice physical therapy other than upon the referral of

a patient by a person who is licensed in this or another state to practice medicine, chiropractic, dentistry, osteopathic medicine or podiatric medicine, within the scope of those practices, and whose license is in good standing and who holds a CPR certificate or its equivalent, unless one of the following conditions is met:

(1) The person holds a master's or doctorate degree from a professional physical therapy program that is accredited by a national accreditation agency recognized by the United States department of education and by the board of physical therapy and the person has completed at least one (1) year of experience as a licensed physical therapist;

(2) The person has successfully completed a residency or clinical fellowship in physical therapy at a program approved by the board; or

(3)(A) The person has completed at least three (3) years of experience as a licensed physical therapist; and

(B) The person has completed a course approved by the board of physical therapy and offered by an accredited university of at least fifteen (15) hours, designed to enable the physical therapist to identify signs and symptoms of systemic disease, particularly those that can mimic cardiological, neurological, oncological or musculoskeletal disorders and to recognize conditions that require timely referral to a physician, dentist, osteopath, podiatrist or chiropractor.

(c) It is unprofessional conduct, for the purposes of § 63-13-312, for a physical therapist to knowingly initiate services to a patient in violation of subdivision (a)(4).

63-13-305. Claims and practices of other licensed professionals — Exemptions from licensure.

(a) Nothing in this chapter shall be construed as restricting a person licensed or certified under any other law of this state from engaging in the profession or practice for which the person is licensed or certified; provided, that the person does not claim to be a physical therapist, a physical therapist assistant or a provider of physical therapy.

(b) The following persons shall be exempt from licensure as a physical therapist or physical therapist assistant under this chapter:

(1) A person who is pursuing a course of study leading to a degree as a physical therapist or physical therapist assistant in a professional education program approved by the board and is satisfying supervised clinical education requirements related to physical therapy education;

(2) A physical therapist or physical therapist assistant while practicing in the United States armed services, United States public health service or veterans administration as based on requirements under federal regulations for state licensure of health care providers;

(3) A physical therapist or physical therapist assistant licensed in another United States jurisdiction, or a foreign-educated or internationally trained physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty (60) days in a calendar year; and

(4) A physical therapist or physical therapist assistant licensed in another United States jurisdiction who is temporarily performing physical therapy for members of established athletic teams, athletic corporations or perform-

ing arts companies that are training, competing or performing in Tennessee; provided, however, that a person performing physical therapy in this state pursuant to this subdivision (b)(4) shall agree to use the secretary of state for service of process pursuant to title 20, chapter 2, part 2.

(c) The practice of dry needling by a physical therapist licensed under this chapter shall not constitute the practice of acupuncture under chapter 6, part 10 of this title.

(d) Nothing in this chapter shall be construed as restricting persons licensed under any other law of this state from performing physical agent modalities for which they have received education and training.

63-13-306. Application — Examinations.

(a) An applicant for licensure as a physical therapist or physical therapist assistant shall file an application as required by the board. A nonrefundable application fee and cost of the examination shall accompany the completed written or online application. Fees shall be established by the rules promulgated by the board.

(b) After the application process has been completed, an applicant shall take the examination for physical therapist licensure that covers current physical therapy practice.

(c) After the application process has been completed, an applicant shall take the examination for physical therapist assistant licensure that covers current technical application of physical therapy services.

(d) Examinations shall be available within the state at such time and place as the board shall determine. The board shall determine the passing score.

(e) Applicants who do not pass the examination after the first attempt may retake the examination one (1) additional time without reapplication for licensure up to a total of six (6) attempts. Applications remain active for twelve (12) months. After twelve (12) months, applicants must submit a new application with all applicable fees.

63-13-307. Qualifications of applicants — Reciprocity.

(a) An applicant for licensure as a physical therapist shall have the following qualifications:

(1) [Deleted by 2020 amendment.]

(2) Be of good moral character;

(3) Have completed the application process;

(4) Be a graduate of a professional physical therapy program accredited by a national accreditation agency recognized by the United States department of education and by the board of physical therapy; and

(5) Have successfully passed an examination approved by the board.

(b) An applicant for license as a physical therapist assistant shall meet the following requirements:

(1) [Deleted by 2020 amendment.]

(2) Be of good moral character;

(3) Have completed the application process;

(4) Be a graduate of a physical therapist assistant education program accredited by an accreditation agency approved by the board; and

(5) Have successfully passed an examination approved by the board.

(c) The board shall issue a license to a physical therapist or physical

therapist assistant who has a valid unrestricted license from another United States jurisdiction in which such person, when granted such license, previously met all requirements as specified in subsections (a) and (b) and as further established by rules promulgated by the board.

(d) An applicant for licensure as a physical therapist who has been educated outside the United States, foreign-educated, or internationally trained shall meet the following qualifications:

(1) [Deleted by 2020 amendment.]

(2) Be of good moral character;

(3) Have completed the application process;

(4) Provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require completion of additional course work before proceeding with the application process;

(5) Provide written proof that the school of physical therapy education is recognized by its own ministry of education;

(6) Provide written proof of authorization to practice as a physical therapist without limitations in the country where the professional education occurred;

(7) Provide proof of legal authorization to reside and seek employment in the United States or its territories;

(8) Have the applicant's educational credentials evaluated by a board-approved credential evaluation agency;

(9) Have passed the board approved English proficiency examinations, if the applicant's native language is not English;

(10) Have participated in and completed an interim supervised clinical practice period prior to licensure; and

(11) Have successfully passed the examination approved by the board.

(e) Notwithstanding this section, if the foreign-educated physical therapist applicant is a graduate of a professional physical therapy education program accredited by an agency approved by the board, the requirements in subdivisions (d)(4), (5), (8) and (10) may be waived.

(f) In determining the qualifications of an applicant for licensure as a physical therapist or as a physical therapist assistant, only a majority vote of the board of physical therapy shall be required.

63-13-308. License renewal — Eligibility to apply for physical therapy licensure compact privileges — Changes in name or address — Retirement — Inactive Status — Exemption from continuing education requirements.

(a) A physical therapist or physical therapist assistant licensed under this part shall renew the person's license as specified in the rules. An individual who fails to renew the license by the date of expiration shall not practice physical therapy or function as a physical therapist assistant in this state.

(b) A physical therapist or physical therapist assistant licensed in a jurisdiction that is a member state of the Physical Therapy Licensure Compact is eligible to become a licensee for compact privileges in this state, subject to the requirements in § 63-13-402.

(c) Each licensee shall report to the division a name change and changes in

business and home address within thirty (30) days of the change.

(d) A person licensed by the board to the practice of physical therapy in this state who has retired, or may retire, from the practice in this state is not required to register as required by this part if the person files with the board an affidavit on a form to be furnished by the board, which affidavit states the date on which the person retired from the practice and any other facts the board considers necessary that tend to verify the retirement. If the person thereafter reengages in the practice in this state, the person must apply for licensure with the board as provided by this part and meet the continuing education requirements that are established by the board, except for good and sufficient reasons as determined by the board.

(e) A person licensed by the board may place their license on inactive status by filing the proper forms with the board and by paying a biennial fee in accordance with rules. If the person thereafter reengages in active practice of physical therapy in this state, then the person must apply for relicensure with the board as provided by this part and meet the continuing education requirements as are established by the board, except for good and sufficient reasons as determined by the board.

63-13-310. Unlawful use of titles or designations indicating licensure.

(a) A physical therapist shall use the letters "PT" or "DPT", as appropriate for the individual's education, in connection with their name or place of business to denote licensure under this part.

(b) It is unlawful for any person or for any business entity, its employees, agents or representatives to use in connection with such person's name or the name or activity of the business the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "registered physical therapist," "licensed physical therapist," "doctor of physical therapy," or the letters "PT," "LPT," "DPT," or "RPT" or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless such services are provided by or under the direction of a physical therapist licensed in accordance with this part.

(c) Nothing in this chapter shall be construed as restricting a person licensed or certified under any other law of this state from engaging in the profession or practice for which the person is licensed or certified; provided, that the person does not claim to be a physical therapist, a physical therapist assistant or a provider of physical therapy.

(d) A physical therapist assistant shall use the letters "PTA" in connection with the person's name to denote licensure.

(e) No person shall use the title "physical therapist assistant" or use the letters "PTA" in connection with the person's name or any other words, abbreviations or insignia indicating or implying, directly or indirectly, that the person is a physical therapist assistant unless the person is licensed as a physical therapist assistant in accordance with this part.

63-13-312. Denial, suspension or revocation of licenses.

(a) The board has the power, and it shall be its duty, to deny, suspend or revoke the license of, or to otherwise lawfully discipline, a licensee who is guilty of violating any of this part or is guilty of the following acts or offenses:

(1) Practicing physical therapy in violation of this chapter or any rule or written order adopted by the board;

(2) Practicing or offering to practice beyond the scope of physical therapy practice as defined in this chapter;

(3) Making false or misleading statements or representations, being guilty of fraud or deceit in obtaining admission to practice or being guilty of fraud or deceit in the licensee's practice;

(4) Engaging in the performance of substandard care by a physical therapist due to ignorance, incompetence or a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;

(5) Engaging in the performance of substandard care by a physical therapist assistant, which includes exceeding the authority to perform the task selected and delegated by the supervising physical therapist, regardless of whether actual injury to the patient is established;

(6) Inadequately supervising or delegating duties that exceed the scope of practice for assistive personnel in accordance with this chapter and rules adopted by the board;

(7) Conviction of a felony or any offense involving moral turpitude in the courts of this state or any other state, territory or country. "Conviction," as used in this subdivision (a)(7), includes a finding or verdict of guilt or a plea of nolo contendere;

(8) Practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the use of controlled substances, controlled substance analogues, other habit-forming drugs, chemicals or alcohol;

(9) Disciplinary action against a person licensed to practice as a physical therapist or physical therapist assistant by another state or territory of the United States for any acts or omissions that would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document shall constitute prima facie evidence of a violation of this section and be sufficient grounds upon which to deny, restrict or condition licensure or renewal and/or discipline a person licensed in this state;

(10) Engaging in sexual misconduct. "Sexual misconduct," for the purpose of this section, includes:

(A) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant/patient relationship exists;

(B) Making sexual advances, requesting sexual favors and engaging in other verbal conduct or physical conduct or physical contact of a sexual nature with patients; and

(C) Intentionally viewing a completely or partially disrobed patient in the course of treatment, if the viewing is not related to patient diagnosis or treatment under current practice standards;

(11) Directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee or profiting by means of a credit or other valuable consideration, such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. Nothing in this subdivision (a)(11) prohibits the members of any regularly and properly organized business entity recognized

by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expenses. Physical therapists employed by or contracting with a physician, physician group, as defined in accordance with the federal Physician Self-Referral Law (42 U.S.C. § 1395nn), or entity primarily owned by physicians and receiving wages or other compensation and/or benefits pursuant to the employment or contract shall not be deemed to be in violation of any provision under this chapter solely by virtue of the employment or contract and shall not be subject to licensure denial, suspension, revocation or any other disciplinary action or other penalty described under this chapter solely by virtue of the employment or contract. This subdivision (a)(11) shall not be interpreted in such a way as to create a prohibition on the corporate practice of any health care professional where no such prohibition previously existed;

(12) Failing to adhere to standards of ethics of the physical therapy profession;

(13) Charging unreasonable or fraudulent fees for services performed or not performed;

(14) Making misleading, deceptive, untrue or fraudulent representations in violation of this chapter, or otherwise, in practice of the profession;

(15) Being under a current judgment of mental incompetency rendered by a court of competent jurisdiction;

(16) Aiding or abetting a person not licensed in this state who directly or indirectly performs activities requiring a license;

(17) Failing to report to the board any act or omission of a licensee, applicant or any other person which violates this chapter;

(18) Interfering with, or refusing to cooperate in, an investigation or disciplinary proceeding, including willful misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent the patient or witness from providing evidence in a disciplinary proceeding or any legal action;

(19) Failing to maintain patient confidentiality without prior written consent or unless otherwise required by law;

(20) Failing to maintain adequate patient records that contain a minimum of an evaluation of objective finding, a physical therapy treatment diagnosis, the plan of care including desired outcomes, the treatment record, a discharge plan including results of intervention and sufficient information to identify the patient;

(21) Promoting unnecessary devices, treatment intervention or service for the financial gain of the practitioner or of a third party;

(22) Providing treatment intervention unwarranted by the condition of the patient, nor shall the licensee continue treatment beyond the point of reasonable benefit;

(23) A violation or attempted violation, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provisions of this chapter or any lawful order of the board issued pursuant thereto or any criminal statute of this state;

(24) Division of fees or agreeing to split fees or divide fees received for professional services with any person for bringing or referring a patient outside the scope of § 63-13-315;

(25) Payment or acceptance of commissions, in any form or manner, on fees for professional services, references, consultations, pathological reports,

prescriptions or on other services or articles supplied to patients;

(26) Acting in a manner inconsistent with generally accepted standards of physical therapy practice; or

(27) Practicing physical therapy with a mental or physical condition that impairs the ability of the licensee to practice with skill and safety.

(b) An action taken under this section shall be subject to the applicable provisions of the Fresh Start Act that are compiled in chapter 1, part 1 of this title.

63-13-318. Board of physical therapy.

(a) There is created a board of physical therapy, which shall perform the same functions and have the same duties and responsibilities that were performed by the committee of physical therapy prior to July 1, 2007.

(b) The board shall consist of five (5) members appointed by the governor, each of whom shall be a resident of this state. Three (3) members of the board shall be licensed physical therapists who have had at least five (5) years of experience in the actual practice or teaching of physical therapy immediately preceding their appointment. One (1) member of the board shall be a licensed physical therapist assistant who has had at least five (5) years of experience in the actual performance of physical therapy procedures and related tasks or teaching of a physical therapist assistant curriculum immediately preceding the appointment. One (1) member of the board shall be a person who is not engaged in the practice of physical therapy and who is not professionally or commercially associated with the health care industry.

(c) The physical therapist and physical therapist assistant members may be appointed by the governor from lists of nominees submitted by interested physical therapy groups, including, but not limited to, the Tennessee Physical Therapy Association. The governor shall consult with the interested physical therapy groups to determine qualified persons to fill positions on the board.

(d) The physical therapists and the physical therapist assistant who are serving on the committee of physical therapy on July 1, 2007, shall continue to serve as members of the board until the expiration of their terms.

(e) The board shall organize annually and select a chair and a secretary. Meetings shall be held as frequently as may be required.

(f) A quorum of the board shall consist of at least three (3) members.

(g) The division shall provide administrative, investigatory and clerical services to the board.

(h) Each member of the board shall be reimbursed for actual expenses incurred in the performance of official duties on the board and shall be entitled to a per diem of one hundred dollars ($100) for each day of service in conducting the business of the board. 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.

(i) All regular appointments to the board shall be for terms of three (3) years each. Each member shall serve until a successor is appointed. Vacancies shall be filled by appointment of the governor for the remainder of the unexpired term.

(j) The governor may, at the request of the board, remove any member of the board for misconduct, incompetence or neglect of duty.

(k) In making appointments to the board, the governor shall strive to ensure

that at least one (1) member is fifty-five (55) years of age or older, that at least one (1) member is a racial minority, and that the gender balance of the board reflects the gender balance of the state's population.

(*l*) After July 1, 2007, the board shall assume and fulfill all powers and duties previously assigned to the committee of physical therapy, and the rules adopted by the committee of physical therapy shall become the rules of the board without further action by the board.

64-1-101. Legislative findings — Authority creation — Board of directors — Chair — Meetings — Employees.

(a)(1) The general assembly finds and declares that:

(A) The tributaries and subtributaries of the major waterways of Tennessee are among the basic resources of the state;

(B) Determination and effectuation of the best means for control of the flood waters of those tributaries and subtributaries, development of their full potential as a domestic, municipal, industrial and agricultural water source and use of their waters and shoreline lands for recreation and industrial development are public purposes essential to the integrated economic development of the areas drained by these streams and to the future economic welfare of the entire state;

(C) Development of the watershed of the Beech River by a local development authority will provide information on problems of water control and development valuable in the formulation of state policy with respect to similar action on larger streams; and

(D) Creation of a local development authority is essential to the achievement of these objectives in the watershed of the Beech River in Decatur and Henderson counties.

(2) There is, therefore, hereby created the Beech River watershed development authority, referred to as "authority" in this part, to exercise the powers granted in this part, in and with respect to the portions of the counties of Decatur and Henderson making up the watershed of the Beech River.

(b) The authority shall be a body politic and corporate and shall be governed by a board of directors consisting of:

(1) The commissioner of environment and conservation or the commissioner's designee, the county mayor of Decatur County or the mayor's designee, and the county mayor of Henderson County or the mayor's designee as ex officio members; and

(2) Five (5) additional members to be appointed by the governor from persons residing in Decatur or Henderson County and to include persons active in municipal, industrial, agricultural and commercial groups concerned with the development of the Beech River watershed. One (1) such member shall be appointed for a three-year term, two (2) for six-year terms and two (2) for nine-year terms, but such terms shall continue in all events until successors are appointed. Their successors shall be appointed by the governor for terms of nine (9) years. Two (2) members shall be appointed from persons residing in Decatur County and three (3) from persons residing in Henderson County. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired term.

(c) The board of directors of the authority shall elect a chair from the voting members of the board for a term of three (3) years or for so long as such person

remains a member of the board, whichever is less.

(d) The commissioner shall serve on the board in an advisory capacity without vote. The other members shall each have one (1) vote. The directors shall serve without pay except for actual traveling expenses and other necessary expenses incurred in the performance of their official duties, such expenses to be reimbursed from such funds as may be available to the authority.

(e)(1) Upon completion of the membership of the board, the members shall meet and organize in Lexington, Tennessee, set a regular time and place for the meetings of the authority, and obtain offices and all necessary equipment for the office.

(2)(A) A member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the board.

(B) The presiding officer of the board shall promptly notify, or cause to be notified, the appointing authority of the member who fails to satisfy the attendance requirement prescribed in subdivision (e)(2)(A).

(3) The board may employ an executive secretary and such other persons as it deems necessary to carry out the purposes stated in this part and the salary of any such employees may be paid out of such funds as may be available to the authority from any source. The executive secretary is the custodian of funds belonging to the authority and shall keep the records and accounts as may be required by the board. The executive secretary shall also execute a corporate surety bond as prescribed by the board.

64-1-102. Powers and duties — Eminent domain — Tax-exempt status.

(a) The authority is specifically authorized and empowered to do any and all things necessary in forming and executing a plan for the comprehensive development of the resources of the Beech River watershed, including an action in cooperation, when necessary, with appropriate local, state, and federal agencies, in the fields of agriculture, forestry, drainage and flood control, land reclamation, electric power utilization, irrigation, water conservation and supply, recreation, public health, manufacturing, and trade. To that end the authority:

(1) Shall have succession in its corporate name;

(2) May sue and be sued in its corporate name;

(3) May adopt and use a corporate seal;

(4) May establish, amend and repeal bylaws and make all rules and regulations deemed expedient for the management of its corporate affairs;

(5) May make contracts and execute instruments containing such terms, provisions and conditions as in the judgment of the board of directors may be necessary, proper or advisable in the exercise of the powers conferred upon it in this part, including, but not limited to, contracts for grants, loans or other assistance from any federal agency and contracts with corporations, associations or individuals for construction work in the furtherance of any development project and may carry out and perform the terms and conditions of all such contracts or instruments;

(6) May acquire by purchase, lease, gift or by condemnation property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary to the exercise of its powers or functions. Acquisition by

condemnation is limited to land, rights in land, including leaseholds and easements, and water rights in the Beech River watershed that, if taken for channel improvement along an unimpounded portion of the Beech River stream system, lie within the present floodplain of the main stream or of a tributary of the Beech River and, if bordering an impoundment or detention reservoir, lie within two thousand six hundred fifty feet (2,650′) of the nearest point on the maximum shoreline contour of such impoundment. The amount and character of interests in land, rights in land and water rights to be acquired within either of these boundaries shall be determined by the board of directors, which determination shall be final;

(7) May issue its bonds from time to time in a total amount not to exceed one million dollars ($1,000,000) for the purpose of paying in whole or in part the cost of the acquisition of necessary land or interests therein and the development of the resources of the Beech River watershed and expenses incidental thereto; may secure such bonds by a pledge of all or any part of the revenues that may now or hereafter come to the authority from any source, by a mortgage or deed of trust of the authority's land or any part thereof, or by a combination of the two (2); and may make such contracts or covenants in the issuance of such bonds as may be necessary to ensure the marketability thereof;

(8) May arrange with any city, county, municipality or supplier of utilities for the abandonment, relocation or other adjustment of roads, highways, bridges and utility lines;

(9) May enter into contracts with municipalities, corporations, other public agencies or political subdivisions of any kind or with others for the sale of water from reservoirs in the Beech River system under its control for municipal, domestic, agricultural or industrial use or any other services, facilities or commodities that the authority may be in a position to supply;

(10) May develop or provide for the development of residential and commercial property existing within the Beech River system, and may develop reservoirs and shoreline lands for recreational use and provide for their operation or use for this purpose directly or by concessionaires, lessees, or vendees of shoreline lands;

(11) May sell or lease shoreline lands acquired in connection with development of the Beech River system for uses consistent with the authority's development plans and subject to such restrictions as the authority deems necessary for reservoir protection and to such requirements as to:

(A) Character of improvements and activities on the lands; and

(B) Time within which such improvements or activities shall be undertaken as the authority deems appropriate to its overall development plans; and

(12) May manage or operate reservoirs or shoreline lands of reservoirs owned by the United States under appropriate agreements with the federal agency or agencies having custody and control thereof.

(b)(1) The authority's power of eminent domain may be exercised under title 29, chapter 16, or pursuant to any other applicable statutory provisions, now in force or hereafter enacted, for the exercise of the power of eminent domain.

(2)(A) At any time on or after the filing of a petition for condemnation of property and before the entry of final judgment, the authority may file with the clerk of the court in which the petition is filed a declaration of

taking signed by the duly authorized officer or agent of the authority declaring that all or part of the property described in the petition is being taken for the use of the authority. The declaration of taking is sufficient if it sets forth:

(i) A description of the property, sufficient for the identification thereof, to which there may be attached a plat or map thereof;

(ii) A statement of the estate or interest in the property being taken; and

(iii) A statement of the sum of money estimated by the authority to be just compensation for the property taken.

(B) At any time prior to the vesting of title to property in the authority, the authority may withdraw or dismiss its petition with respect to any and all of the property described in the petition.

(3) From the filing of the declaration of taking and the deposit in court to the use of the persons entitled thereto of the amount of the estimated compensation stated in the declaration, title to the property described as being taken by the declaration shall vest in the authority, free from the right, title, interest or lien of all parties to the cause; and the property shall be deemed to be condemned and taken for the use of the authority, and the right to just compensation for the same shall vest in the persons entitled thereto. Upon the filing of the declaration of taking, the court shall designate a day, not exceeding twenty (20) days after such filing, except upon good cause shown, on which the persons in possession are required to surrender possession to the authority.

(4) The ultimate amount of compensation shall be determined pursuant to title 29, chapter 16. If the amount so fixed exceeds the amount so deposited in the court by the authority or otherwise paid to the persons entitled thereto, the court shall enter judgment against the authority in the amount of such deficiency, together with interest at the legal rate on such deficiency from the date of the vesting of title to the date of entry of the final judgment, subject, however, to abatement for use, income, rents or profits derived from such property by the owner thereof subsequent to the vesting of title in the authority; and the court shall order the authority to deposit the amount of such deficiency in court. Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of just compensation to be awarded in the proceedings. Interest is not allowed on so much of the just compensation as has been paid into court with the declaration of taking. In case the amount deposited in court by the authority as the estimated compensation for the property exceeds the amount of the final award or judgment, such excess shall be returned to the authority.

(5) As an alternative to the procedure provided in subdivisions (b)(2)-(4), the authority may file in the court where condemnation proceedings of the authority are pending an application for a writ of possession, which the court shall, upon the authority's posting a bond with the clerk of the court in such amount as the court may deem commensurate with the value of the property condemned, order that a writ of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just.

(c) During the time that title to land or rights in land are held by the authority, they are exempt from all taxes levied by the state or any of its political subdivisions, or instrumentalities of either, and all other property and

activities of the authority are similarly exempt.

(d) The authority shall not exercise any broad governmental controls or police powers to regulate land use planning, zoning, subdivision regulations, building codes, or similar powers to regulate land use.

64-1-203. Board of directors — Officers — Meetings — Expenses — Quorum.

(a) The organization of the authority is as follows:

(1) The authority shall be governed by a board of directors;

(2)(A) Membership of the board of directors shall consist of:

(i) The presiding officer of the county legislative body or the presiding officer's authorized representative and one (1) other member from the county legislative body in each county that is a member of the authority. The terms of such members shall coincide with their terms of office; but such membership may, at the discretion of the respective county legislative body, be rotated annually;

(ii) The chair or the chair's authorized representative and one (1) member of the council of the city of Memphis. The terms of such members shall coincide with their terms of office, but such membership may, at the discretion of the council, be rotated annually;

(iii) One (1) member at large, to be appointed by the governor to serve during the governor's term of office;

(iv) The mayor of Shelby County or the mayor's authorized representative;

(v) One (1) member from each county soil conservation district board of supervisors from each county that is a member of the authority, as established under title 43, chapter 14, part 2. The term of such member shall coincide with the member's term of office on the district board, but such membership may, at the discretion of the district board, be rotated annually; and

(vi) The mayor, or the mayor's authorized representative, of each incorporated municipality within counties that are members of the authority;

(B) No person shall be appointed to the board by any legislative body or the governor who has an interest, either indirect ownership or through a trustee, in real property that is to be acquired by the Chickasaw basin authority. Any person not eligible for appointment due to the prohibitions in this subdivision (a)(2)(B) who accepts such appointment shall be subject to the penalties set forth in §§ 12-4-101 and 12-4-102. Whenever public officials who are members of the board by virtue of office, including the presiding officer of the county legislative bodies in each county that is a member of the authority, the chair of the council of the city of Memphis, the mayor of Shelby County and the mayor of each incorporated municipality within counties that are members of the authority, are not eligible to serve as a member of the board due to this subdivision (a)(2)(B), the legislative body of the respective county or municipality shall elect an authorized representative to serve in place of the public officials; and

(3) Upon completion of its membership, the appointees shall meet and organize at Memphis, elect a chair, vice chair and secretary-treasurer and set a regular time and place for meetings of the board. The officers of the board of directors shall be elected annually at the first meeting of each

calendar year.

(b) Directors and ex officio members shall serve without compensation, except reimbursements for actual traveling and other expenses incurred in the performance of their official duties, subject to such funds as may be available to the authority and with the approval of their respective elected legislative bodies. 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.

(c) The authority shall act only by vote or concurrence of a majority of a quorum of its membership. A quorum shall be not less than one-half (½) of the members of the authority.

(d)(1) Any member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the board.

(2) The presiding officer of the board shall promptly notify, or cause to be notified, the appointing authority of the member who fails to satisfy the attendance requirement as prescribed in subdivision (d)(1).

64-1-501. Creation — Purpose.

(a) There is created the Sequatchie Valley educational development agency, being a public body corporate and politic and referred to as the "agency" in this part.

(b) The agency is created for the purpose of developing the field of education for the region covered by Bledsoe, Marion, Rhea, Grundy, and Sequatchie counties, referred to as the "region" in this part.

(c) The scope of the agency's interests, work, and activities includes programs in the field of education.

64-1-502. Board of directors — Officers — Meetings — Expenses — Removal.

(a)(1) The agency shall be governed by a board of directors, referred to as the "board" in this part, consisting of the following members, to serve until their successors are appointed:

(A) The county mayor of each of Bledsoe, Marion, Rhea, Grundy and Sequatchie counties shall during that county mayor's term as county mayor be a member of the board, or the county mayor may designate another person from that county to serve as member for the term that the county mayor would otherwise serve;

(B) The governor shall appoint from each of the counties mentioned in subdivision (a)(1)(A) to be a member of the board a person active in county, municipal or other public or business, labor or agricultural affairs. The term of each such member shall be six (6) years, except for the original terms, which shall be for two (2), four (4) and six (6) years, beginning with the date of the organizational meeting of the board as provided in subsection (b);

(C) The mayors of the incorporated cities and towns in each of the five (5) counties shall designate by majority vote one (1) member of the board of directors. The terms of these five (5) members of the board shall be six (6) years, beginning with the date of the organizational meeting of the board as provided in subsection (b); and

(D) The governor shall designate a member of the governor's staff or

cabinet to serve as a director during the governor's term of office.

(2) Any vacancy in the board shall be filled in the same manner as provided in subdivision (a)(1); provided, that any such appointment or designation to fill a vacancy shall be for the unexpired portion of the term of the director being replaced.

(b) Upon completion of the membership of the board, the directors shall meet and organize by electing a chair, vice chair and secretary-treasurer and shall set a regular time and place for meetings of the board thereafter.

(c) The directors shall serve without compensation, except that they shall be reimbursed for actual traveling expenses and other necessary expenses incurred in the performance of their official duties. 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.

(d)(1) A member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the board.

(2) The presiding officer of the board shall promptly notify, or cause to be notified, the appointing authority of the member who fails to satisfy the attendance requirement as prescribed in subdivision (d)(1).

64-1-503. General powers and duties.

The agency has the following general powers, functions, and duties:

(1) Perpetual succession in the corporate name;

(2) Sue and be sued in the corporate name;

(3) Adopt, use, and alter a corporate seal, which is judicially noticed;

(4) Enter into contracts and cooperative agreements with federal, state, and local governments, and other agencies, with private individuals, corporations, associations, and other organizations as the board deems necessary in carrying out the purposes of this part;

(5) Adopt, amend, and repeal bylaws;

(6) Appoint managers, officers, employees, attorneys, and agents as the board deems necessary for the transaction of business, fix the appointees' compensation, and, if the board determines necessary, require bonds from the appointees;

(7)(A) Receive and expend funds from any source for staffing and other administrative expenses, research, planning, coordination, and other activities deemed necessary to promote the efficient educational development of the region; and

(B) Receive grants from private foundations and other sources for the purposes of research and for demonstration projects oriented to human, physical, and natural resources utilization;

(8) Coordinate its activities with federal agencies having responsibility for developing natural, human, and physical resources of the region and cooperate with the agencies in developing such resources;

(9) Cooperate with local and regional financial institutions in assembling financial resources for educational development; and

(10) Acquire by purchase, lease, or gift real and personal property, or any interest therein, that the board deems necessary in carrying out the purposes of this part.

64-1-504. [Repealed.]

64-1-505. [Repealed.]

64-1-506. Construction and operation of regional facilities.

(a) Without derogating from any of its powers, duties, functions and responsibilities as set forth in the other provisions of this part, the agency is specifically authorized to:

(1) Make plans for the construction, operation, and maintenance of regional educational facilities in one (1) or more of the five (5) counties constituting the region; and

(2) Take all such actions as are necessary or convenient in the judgment of the board in effectuating such plans, including, but without limitation, by reason of this enumeration:

(A) The acquisition of sites for the facilities;

(B) Sale or transfer of such sites, if acquired in the agency's name, to the agency or institution that will own and operate the facility;

(C) Arranging for the financing of the facility's construction, operation and maintenance;

(D) Applying for such federal assistance as may be available and obligating the agency as required to obtain such assistance; and

(E) Making contracts and agreements with federal, state and local educational agencies and institutions in carrying out this section.

(b) The agency may, at the request of the counties, act as a vehicle for contracts or agreements among counties for carrying out regional projects.

64-1-508. Authority to contribute money and issue bonds.

The various counties, towns and incorporated municipalities in the region are hereby authorized and empowered to:

(1) Contribute to the work of the agency any amount or amounts of money that their respective governing bodies, acting in their sole discretion, approve to be paid from the general fund of the respective county or city. County legislative bodies and governing bodies of the cities or towns are empowered to levy and collect ad valorem taxes for purposes that are hereby declared to be for municipal and county public purposes; and

(2) Issue their bonds as provided in title 9, chapter 21 to obtain funds for the financing of projects undertaken by the agency or to secure advances made by federal agencies for the construction of projects in the region pursuant to agreements with the agency.

64-1-511. [Repealed.]

64-1-602. Board of directors — Officers — Meetings — Expenses — Removal.

(a) The organization of the agency shall be as follows:

(1) The agency shall be governed by a board of directors consisting of twelve (12) members;

(2)(A) The governor shall appoint one (1) director from each county named in § 64-1-601(b). Each director shall be chosen from a list of three (3) candidates nominated by majority vote of the county legislative bodies of

each county. Candidates shall include persons active in municipal, industrial, agricultural, commercial and citizen organizations, such as the Upper Duck River development association, and active in promoting comprehensive unified development of the resources and economic growth of the Upper Duck River watershed. The presiding officer of the governing body of each county shall certify such nominations to the governor. From the nominations, the governor shall appoint three (3) directors for terms of three (3) years and two (2) directors for terms of four (4) years. Successors shall be appointed for terms of six (6) years. Directors shall serve until their successors are appointed. If a vacancy occurs, the governor shall appoint a successor for the unexpired term;

(B) The governor shall designate a member of the governor's staff or cabinet to serve as a director during the governor's term of office;

(C) The governor shall designate county mayors from two (2) counties of the area to serve as directors for two-year terms;

(D) The governor shall designate mayors of two (2) incorporated cities or towns of the area to serve as directors for two-year terms; and

(E) The governor shall appoint two (2) additional directors for terms of four (4) years. The governor may choose from a list of six (6) at-large candidates nominated by the board of directors. There is no residency requirement for the two (2) additional directors other than to be citizens of the state; and

(3) The board of directors shall elect a chair, vice chair and secretary-treasurer and set a regular time and place for meetings of the board.

(b) Directors serve without compensation, except reimbursement for actual traveling expenses and other necessary expenses incurred in the performance of their official duties, such expenses to be reimbursed from such funds as may be available to the agency. All reimbursement for travel expenses shall be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(c)(1) Any member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the board.

(2) The presiding officer of the board shall promptly notify, or cause to be notified, the appointing authority of the member who fails to satisfy the attendance requirement as prescribed in subdivision (c)(1).

64-1-603. Powers and duties.

(a) The powers, duties and functions of the agency are as follows:

(1) **General:**

(A) Perpetual succession in corporate name;

(B) Sue and be sued in corporate name;

(C) Adopt, use and alter a corporate seal, which shall be judicially noticed;

(D) Enter into such contracts and cooperative agreements with the federal, state and local governments, with agencies of such governments, with private individuals, corporations, associations and other organizations as the board may deem necessary or convenient to enable it to carry out the purposes of this part;

(E) Adopt, amend and repeal bylaws; and

(F) Appoint such managers, officers, employees, attorneys and agents as the board deems necessary for the transaction of its business, fix their compensation, define their duties and require bonds of such of them as the board may determine. The salaries of any such employees may be paid out of such funds as may be available to the agency from any source;

(2) **Formulation and Execution of Development Plans:** The agency is authorized to:

(A) Investigate the resources of the Upper Duck River area and determine the requirements for their full development and for control and development of the Upper Duck River stream system as an integral part of the economy of the area;

(B) Develop and carry out a unified comprehensive program of resource development for economic growth of the area. These plans shall be consistent with plans for statewide economic development;

(C) In making such investigations and in formulating development plans, seek and utilize the assistance of appropriate federal, state and local agencies and of private citizens and citizen organizations interested in the conservation and development of the resources of the area;

(D) Provide, develop and help as appropriate the needed and feasible cooperative arrangements for the construction of water control structures, channel improvements and facilities for navigation, drainage, irrigation, water conservation and supply, industrial development and recreation as a part of comprehensive plans and, in aid of such activities, to accept loans, grants or other assistance from federal, state and local governments or from agencies of such governments; and

(E) Arrange with any city, county, municipality or supplier of utilities for the abandonment, relocation or other adjustment of roads, highways, bridges and utility lines;

(3) **Land Acquisition:** Acquire by purchase, lease, gift or in any manner other than by condemnation property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary or convenient to the exercise of its powers or functions; and

(4) **Management and Operation:**

(A) Enter into contracts with municipalities, corporations and other public agencies or political subdivisions of any kind or with others for the sale of water for municipal, domestic, agricultural or industrial use or of any other services, facilities or commodities that the agency may be in a position to supply;

(B) Develop reservoirs and shoreline lands for recreational and other uses as may be determined by the board of directors and provide for their operation for these purposes directly or by concessionaires, lessees or vendees of shoreline lands;

(C) Sell or lease shoreline lands acquired in connection with development of the Upper Duck River system for uses consistent with the agency's development plan and subject to such restrictions as the agency deems necessary for reservoir protection and to such requirements as to character of improvements and activities and the time within which such improvements or activities shall be undertaken as the agency deems appropriate to its overall development plan;

(D) Acquire or operate shoreline lands of reservoirs owned by the United States as the agent of the federal agency having custody and

control thereof under appropriate agreements with such agencies;

(E) Acquire, construct or operate other facilities or works for improvement as are necessary to effectuate plans for comprehensive development of the area; and

(F) In addition to the investment of funds authorized by any other general law, invest funds to the same extent as utility districts are authorized to invest idle funds pursuant to § 7-82-108(a); provided, that the criteria set out in § 64-1-604(g) shall continue to apply to investments of refunding bond proceeds.

(b) The agency shall not exercise any broad governmental controls or police powers to regulate land use, planning, zoning, subdivision regulations, building codes, or similar powers to regulate land use.

64-1-802. Board of directors.

(a) The authority shall be governed by a board of directors consisting of six (6) members appointed by the governor.

(b) Members of the board of directors shall be citizens of Tennessee and residents of Carroll County.

(c) Terms of members of the board shall be six (6) years, except that in the initial appointments two (2) members shall be appointed to two-year terms, two (2) members shall be appointed to four-year terms, and two (2) members shall be appointed to six-year terms.

(d) Vacancies shall be filled by the governor for the unexpired portion of the term.

(e) The board shall elect a chair for a term of two (2) years and such other officers for similar terms as it finds necessary.

(f) Members of the board may be reappointed and officers of the board may be reelected.

(g) The board shall meet at least quarterly in Huntingdon, but may meet at such other times and places as the board may determine. Emergency meetings may be called by the chair on the chair's own initiative or upon petition by a majority of the board.

(h) A quorum of the board, which shall be four (4) members, shall be necessary for the transaction of any business.

(i)(1) Any member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the board.

(2) The presiding officer of the board shall promptly notify, or cause to be notified, the appointing authority of any member who fails to satisfy the attendance requirement as prescribed in subdivision (i)(1).

64-1-804. Powers and duties.

(a) The authority is specifically authorized and empowered to do any and all things necessary in forming and executing a plan for the comprehensive development of the resources of Carroll County, including an action in cooperation, when necessary, with appropriate local, state, and federal agencies in the fields of agriculture, forestry, drainage and flood control, land reclamation, electric power utilization, irrigation, water conservation and supply, recreation, public health, manufacturing, and trade. To that end the authority:

(1) Shall have succession in its corporate name;

(2) May sue and be sued in its corporate name;

(3) May adopt and use a corporate seal;

(4) May establish, amend and repeal bylaws and make all rules and regulations deemed expedient for the management of its corporate affairs;

(5) May make contracts and execute instruments containing such terms, provisions and conditions as in the judgment of the board of directors may be necessary, proper or advisable in the exercise of the powers conferred upon it in this section, including, but not limited to, contracts for grants, loans or other assistance from any federal agency and contracts with corporations, associations or individuals for construction work in the furtherance of any development project, and may carry out and perform the terms and conditions of all such contracts or instruments;

(6) May acquire by purchase, lease, gift or by condemnation property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary to the exercise of its powers or functions; provided, that acquisition by condemnation is limited to land, rights in land, including leaseholds and easements, and water rights in watersheds of rivers or streams in Carroll County that, if taken for channel improvement along an unimpounded portion of such rivers or streams, lie within the present floodplain of such rivers or streams and, if bordering an impoundment or detention reservoir, lie within two thousand six hundred fifty feet (2,650′) of the nearest point on the maximum shoreline contour of such impoundment. The amount and character of interests in land, rights in land and water rights to be acquired within either of these boundaries shall be determined by the board of directors, which determination shall be final;

(7) May:

(A) Issue its bonds, including refunding bonds, from time to time in a total amount not to exceed twelve million dollars ($12,000,000) for the purpose of paying in whole or in part the cost of the acquisition of necessary land or interests in such land and the development of the resources of Carroll County, and expenses incidental to such development;

(B) Issue refunding bonds which refinance or refund bonds used for any purpose described in subdivision (a)(7)(A);

(C) Secure such bonds by a pledge of all or any part of the revenues that may come to the authority from any source, by a mortgage or deed of trust of the authority's land or any part of such land, or by a combination of the two (2); and

(D) Make such contracts or covenants in the issuance of such bonds as may be necessary to ensure the marketability of the bonds;

(8) May arrange with any city, county, municipality or supplier of utilities for the abandonment, relocation or other adjustment of roads, highways, bridges and utility lines;

(9) May enter into contracts with municipalities, corporations, other public agencies, or political subdivisions of any kind, or with others for the sale of water from reservoirs in the rivers or streams of Carroll County under its control for municipal, domestic, agricultural or industrial use or any other services, facilities or commodities that the authority may be in a position to supply;

(10) May develop reservoirs and shoreline lands for recreational use and provide for their operation or use for this purpose directly or by concessionaires, lessees or vendees of shoreline lands;

(11) May sell or lease shoreline lands acquired in connection with development of the rivers or streams of Carroll County for uses consistent with the authority's development plans and subject to such restrictions as the authority deems necessary for reservoir protection and to such requirements as to:

(A) Character of improvements and activities on the lands; and

(B) Time within which such improvements or activities shall be undertaken as the authority deems appropriate to its overall development plans; and

(12) May manage or operate reservoirs or shoreline lands of reservoirs owned by the United States under appropriate agreements with the federal agency or agencies having custody and control thereof.

(b) It is recognized that parts of Carroll County are within the watersheds of the Obion and Forked Deer Rivers. Nothing in this section or this part should be construed as giving the Carroll County watershed authority power that conflicts with the power of the West Tennessee basin authority created by part 11 of this chapter. In the event of any disagreement between these two (2) agencies over activities in the Obion or Forked Deer River Basins, the determination of the West Tennessee River basin authority shall prevail.

(c) The authority shall not exercise any broad governmental controls or police powers to regulate land use planning, zoning, subdivision regulations, building codes, or similar powers to regulate land use.

64-1-902. Board of directors.

(a) The authority shall be governed by a board of directors. The board shall make policy, which shall be implemented.

(b) The membership of the board shall be as follows:

(1) A member of the county legislative body of Sumner County, Tennessee and Simpson County, Kentucky, chosen by their respective legislative bodies;

(2) The mayors of the cities of Portland, Tennessee and Franklin, Kentucky;

(3) A member of the city legislative bodies from the cities of Portland, Tennessee and Franklin, Kentucky chosen by the respective legislative bodies;

(4) A member of an industrial foundation board or equivalent, if one exists, from Portland, Tennessee and Franklin, Kentucky, as appointed by the respective boards;

(5) A commissioner or designee chosen by the board of commissioners of the Simpson County water district; and

(6) A commissioner or designee chosen by the board of commissioners of the Sumner County water authority.

(c)(1) Each local governmental entity that is authorized to designate one (1) of its members for membership on the board shall designate the member by an appropriate resolution or ordinance.

(2) Each participating governmental entity shall adopt an appropriate resolution or ordinance, which shall state the intention of the local entity to participate in the authority. The resolution or ordinance shall also include a recitation of the participating entity's statutory authority for participation.

(3) The authority shall not convene or conduct business until the requirements of this subsection (c) have been met.

(d) Any elected official's or such elected official's designated alternate's

position on the board shall run concurrent with the official's elected term.

(e) Any nonelected official shall have a term of four (4) years.

(f) If a vacancy occurs on the board, the position shall be filled in the same manner as set forth in the original appointment. A vacancy shall occur when any board member no longer meets the requirements for appointment to the board.

(g) The board shall meet annually at a time and place designated by the board. The time, place and date of this meeting shall be published in newspapers of general circulation in Sumner and Simpson counties at least seven (7) days prior to the meeting.

(h) The board at its annual meeting shall adopt or amend bylaws, if any, adopt an annual budget, elect officers and adopt any policies and work programs necessary for the operation of the authority and fulfillment of the purposes of the authority.

(i) Fifty percent (50%) of the membership of the board shall constitute a quorum for the conduct of the business of the authority.

(j) The act of fifty percent (50%) plus one (1) of all those voting shall be the act of the board for the execution of business.

(k) The board at its annual meeting shall elect as authority officers a chair, a vice chair, and a secretary-treasurer who shall serve terms of one (1) year. The chair shall alternate between members from Tennessee and Kentucky. When a member from one (1) of the states sits as chair, no more than one (1) other member from the state can sit as vice chair or secretary-treasurer.

(*l*)(1) Any member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the board.

(2) The presiding officer of the board shall promptly notify, or cause to be notified, the appointing authority of the member who fails to satisfy the attendance requirement as prescribed in subdivision (*l*)(1).

64-1-903. Powers, functions and duties of the authority.

(a) The authority has the following general powers, functions and duties to:

(1) Have perpetual succession in the corporate name;

(2) Sue and be sued in the corporate name and sue and be sued in either Tennessee or Kentucky with the jurisdiction of either state's courts to be determined by where the cause of action arose;

(3) Adopt, use and alter a corporate seal, which shall be judicially noticed;

(4) Enter into contracts and cooperative agreements with federal, state and local governments and agencies thereof with private individuals, corporations, associations and with other organizations that the board may deem necessary or convenient in carrying out the purposes of this part;

(5) Adopt, amend and repeal bylaws;

(6) Employ an executive director and appoint managers, officers, employees, attorneys and agents as the board deems necessary for the transaction of its business, fix their compensation, define their duties and require bonds of such of them as the board may determine;

(7) Receive and expend funds from any source for staffing and other administrative expenses, research, planning, coordination and activities deemed necessary to promote and carry out the purposes of the authority;

(8) Cooperate and coordinate its activities with local, regional and state planning agencies in developing and implementing plans for the develop-

ment of the projects of the authority;

(9) Cooperate and coordinate its activities with the federal agencies having responsibility for developing natural, human and physical resources of the region;

(10) Cooperate with local and regional financial institutions in assembling financial resources for commercial, industrial and other development;

(11) Enter into compacts or contractual arrangements with planning agencies of both states for the purpose of preparing joint-comprehensive plans for the development and maintenance of the projects of the authority;

(12) Acquire and hold real and personal property or interests therein as necessary to carry out the purposes of this part; and

(13) Have and exercise other authority deemed necessary by the board to further and promote the purpose of this part.

(b) The authority shall not exercise any broad governmental controls or police powers to regulate land use planning, zoning, subdivision regulations, building codes, or similar powers to regulate land use.

64-1-1101. Creation — Purpose.

(a) There is created and established within the department of environment and conservation, the West Tennessee River basin authority, referred to as the "authority" in this part.

(b) The authority is created to preserve the natural flow and function of the Hatchie, Loosahatchie, Obion and Forked Deer River basins through environmentally sensitive stream maintenance. The authority shall also seek to:

(1) Maintain or stabilize the function of altered streams and rivers for which the expectation of altered drainage is well established because of agricultural or other land uses and for which the restoration of natural stream or river function is not practicable;

(2) Restore, where practicable, in a self-sustaining manner, natural stream and floodplain dynamics and associated environmental and economic benefits; i.e., restore and conserve fisheries and wildlife habitat, wetlands, water quality and naturally or economically productive bottom land hardwood systems;

(3) Facilitate the proper interaction of private activities adjacent to or affecting public waters that may be negatively affecting those waters; and

(4) In general, provide regional and local leadership for the conservation and sustainable utilization of these river basins and the creek and river basins that flow through the counties of Benton, Decatur and Hardin into the Tennessee River.

(c) These activities shall be accomplished in the twenty-county area of West Tennessee comprised of Lauderdale, Lake, Dyer, Obion, Madison, Weakley, Henry, Gibson, Carroll, Benton, Decatur, Hardin, Haywood, Crockett, Henderson, Chester, McNairy, Tipton, Fayette and Hardeman counties.

(d) The authority shall be administered in such a way as to maximize the funds spent on actual work on the rivers and minimize administrative costs.

(e) As an agency of the state, attached to the department, the authority shall be subject to all laws and regulations applicable to any state department.

(f) The authority shall not exercise any broad governmental controls or police powers to regulate land use planning, zoning, subdivision regulations, building codes, or similar powers to regulate land use.

64-1-1102. Board of directors.

(a)(1) The West Tennessee River basin authority, under the administrative control of the department of environment and conservation, shall be governed and directed by a board of directors consisting of the following members:

(A) The county mayor of each county electing to participate in the authority shall be a member of the board or, if the county mayor recommends, the county legislative body may select a member of the county legislative body or another citizen of the county to serve instead of the county mayor;

(B) The commissioner of agriculture or a designee;

(C) One (1) member who is a supervisor of a soil conservation district in the participating counties, as established under the Soil Conservation Districts Law, compiled in title 43, chapter 14, part 2, to be appointed by the governor from a list of nominees submitted by interested soil conservation groups including, but not limited to, the Tennessee Association of Soil Conservation Districts. The term of this member shall coincide with the supervisor's term of office;

(D) Two (2) members of the house of representatives representing part of the area to which this part applies, to serve on the board during that representative's term of office, to be appointed by the speaker of the house of representatives from different political parties unless all members representing part of the area only belong to one (1) political party then the speaker of the house of representatives shall appoint two (2) members from that political party;

(E) Two (2) members of the senate representing part of the area to which this part applies, to serve on the board during that senator's term of office, to be appointed by the speaker of the senate from different political parties unless all members representing part of the area only belong to one (1) political party then the speaker of the senate shall appoint two (2) members from that political party;

(F) The commissioner of environment and conservation or a designee;

(G) The executive director of the wildlife resources agency or a designee;

(H) One (1) member who is a resident of a participating county appointed by the governor from a list of nominees submitted by interested forestry groups including, but not limited to, the Tennessee Forestry Association;

(I) One (1) member who is a resident of a participating county appointed by the governor from a list of nominees submitted by interested conservation groups including, but not limited to, the Tennessee Wildlife Federation; and

(J) One (1) member who is a resident of a participating county appointed by the governor from a list of nominees submitted by interested farm business groups including, but not limited to, the Tennessee Farm Bureau.

(2) The governor shall consult with the interested groups described in subdivision (a)(1) to determine qualified persons to fill the positions on the board.

(b) Annually, at its first meeting of the year, the board shall elect a chair, vice chair and a secretary-treasurer and shall set a regular time and place for

meetings of the board.

(c) Members of the board shall serve without compensation except reimbursement as provided by state travel regulations for travel expenses incurred in the performance of their official duties.

(d) The terms of the members of the board that are appointed by the governor pursuant to subsection (a) shall be six (6) years. Such members shall serve until a successor is appointed.

(e)(1) A member who misses more than fifty percent (50%) of the scheduled meetings in a calendar year is removed as a member of the board.

(2) The presiding officer of the board shall promptly notify, or cause to be notified, the appointing authority of the member who fails to satisfy the attendance requirement as prescribed in subdivision (e)(1).

64-1-1201. [Repealed.]

64-1-1202. [Repealed.]

64-1-1203. [Repealed.]

64-1-1204. [Repealed.]

64-1-1205. [Repealed.]

64-1-1206. [Repealed.]

64-1-1207. [Repealed.]

64-1-1208. [Repealed.]

64-1-1209. [Repealed.]

64-1-1210. [Repealed.]

64-1-1211. [Repealed.]

64-1-1212. [Repealed.]

64-1-1213. [Repealed.]

64-1-1214. [Repealed.]

64-1-1215. [Repealed.]

64-1-1216. [Repealed.]

64-1-1217. [Repealed.]

64-1-1218. [Repealed.]

64-1-1219. [Repealed.]

65-25-105. Powers of cooperative — Effect of chapter on third-party contractors.

(a) Not inconsistent with or in lieu of, but in addition to, the powers set forth in title 48, chapter 53, a cooperative has the power to:

(1) Have a corporate seal and alter the same at will; provided, that it need not have, nor shall it for any purpose be necessary for it to use, such a seal;

(2) Become a member in or stockholder of one (1) or more other nonprofit cooperatives, corporations or other legal entities and to own the same, wholly or in part;

(3) Solely on its own, or jointly, as tenant in common or as a partner with one (1) or more other entities, construct, purchase, take, receive, lease as lessee or lessor, or otherwise acquire, and own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease back, mort-

gage, pledge, or otherwise dispose of or encumber any and all property, of whatever kind or nature and of whatever estate, real and personal, tangible and intangible, including choses in action;

(4) Purchase or otherwise acquire, and own, lease as lessor or lessee, lease back, hold, use, and exercise, and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights-of-way, and easements;

(5) Secure any of its liabilities or obligations by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(6) Make any and all contracts necessary or convenient for the full exercise of the powers in this chapter granted, including, but not limited to, contracts with any person, federal agency, or municipality, for the purchase or sale of electric power and energy and, in connection with any such electric power and energy contract, stipulate and agree to such covenants, terms, and conditions as the board may deem appropriate, including covenants, terms, and conditions with respect to resale rates, financial and accounting methods, services, operation and maintenance practices, and, consistent with § 65-25-112, the manner of disposing of the revenues of the properties operated and maintained by the cooperative;

(7) Conduct its business and exercise any or all of its powers within or without this state;

(8) Adopt, amend, and repeal bylaws;

(9) Organize and promote and otherwise foster and participate in, through membership or ownership, including stock ownership, community, regional, or statewide or national organizations whose purposes are or include the promotion and assistance of economic, industrial or commercial development which the board of the cooperative determines will, or likely will, result in economic benefits to the cooperative or its members;

(10) Do and perform any and all other acts and things and have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the cooperative's purpose or purposes;

(11) With respect to a primary purpose and the secondary purpose of supplying telecommunications and broadband internet access and related services, but without limiting the generality or particularity of subdivisions (a)(1)-(10), construct, maintain, and operate, and allow others, so long as such others are permitted by law to operate such systems within the cooperative's service area, to operate, electric, or other telecommunications or broadband internet access and related services transmission and distribution lines or other conducting or communications facilities along, upon, under, and across all of the following:

(A) Real property, personal property, rights of way and easements owned, held, or otherwise used by the cooperative. Any easement owned, held, or otherwise used by the cooperative in pursuit of a primary purpose may be used for any secondary purpose; and

(B) Public thoroughfares, including, but not limited to, all roads, highways, streets, alleys, bridges, and causeways and publicly owned lands if the applicable authorities having jurisdiction over the public thoroughfares and lands consent, but consent shall not be unreasonably withheld or conditioned for the purpose of enabling the authority to gain

competitive advantage with respect to the rendition by the authority or any other entity of a service that the cooperative also has a right to render; and

(12) With respect to a primary purpose, but without limiting the generality or particularity of subdivisions (a)(1)-(11):

(A) Generate, manufacture, purchase, acquire, and transmit, and transform, supply, distribute, furnish, deliver, sell, and dispose of, electric power and energy;

(B) Make loans to persons to whom electric power or energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character, and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electric and plumbing fixtures, appliances, apparatus, and equipment, and accept, or otherwise acquire, and sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of, notes, bonds and other evidences of indebtedness and any and all types of security therefor; and

(C) Condemn either the fee or such other right, title, interest or easement in and to property as the board may deem necessary, and such property or interest in such property may be so acquired, whether or not the same is owned or held for public use by corporations, associations, cooperatives or persons having the power of eminent domain, or otherwise held or used for public purposes, and such power of condemnation may be exercised in the mode of procedure prescribed by title 29, chapter 16, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain; provided, that no property which is owned or held for public use, nor any interest therein, shall be condemned if, in the judgment of the court the condemnation of such property or interest therein will obstruct, prevent, burden, interfere with, or unduly inconvenience the continued use of such property for the public use to which it is devoted at the time the same is sought to be condemned; provided further, that where title to any property sought to be condemned is defective, it shall be passed by decree of court; provided further, that where condemnation proceedings become necessary, the court in which such proceedings are filed shall, upon application by the cooperative and upon the posting of a bond with the clerk of the court in such amount as the court may deem commensurate with the value of the property, order that the right of possession shall issue immediately or as soon and upon such terms as the court, in its discretion, may deem proper and just; but provided further, that in cases where condemnation of property already devoted to a public use is sought, no order as to right of possession shall issue until it is finally determined that the condemnor is entitled to condemn such property. The power of eminent domain provided by this subdivision (a)(12)(C) shall be supplemental to, not in lieu of or in conflict with, § 48-51-103 of the Tennessee Nonprofit Corporation Act.

(b) All of the powers conferred by this section are to be exercised by a cooperative for rendering one (1) or more services to persons who or which are its members and to other persons, not to exceed fifteen percent (15%) of the number of persons who or which are its members; provided, that whenever in

the sole judgment of its board such is necessary to acquire or to protect and preserve a cooperative's exemption from federal income taxation relative to a primary or secondary purpose, a cooperative may require new nonmember patron applicants or existing nonmember patrons to become members as a condition of initially receiving or of continuing to receive such service.

(c) This chapter does not affect, abrogate, or eliminate any obligation of a cooperative's third-party contractors that are permitted by law to operate within the cooperative's service area to comply with applicable permitting requirements that the cooperative is subject to with respect to property that is held or controlled by a railroad company.

(d)(1) In addition to all other powers set forth in this chapter, a cooperative may make contributions for bona fide charitable purposes and accept excess receipts pursuant to programs approved by the board of directors, which programs may include, but are not limited to, programs in which bills for electric power are rounded up to the next dollar when the amount of any excess receipt due to rounding is shown as a separate line on the electric bill.

(2) Excess receipts accepted by a cooperative pursuant to programs authorized by subdivision (d)(1) are not considered revenue to the cooperative and the cooperative may only use the excess receipts for charitable purposes.

(3) This subsection (d) prohibits discrimination by a cooperative in the distribution of excess receipts for bona fide charitable purposes to organizations whose mission is to assist persons regardless of their race, color, creed, religion, national origin, gender, disability, or age.

(4)(A) A cooperative that establishes a program authorized by subdivision (d)(1) on or after January 1, 2021, shall not enroll any customer into the program without the express consent of the customer.

(B) A customer who is enrolled in a program authorized by subdivision (d)(1) may opt out of the program by providing notice to the cooperative of the customer's desire to cease participation in the program.

(C) Upon receiving an opt-out notice from a customer, the cooperative shall remove the customer from enrollment in the program no later than the first day of the customer's next regular billing cycle that begins no fewer than thirty (30) days after the date of the customer's opt-out notice.

(5)(A) Any cooperative that on June 3, 2019, utilizes a program authorized by subdivision (d)(1) and operates the program on an opt-out basis shall send a written notice to each cooperative customer no later than November 1, 2020, that contains, but is not limited to, the following information:

(i) A statement that the cooperative utilizes a program authorized by subdivision (d)(1), the program is operated on an opt-out basis, and a description of the program;

(ii) Notification that a customer whose bill is currently rounded up by the cooperative has the right to opt out of participation in the program; and

(iii) Contact information for the cooperative and instructions on how the customer may contact the cooperative to opt out of participation in the program.

(B) The written notice required by this subdivision (d)(5) may be provided to the customer by electronic means and may accompany a regular billing statement, at the discretion of the cooperative.

(C) A cooperative that on June 3, 2019, utilizes a program authorized by subdivision (d)(1) and operates the program on an opt-out basis that fails to send the notice required by this subdivision (d)(5) shall, on and after January 1, 2021, cease operating the program on an opt-out basis and shall not operate a program unless operated in compliance with subdivision (d)(4).

(6) Any cooperative that utilizes a program authorized by subdivision (d)(1) and that maintains a website that is accessible by the general public shall publish in a conspicuous location on the website by November 1, 2020, and throughout the duration of the cooperative's utilization of the program, the following information:

(A) A statement that the cooperative utilizes a program authorized by subdivision (d)(1) and a description of the program;

(B) Notification that a customer whose bill is currently rounded up by the cooperative has the right to opt out of participation in the program; and

(C) Contact information for the cooperative and instructions on how the customer may contact the cooperative to opt into or out of participation in the program.

66-7-109. Notice of termination by landlord.

(a)(1) Except as provided in this section, fourteen (14) days' notice by a landlord shall be sufficient notice of termination of tenancy for the purpose of eviction of a residential tenant, if the termination of tenancy is for one of the following reasons:

(A) Tenant neglect or refusal to pay rent that is due and is in arrears, upon demand;

(B) Damage beyond normal wear and tear to the premises by the tenant, members of the household, or guests; or

(C) The tenant or any other person on the premises with the tenant's consent willfully or intentionally commits a violent act or behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants, the landlord, the landlord's representatives or other persons on the premises.

(2) If the notice of termination of tenancy is given for one of the reasons set out in subdivision (a)(1)(A) or (a)(1)(B) and the breach is remediable by repairs or the payment of rent or damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice from the landlord, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement.

(b) For all other defaults in the lease agreement, a thirty (30) day termination notice from the date such notice is given by the landlord shall be required for the purpose of eviction of a residential tenant.

(c) This section shall not apply to a tenancy where the rental period is for less than fourteen (14) days.

(d) Notwithstanding § 66-7-107 or this section to the contrary, three (3) days' notice by a landlord is sufficient notice of termination of tenancy to evict

a residential tenant in a housing authority created pursuant to title 13, chapter 20, part 4 or 5, or a residential tenant, who is not mentally or physically disabled, in a rental property located in any county not governed by the Uniform Residential Landlord and Tenant Act, compiled in chapter 28 of this title, if the tenant, in either case, or any other person on the premises with the tenant's consent, willfully or intentionally:

(1) Commits a violent act;

(2) Engages in any drug-related criminal activity; or

(3) Behaves in a manner that constitutes or threatens to be a real and present danger to the health, safety, or welfare of the life or property of other tenants, the landlord, the landlord's representatives, or other persons on the premises.

(e)(1) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which a tenancy is terminated, only the perpetrator may be evicted. The landlord shall not evict the victims, minor children under eighteen (18) years of age, or innocent occupants, any of whom occupy the subject premises under a lease agreement, based solely on the domestic abuse. Even if evicted or removed from the lease, the perpetrator shall remain financially liable for all amounts due under all terms and conditions of the present lease agreement.

(2) If a lease agreement is in effect, the landlord may remove the perpetrator from the lease agreement and require the remaining adult tenants to qualify for and enter into a new agreement for the remainder of the present lease term. The landlord shall not be responsible for any and all damages suffered by the perpetrator due to the bifurcation and termination of the lease agreement in accordance with this section.

(3) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which tenancy could be terminated, the victim and all adult tenants shall agree, in writing, not to allow the perpetrator to return to the subject premises or any part of the community property, and to immediately report the perpetrator's return to the proper authority, for the remainder of the tenancy. A violation of such agreement shall be cause to terminate tenancy as to the victim and all other tenants.

(4) The rights under this section shall not apply until the victim has been judicially granted an order of protection against the perpetrator for the specific incident for which tenancy is being terminated, a copy of such order has been provided to the landlord, and the order:

(A) Provides for the perpetrator to move out or vacate immediately;

(B) Prohibits the perpetrator from coming by or to a shared residence;

(C) Requires that the perpetrator stay away from the victim's residence; or

(D) Finds that the perpetrator's continuing to reside in the rented or leased premises may jeopardize the life, health, and safety of the victim or the victim's minor children.

(5) Failure to comply with this section, or dismissal of an order of protection that allows application of this section, abrogates the rights provided to the victim, minor children, and innocent occupants under this section.

(6) The rights granted in this section shall not apply in any situation where the perpetrator is a child or dependent of any tenant.

(7) Nothing in this section shall prohibit the eviction of a victim of domestic abuse for non-payment of rent, a lease violation, or any violation of

this chapter.

(f) Three-days' notice by a landlord is sufficient notice of termination of tenancy for the purpose of eviction of an unauthorized subtenant or other unauthorized occupant, if the termination of tenancy is for refusal by the unauthorized subtenant or other unauthorized occupant to vacate the premises.

(g) Nothing in this section shall apply to rental property located in any county governed by the Uniform Residential Landlord and Tenant.

(h) [Deleted by 2019 amendment.]

66-11-124. Waiver of lien — Payment bonds.

(a) The acceptance by the lienor of a note or notes for all or any part of the amount of the lienor's claim shall not constitute a waiver of the lienor's lien, unless expressly so agreed in writing, nor shall it in any way affect the period for serving or recording the notice of lien under this chapter.

(b)(1) Any contract provision that purports to waive any right of lien under this chapter is void and unenforceable as against the public policy of this state.

(2)(A) If a prime contractor or remote contractor solicits any person to sign a contract requiring the person to waive a right of lien in violation of this section, then the person shall notify the state board for licensing contractors of that fact. Upon receiving the information, the executive director of the board shall notify the prime contractor or remote contractor within a reasonable time after receiving the information that the contract is against the public policy of this state and in violation of this section. If the prime contractor or remote contractor voluntarily deletes the waiver of lien provision from the contract and affirmatively states that the language will not be included in any future contracts to perform construction work in this state, then no further action shall be taken by the board against the prime contractor or remote contractor unless a later complaint is filed against the prime contractor or remote contractor for a violation of this section.

(B) If the prime contractor or remote contractor does not delete the waiver of lien provision from the contract, then the executive director shall schedule a hearing for appropriate action by the board. If the board finds after a hearing that the contracts of the prime contractor or remote contractor are in violation of this section, then the board shall immediately revoke the prime contractor's or remote contractor's license.

(C) The board shall send notice of the revocation to the prime contractor's or remote contractor's licensing authority in all states in which the prime contractor or remote contractor is licensed as a contractor.

(D) In any action for damages based on the waiver of a right of lien filed by a person solicited by the prime contractor or remote contractor, the person has the right to recover from the prime contractor or remote contractor reasonable attorney's fees and costs in connection with the enforcement of the lien.

(c) Notwithstanding any other provision of this chapter, no liens by remote contractors are allowed under this chapter if, prior to any work or labor being provided or materials, services, equipment, or machinery furnished in furtherance of the improvement, the owner, or the owner's agent, provides a payment

bond, equal in amount to one hundred percent (100%) of the prime contractor's contract price, in favor of the remote contractors who provide work or labor or furnish materials, services, equipment, or machinery in furtherance of the improvement pursuant to a contract. The payment bond shall be executed with sufficient surety by one (1) or more sureties authorized to do business in this state. The bond shall be recorded in the office of the register of deeds of every county where the real property to be improved, or any affected part, lies.

66-11-126. Methods of enforcement.

Liens under this chapter, except as provided in subdivision (5)(A), shall be enforced only by the filing of a complaint, petition, or civil warrant seeking the issuance of an attachment in the manner as follows:

(1) For a prime contractor, the lien shall be enforced in a court of law or equity by complaint and writ of attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts, describing the real property, with process to be served on the person or persons whose interests the prime contractor seeks to attach and sell;

(2) For a remote contractor, the lien shall be enforced in a court of law or equity by complaint and writ of attachment or in a court of general sessions having jurisdiction by a warrant for the sum claimed and writ of attachment, filed under oath, setting forth the facts and describing the real property with process to be served on the person or persons whose interests the remote contractor seeks to attach and sell. In the discretion of the plaintiff or complainant, the complaint or warrant may also be served on the prime contractor or remote contractor in any degree, with whom the plaintiff or complainant is in contractual privity. In either event, the person or persons whose interest the remote contractor seeks to attach and sell shall have the right to make the prime contractor or remote contractor a defendant by third-party complaint or cross-claim as is otherwise provided by law;

(3) A complaint, petition, or civil warrant under this chapter is timely filed if a suit seeking the issuance of an attachment is filed within the applicable period of time, even if the attachment is not issued or served within the applicable period. The clerk of the court in which the suit is brought shall issue the attachment writ without obtaining fiat of a judge or chancellor;

(4) The clerk of the court to whom application for attachment is made shall, before issuing the attachment, require the plaintiff, or the plaintiff's agent or attorney to execute a bond with sufficient surety, payable to the defendant or defendants in the amount of one thousand dollars ($1,000) or the amount of the lien claimed, whichever is less; provided, that a party may petition the court for an increase in the amount for good cause shown, and conditioned that the plaintiff will prosecute the attachment with effect or, in case of failure, pay the defendant or defendants all costs that may be adjudged against the defendant or defendants and all such damages as the defendant or defendants may sustain by the wrongful suing out of the attachment; and

(5)(A) Where a bond has been provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, an attachment on the real property shall not be necessary after the bond has been recorded, and the claim shall be

enforced by a complaint, petition, or civil warrant on the bond before the circuit or chancery court, or before a court of general sessions where the amount is within its jurisdiction, filed under oath, setting forth the facts and describing the real property with process to be served on the obligors on the bond. In the discretion of the plaintiff or complainant, the complaint or warrant may also be served on the owner or owner's agent, prime contractor or remote contractor in any degree with whom the plaintiff is in contractual privity. In either event, the obligors on the bond shall have the right to make the owner or owner's agent, prime contractor, or any remote contractor of any degree a defendant by third-party complaint or cross-claim as is otherwise provided by law. Any complaint, petition, or civil warrant on the bond shall be filed in the county where any portion of the real property is located;

(B) Where a lien is enforced pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the plaintiff shall, in case of failure to prosecute the suit with effect, pay the defendant or defendants all costs adjudged against the defendant or defendants and all the damages the defendant or defendants may sustain by the wrongful assertion of the lien; and

(C) Where a complaint, petition, or civil warrant is brought pursuant to this subdivision (5), or after suit is commenced on a bond provided pursuant to § 66-11-124, § 66-11-136, or § 66-11-142, the defendants shall retain all defenses to the validity of the underlying lien.

66-11-130. Demand for enforcement of lien.

Upon written demand of the owner, the owner's agent, or prime contractor, served on the lienor, requiring the lienor to file a complaint, petition, or civil warrant to enforce the lienor's lien, and describing the real property in the demand, the proceeding must be commenced, or the claim filed in a creditors' or foreclosure proceeding, within sixty (60) days after service, or the lien is forfeited.

66-11-131. Joinder of petitioners.

Where there are several persons entitled to the lien given by this chapter, all or any number of them may join in one (1) suit; or upon the filing by one (1) or more of the lienors of a complaint, petition, or civil warrant for the benefit of all lienors, any other lienor may come in by petition, under oath, without suing out a new attachment, by giving bond and security, with effect as if the attachment, if any, had been taken out by the petitioner.

66-11-132. Consolidation of proceedings.

If separate complaints, petitions, or civil warrants to enforce liens provided by this chapter are brought in the same court, then they must be consolidated; and if in different courts, the proceedings may, upon application, be removed into the court, if a court of record, in which the first complaint, petition, or civil warrant was filed, and there consolidated, unless the later proceeding is one for the benefit of all lienors, in the nature of a lien-creditors' bill, in which event earlier proceedings not of that nature must be consolidated into the lien-creditors' bill, on petition.

66-11-133. Adjudication of conflicting rights in consolidated proceeding.

The court is authorized to adjudicate, in a consolidated proceeding, the conflicting rights of the parties claiming liens, among themselves; and to enforce the same according to priorities, if any.

66-11-134. Enforcement in general sessions court.

(a) When the lien is enforced by a civil warrant before a court of general sessions, and when an attachment has been levied on the lot or land and judgment rendered, the papers shall be returned to the circuit court, there to be proceeded with as in the case of a court of general sessions execution levied on land.

(b)(1) No court of general sessions' attachment in any such case shall be a lien on the land, unless, within twenty (20) days after the levy of attachment, an abstract of the levy of attachment, showing the name of the plaintiff and defendant, the date and amount of the claim, and a description of the premises affected, is filed for registration in the lien book in the office of the register of the county in which the real property, or any affected portion of the real property, lies.

(2) The register shall index the abstract, as the indexer is required to index deeds, and, for the registration and indexing, the indexer shall receive the sum prescribed by § 8-21-1001.

66-11-135. Release of lien — Recording release.

(a) If a lienor whose lien has been forfeited, expired, satisfied or adjudged against the lienor in a proceeding on the lien, fails to cause the lien provided by this chapter to be released within thirty (30) days after service of written notice demanding release, the lienor shall be liable to the owner for all damages arising therefrom, and costs, including reasonable attorneys' fees, incurred by the owner.

(b) The release shall be recorded in the office where the notice of lien was recorded. The fee for recording shall be the fee required for the recording of a release or satisfaction of a mortgage as provided by law.

(c) For the purpose of this section, a lien shall be deemed released on the day on which the release of the lien is recorded in the proper office.

66-11-136. Property owner's right to bond against enforcement of liens.

The owner of the property on which the improvement is made has the right to demand a bond from the prime contractor to protect the owner in case of the enforcement of a lien under this chapter by one (1) or more remote contractors; and in the event the prime contractor is paid for the work done, or any part of it, that is subject to a lien by a remote contractor, then on payment by the owner to the remote contractor of the amount due, the owner shall have judgment for the amount by filing a complaint, petition, or civil warrant against the bond in any court having jurisdiction in such cases; but the prime contractor shall have the right to contest the legality and amount of the claim of the remote contractors before the prime contractor is held liable.

66-11-139. Exaggeration of claims by lienor.

If, in any proceeding to enforce the lien provided by this chapter, the court finds that any lienor has willfully and grossly exaggerated the amount for which that person claims a lien, as stated in that person's notice of lien or pleading filed, in the discretion of the court, no recovery may be allowed thereon, and the lienor may be liable for any actual expenses incurred by the injured party, including attorneys' fees, as a result of the lienor's exaggeration.

66-11-142. Bond to indemnify against recorded lien — Recording bond — Recording of contractor's payment bond.

(a) If a lien, other than a lien granted in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may record a bond to indemnify against the lien. The bond shall be recorded with the register of deeds of the county in which the lien was recorded. The bond shall be for the amount of the lien claimed and with sufficient corporate surety authorized and admitted to do business in the state and licensed by the state to execute bonds as surety, and the bond shall be conditioned upon the obligor or obligors on the bond satisfying any judgment that may be rendered in favor of the person asserting the lien. The bond shall state the book and page or other reference and the office where the lien is of record. The recording by the register of a bond to indemnify against a lien shall operate as a discharge of the lien. After recording the bond, the register shall return the original bond to the person providing the bond. The register shall index the recording of the bond to indemnify against the lien in the same manner as a release of lien. The person asserting the lien may make the obligors on the bond parties to any proceeding in which the person files a complaint, petition, or civil warrant to enforce the claim, and any judgment recovered may be against all or any of the obligors on the bond.

(b)(1) When a prime contractor or remote contractor has provided a valid payment bond for the benefit of potential lien claimants, a copy of that bond may be recorded, in lieu of the recording of another bond, to discharge a lien asserted by the lien claimants. A copy of the bond may be recorded with the register of deeds in lieu of the bond provided in subsection (a) to discharge such a lien. Upon recording with the register of deeds, the prime contractor, remote contractor, or owner shall notify the surety executing the bond, and the lien on the property shall be discharged. The person asserting the lien may make the obligors on the bond parties to any proceeding in which the person files a complaint, petition, or civil warrant to enforce the claim, and any judgment recovered may be against all or any of the obligors on the bond.

(2) The bond recorded pursuant to this subsection (b) shall:

(A) Be in a penal sum at least equal to the total of the original contract amount;

(B) Be in favor of the owner;

(C) Be executed by:

(i) The original prime contractor or remote contractor as principal; and

(ii) A sufficient corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as surety; and

(D) Provide for payment of the lien claimant, whether the lien claimant was employed or contracted with by the person who originally contracted with the owner of the premises or by a remote contractor.

(c) The register of deeds may record any bond recorded under this section and return the original to the person providing the bond.

66-11-203. Notice to owner.

Any contractor who is about to enter into a contract, either written or oral, for improving residential real property, as that term is defined by § 66-11-146, with the owner or owners thereof shall, prior to commencing the improvement of the residential real property or making of the contract, deliver, by registered mail or otherwise, to the owner or owners of the residential real property to be improved written notice in substantially the following form:

Delivered this ____ day of _____, 20____, by _____, Contractor.

The above-captioned contractor hereby gives notice to the owner of the property to be improved, that the contractor is about to begin improving the property according to the terms and conditions of the contract and that under the provisions of the state law (§§ 66-11-101 — 66-11-141) there shall be a lien upon the real property and building for the improvements made in favor of the above-mentioned contractor who does the work or furnishes the materials for such improvements for a duration of one (1) year after the work is finished or materials furnished.

_____ Contractor

66-11-204. Rejection of contracts.

An owner of residential real property may reject a contract by notifying the contractor by written notice by registered mail within three (3) days after receipt of the notice required in § 66-11-203; otherwise the contract is affirmed.

66-11-205. Contractor's notice to owner that all liens have been paid — Guarantee — Form.

Upon completion of the contract or improvement and upon receipt of the contract price, the prime contractor shall deliver by registered mail or otherwise to the owner or owners of the real property a sworn affidavit and receipt substantially in the following form:

State of Tennessee

County of _____

On this ____day of _____, 20____, before me personally appeared _____ (if a corporation use "_____ President (or other officer) of (Corporate Name) a corporation"), prime contractor, to me personally known, who being duly sworn by oath, did say that all of the persons, firms, and corporations, including the prime contractor and all remote contractors and laborers, who have furnished services, labor, or materials according to the plans or specifications, or extra items used in the construction or repair of buildings and improvements on the real estate hereinafter described, have been paid in full or will be paid in full no later than ten (10) days from the date a bill is rendered for such services,

labor, or materials and that such work has been fully completed and accepted by the owner, and further that such owner has paid the contract price in full, the receipt of which is hereby acknowledged. Affiant further says that no claims have been made to affiant by, nor is any suit pending on behalf of the prime contractor or any remote contractors or laborers, and further that no chattel mortgages or conditional bills of sale have been given or are now outstanding as to any materials, appliances, fixtures, or furnishings placed upon or installed in the aforementioned premises. Affiant as a party does for a valuable consideration hereby agree and guarantee to hold the owner of the real estate, the owner's successors, heirs and assigns, harmless against any lien, claim, or suit by any remote contractor or laborer and against chattel mortgages or conditional bills of sale in conjunction with the construction of such buildings or improvements on such real estate.

The real estate and improvements referred to herein are situated in the County of _____, State of Tennessee, and are described as follows: (give street address)

_____
Prime Contractor
Sworn to and subscribed before me
on the date above first written.

_____
Notary Public
My Commission Expires: _____

66-11-206. Noncompliance by contractor — Misdemeanor — Penalties — Owner remedies.

(a) In the event that any materialmen's liens or mechanics' liens are perfected, filed or enforced under part 1 of this chapter against any real estate for transactions covered under §§ 66-11-203 and 66-11-205 and the contractor has not complied with §§ 66-11-203 and 66-11-205 or if having technically complied with this part has willfully, knowingly and unlawfully falsified any statements or fraudulently obtained any permission, the contractor commits a Class B misdemeanor.

(b) Nothing contained in this part shall abrogate the right of any person who is materially or personally damaged or injured by any contract covered by this part to seek such person's remedies against the responsible person in the courts.

(c) Noncompliance with §§ 66-11-203 and 66-11-205 shall in no way affect the lien rights of a contractor, actually performing the work and having a contract directly with an owner, or the owner's agent, to enforce a lien as provided in § 66-11-102.

66-28-517. Termination by landlord for violence or threats to health, safety, or welfare of persons or property.

(a) A landlord may terminate a rental agreement within three (3) days from the date written notice is received by the tenant if the tenant or any other person on the premises with the tenant's consent:

(1) Willfully or intentionally commits a violent act;

(2) Behaves in a manner which constitutes or threatens to be a real and present danger to the health, safety or welfare of the life or property of other tenants or persons on the premises;

(3) Creates a hazardous or unsanitary condition on the property that affects the health, safety or welfare or the life or property of other tenants or persons on the premises; or

(4) Refuses to vacate the premises after entering the premises as an unauthorized subtenant or other unauthorized occupant.

(b) The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

(c) Upon receipt of such written notice, the tenant shall be entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining a temporary or permanent injunction against such termination by the landlord.

(d) Nothing in this section shall be construed to allow a landlord to recover or take possession of the dwelling unit by action or otherwise including willful diminution of services to the tenant by interrupting or causing interruption of electric, gas or other essential service to the tenant except in the case of abandonment or surrender.

(e) If the landlord's action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages sustained by the tenant plus reasonable attorney's fees.

(f) The failure to bring an action for or to obtain an injunction may not be used as evidence in any action to recover possession of the dwelling unit.

(g)(1) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which a tenancy is terminated, only the perpetrator may be evicted. The landlord shall not evict the victims, minor children under eighteen (18) years of age, or innocent occupants, any of whom occupy the subject premises under a lease agreement, based solely on the domestic abuse. Even if evicted or removed from the lease, the perpetrator shall remain financially liable for all amounts due under all terms and conditions of the present lease agreement.

(2) If a lease agreement is in effect at the time that the domestic abuse is committed, the landlord may remove the perpetrator from the lease agreement and require the remaining adult tenants to qualify for and enter into a new agreement for the remainder of the present lease term. The landlord shall not be responsible for any and all damages suffered by the perpetrator due to the bifurcation and termination of the lease agreement in accordance with this section.

(3) If domestic abuse, as defined in § 36-3-601, is the underlying offense for which tenancy could be terminated, the victim and all adult tenants shall agree, in writing, not to allow the perpetrator to return to the subject premises or any part of the community property, and to immediately report the perpetrator's return to the proper authority, for the remainder of the tenancy. A violation of such agreement shall be cause to terminate tenancy as to any victim and all other tenants.

(4) The rights under this section shall not apply until the victim has been judicially granted an order of protection against the perpetrator for the specific incident for which tenancy is being terminated, a copy of such order has been provided to the landlord, and the order:

(A) Provides for the perpetrator to move out or vacate immediately;

(B) Prohibits the perpetrator from coming by or to a shared residence;

(C) Requires that the perpetrator stay away from the victim's residence; or

(D) Finds that the perpetrator's continuing to reside in the rented or leased premises may jeopardize the life, health, and safety of the victim or the victim's minor children.

(5) Failure to comply with this section, or dismissal of an order of protection that allows application of this section, abrogates the rights provided to the victim, minor children, and innocent occupants under this section.

(6) The rights granted in this section shall not apply in any situation where the perpetrator is a child or dependent of any tenant.

(7) Nothing in this section shall prohibit the eviction of a victim of domestic abuse for non-payment of rent, a lease violation, or any violation of this chapter.

66-29-142. Disposal of securities.

(a) The treasurer shall sell or otherwise liquidate a security no sooner than thirty-two (32) months, but no later than thirty-six (36) months, after receiving the security and giving the apparent owner notice under § 66-29-130(b)(1) and (2) that the treasurer holds the security.

(b) The treasurer shall not sell a security listed on an established stock exchange for less than the prevailing price on the exchange at the time of sale. The treasurer may sell a security not listed on an established exchange by any commercially reasonable method.

66-29-146. Disposal of funds by treasurer.

(a) Except as otherwise provided in this section, the treasurer shall deposit in the general fund of the state all funds received under this part, including proceeds from the sale of property under this part.

(b) The treasurer shall maintain an account with an amount of funds the treasurer reasonably estimates to be sufficient to pay claims allowed under, and the costs of administering, this part for each fiscal year. If the treasurer determines that the amount of claims and administrative costs during a fiscal year exceeds the amount of funds received during such fiscal year, a sum sufficient must be appropriated from the general funds of the state to the treasurer for the payment of such claims and costs.

(c) For funds received under this part for the report year ending December 31, 2016, and for each report year thereafter, the treasurer shall determine each June 30 the amount of such funds remitted by or on behalf of each local government of the state and its agencies which have remained unclaimed for a minimum of eighteen (18) months following their delivery to the treasurer. If the aggregate unclaimed balance exceeds one hundred dollars ($100), the treasurer shall, upon request of the local government, pay an amount equal to the aggregate unclaimed balance, less a proportionate share of the cost of administering the program, as determined by the treasurer, to the local government, together with a report of the accounts represented by the funds. The funds must be placed in the local government's general fund, except the local government shall maintain, to the extent necessary, a sufficient amount

of the total unclaimed property accounts to ensure prompt payment.

(d) For funds received under this part for the report year ending December 31, 2016, and for each report year thereafter, the treasurer shall determine each June 30 the amount of such funds remitted by or on behalf of each cooperative, as that term is defined in § 65-25-102, that have remained unclaimed for a minimum of eighteen (18) months following the delivery of the cooperative's funds to the treasurer. If the aggregate unclaimed balance exceeds one hundred dollars ($100), the treasurer, upon request of the cooperative, shall pay an amount equal to the aggregate unclaimed balance, less a proportionate share of the cost of administering the program, as determined by the treasurer, to the cooperative, together with a report of the accounts represented by the funds. The funds must be placed in the cooperative's general fund, except the cooperative shall maintain, to the extent necessary, a sufficient amount of the total unclaimed property accounts to ensure prompt payment.

(e) For funds received under this part for the report year ending December 31, 2020, and for each report year thereafter, the treasurer shall determine each June 30 the amount of the funds remitted by or on behalf of each telephone cooperative organized under, or otherwise subject to, the Telephone Cooperative Act, compiled in title 65, chapter 29, part 1, and organized for the purpose described in § 65-29-102, that have remained unclaimed for a minimum of eighteen (18) months following the delivery of the telephone cooperative's funds to the treasurer. If the aggregate unclaimed balance exceeds one hundred dollars ($100), then the treasurer, upon request of the telephone cooperative, shall pay an amount equal to the aggregate unclaimed balance, less a proportionate share of the cost of administering the program, as determined by the treasurer, to the telephone cooperative, together with a report of the accounts represented by the funds. The telephone cooperative shall place the funds in the telephone cooperative's general fund as long as the telephone cooperative maintains, to the extent necessary, a sufficient amount of the total unclaimed property accounts to ensure prompt payment. After the unclaimed property funds are returned to the telephone cooperative, the treasurer may continue to list the property on the department of treasury's website and may refer claimants to the telephone cooperative to claim their funds. Within thirty (30) business days after paying a claim under this section, the telephone cooperative shall report to the treasurer the name and address of the individual who received the unclaimed property from the telephone cooperative and the amount received.

66-29-154. Payment or delivery of property or proceeds of sale of property — Claim for debt owed by owner to state.

(a) Not later than thirty (30) days after a claim is approved by the treasurer under § 66-29-153, the treasurer shall pay or deliver to the owner the property or the net proceeds from a sale of the property, together with dividends, interest, or other increments to which the owner is entitled under § 66-29-137. On request of the owner, the treasurer may sell or liquidate a security and pay the net proceeds to the owner, regardless of whether the security has been held by the treasurer for less than thirty-two (32) months or the treasurer has not complied with the notice requirements under § 66-29-142.

(b) Property held by the treasurer is subject to a claim for the payment of an

enforceable debt that the owner owes in this state for:

(1) Child support arrearages, including child support collection costs and child support arrearages that are combined with amounts for maintenance;

(2) A civil or criminal fine or penalty, court costs, a surcharge, or restitution imposed by a final order of an administrative agency or court; or

(3) State and local taxes, penalties, and interest that have been determined to be delinquent, or for which notice has been recorded with the applicable taxing authority.

(c) The treasurer may make periodic inquiries with state and local agencies in the absence of a claim filed under § 66-29-152 to determine whether apparent owners included in the unclaimed property records of this state have enforceable debts described in subsection (b). The treasurer shall apply the property or net proceeds from a sale of property held by the treasurer to a debt under subsection (b) of an apparent owner who appears in the records of the treasurer and deliver the amount to the appropriate state or local agency. The treasurer shall notify the apparent owner of the payment.

(d) Before delivery or payment to an owner under subsection (a) of property or net proceeds from a sale of property, the treasurer shall apply the property or net proceeds to a debt under subsection (b) that the treasurer has determined is owed by the owner. The treasurer shall pay the amount to the appropriate state or local agency and notify the owner of the payment.

66-31-105. Enforcement of lien.

The enforcement of the owner's lien against an occupant who is in default may be done in accordance with either or both of the following procedures:

(1) In the case of short term default, denial of access:

(A) Upon the failure of an occupant to pay the rent for the storage space or unit when it becomes due, the owner may, without notice, deny the occupant access to the personal property located in the self-service storage facility or self-contained storage unit, and the owner without notice, not less than five (5) days after the date the rent is due, may enter and remove the personal property from the leased space to other suitable storage space pending its sale or other disposition; and

(B) The owner shall notify the occupant of the owner's intent to enforce the owner's lien by written notice delivered by hand delivery, by verified mail, or by electronic mail to the occupant's last known address; or

(2) In the case of long term default, which is a continuous fifteen (15) days, the owner may enforce the owner's lien in accordance with the following procedures:

(A) The occupant shall be notified in writing;

(B) The notice shall be delivered by hand delivery, by verified mail, or by electronic mail to the occupant's last known address;

(C) The notice shall include:

(i) An itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

(ii) A demand for payment of the sum due within a specified time not less than thirty (30) days after the date of the notice and a statement of the approximate additional expenses which may be incurred between the date of the notice and the date of the sale;

(iii) A statement that the contents of the occupant's leased space are

subject to the owner's lien;

(iv) If the owner elects to deny the occupant access to the leased space or elects to enter and/or remove the occupant's personal property from the leased space to other suitable storage space, a statement so advising the occupant shall be included in the notice;

(v) The name, street address and telephone number of the owner or designated agent whom the occupant may contact to respond to the notice; and

(vi) A conspicuous statement that unless the claim is paid within the time stated, the personal property will be advertised for sale or will be otherwise disposed of at a specified time and place, not sooner than sixty (60) days after default;

(D) Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section. If the personal property is advertised for sale and the sale is not consummated, the owner shall give written notice to the occupant of other disposition of the personal property;

(E) Any sale or other disposition of the personal property must be held at the self-service storage facility, online, or at the nearest suitable place to where the personal property is held or stored;

(F) After expiration of the time stated in the notice and if the personal property has not otherwise been disposed, the owner shall advertise the sale of the personal property in a commercially reasonable manner. The manner of advertisement is deemed commercially reasonable if not less than three (3) potential bidders participate in the sale at the time and place advertised. The advertisement of sale may include, but not be limited to, the publishing one (1) time before the date of the sale of the personal property in a newspaper of general circulation that serves the area where the self-storage facility is located. An advertisement must include:

(i) A statement that the contents of the occupant's leased space shall be sold to satisfy the owner's lien;

(ii) The address of the self-service storage facility and the number or other description, if any, of the space where the personal property is located and the name of the occupant; and

(iii) The time, place, and manner of the sale;

(G) Before any sale or other disposition of personal property pursuant to this section, the occupant may pay the amount necessary to satisfy the owner's lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon the payment and satisfaction of the amount necessary to satisfy the lien, the owner shall return the personal property and thereafter the owner shall have no liability to any person with respect to such personal property;

(H) The owner may buy at any sale of personal property to enforce the owner's lien;

(I) A purchaser in good faith of the personal property sold to satisfy the owner's lien takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the owner with the requirements of this section;

(J) In the event of a sale under this section, the owner may satisfy the owner's lien and the expenses of such sale from the proceeds of the sale but

shall hold the balance, if any, for delivery on demand to the occupant. If the occupant does not claim the balance of the proceeds within one (1) year of the date of the sale, such balance shall be deemed to be abandoned, and the owner shall pay such balance to the state treasurer who shall receive, hold and dispose of same in accordance with the Uniform Unclaimed Property Act, compiled in chapter 29, part 1 of this title;

(K) If the property upon which the lien is claimed is a vehicle and rent and other charges related to the property remain unpaid or unsatisfied for sixty (60) days after the maturity of the obligation to pay rent, the facility owner may utilize either of the following options:

(i) The facility owner may have the property towed. If a vehicle is towed as authorized in this subdivision (2)(K)(i), the owner shall not be liable for the vehicle or any damages to the vehicle once the tower takes possession of the property; or

(ii) The facility owner shall contact the appropriate division in such manner as the division prescribes for the purposes of determining the existence and identity of any lien holder and the name and address of the owner of the vehicle as shown in the division's records. If the vehicle is a motor vehicle, then the facility owner may also contact the county clerk for the purposes of determining the existence and identity of any lien holder and the name and address of the owner of the motor vehicle as shown in the county clerk's records. Within ten (10) days of receipt of the information concerning any lien holder and the owner of the motor vehicle, as shown in the division's or county clerk's records, the facility owner shall send a written notice to any lien holder and to the motor vehicle owner, if the motor vehicle owner is not the occupant, by verified mail, stating that:

(a) Such vehicle is being held by the facility owner;

(b) A lien has attached pursuant to this chapter; and

(c) Payment shall be made within thirty (30) days after notification to satisfy the lien. The vehicle owner or lien holder may pay the balance owed and take possession of the vehicle. If the owner or lien holder does not satisfy the lien, the facility owner may sell the vehicle in any manner, including but not limited to, public auction;

(L) The owner's liability arising from the sale is limited to the net proceeds received from the sale of the personal property;

(M) The owner is not liable for identity theft or other harm resulting from the misuse of information contained in a document or electronic storage media:

(i) That are part of the occupant's property sold or otherwise disposed; and

(ii) Of which the owner did not have actual knowledge; and

(N) An owner shall not be entitled to any remedies provided by this chapter, including but not limited to, enforcement of a lien against an occupant, if:

(i) The requirements of this section are not satisfied;

(ii) The sale of the personal property located in the leased space is not in conformity with subdivision (2)(F); or

(iii) There is a willful violation of this chapter.

66-34-103. Withholding of retainage — Violations — Penalties.

(a) All construction contracts on any project in this state, both public and private, may provide for the withholding of retainage; provided, however, that the retainage amount may not exceed five percent (5%) of the amount of the contract.

(b) The owner, whether public or private, shall release and pay all retainages for work completed pursuant to the terms of any contract to the prime contractor within ninety (90) days after completion of the work or within ninety (90) days after substantial completion of the project for work completed, whichever occurs first. As used in this subsection (b), "work completed" means the completion of the scope of the work and all terms and conditions covered by the contract under which the retainage is being held. The prime contractor shall pay all retainages due any remote contractor within ten (10) days after receipt of the retainages from the owner. Any remote contractor receiving the retainage from the prime contractor shall pay to any lower-tier remote contractor all retainages due the lower-tier remote contractor within ten (10) days after receipt of the retainages.

(c) Any default in the making of the payments is subject to those remedies provided in this part.

(d) If an owner or prime contractor withholds retainage that is for the use and benefit of the prime contractor or its remote contractors pursuant to § 66-34-104(a) and (b), then neither the prime contractor nor any of its remote contractors are required to deposit additional retained funds into an escrow account in accordance with § 66-34-104(a) and (b).

(e)(1) It is an offense for a person, firm, or corporation to fail to comply with subsection (a) or (b) or § 66-34-104(a).

(2)(A) A violation of this subsection (e) is a Class A misdemeanor, subject to a fine only of three thousand dollars ($3,000).

(B) Each day a person, firm, or corporation fails to comply with subsection (a) or (b) or § 66-34-104(a) is a separate violation of this subsection (e).

(C) Until the violation of this subsection (e) is remediated by compliance, the punishment for each violation is consecutive to all other violations.

(3) In addition to the fine imposed pursuant to subdivisions (e)(2)(A) and (B), the court shall order restitution be made to the owner of the retained funds. In determining the appropriate amount of restitution, the formula stated in § 40-35-304 must be used.

(4) This subsection (e) does not apply to the state, any department, board, or agency thereof, including the University of Tennessee, all counties and municipalities, and all departments, boards, or agencies thereof, including all school and education boards, and any other subdivision of the state.

66-34-104. Retention of portion of contract price in escrow — Applicability — Mandatory compliance.

(a) Whenever, in any contract for the improvement of real property, a certain amount or percentage of the contract price is retained, that retained amount must be deposited in a separate, interest-bearing, escrow account with a third party which must be established upon the withholding of any retainage.

(b) As of the time of the withholding of the retained funds, the funds become

the sole and separate property of the prime contractor or remote contractor to whom they are owed, subject to the rights of the person withholding the retainage in the event the prime contractor or remote contractor otherwise entitled to the funds defaults on or does not complete its contract.

(c) If the party withholding the retained funds fails to deposit the funds into an escrow account as provided in this section, then the party shall pay the owner of the retained funds an additional three hundred dollars ($300) per day as damages, not as a penalty, for each and every day that the retained funds are not deposited into an escrow account. Damages accrue from the date retained funds were first withheld and continue to accrue until placed into a separate, interest-bearing escrow account or otherwise paid.

(d) The party with the responsibility for depositing the retained amount in a separate, interest-bearing escrow account with a third party has the affirmative duty to provide written notice that the party has complied with this section to any prime contractor upon withholding the amount of retained funds from each and every application for payment, including:

(1) Identification of the name of the financial institution with which the escrow account has been established;

(2) Account number; and

(3) Amount of retained funds that are deposited in the escrow account with the third party.

(e) Upon satisfactory completion of the contract, to be evidenced by a written release by the owner, prime contractor, or remote contractor owing the retainage, all funds accumulated in the escrow account together with all interest on the account must be paid immediately to the prime contractor or remote contractor to whom the funds and interest are owed.

(f) If the owner, prime contractor, or remote contractor, as applicable, fails or refuses to execute the release provided for in subsection (e), then the prime contractor or remote contractor, as applicable, may seek equitable relief, including injunctive relief, as provided in § 66-34-602, against the owner, prime contractor, or remote contractor. Relief may not be sought against the person holding the retainage as an escrow agent, and that person bears no liability for the nonpayment of the retainage; however, a court may issue an order to the person holding retainage to pay any sums held in trust pursuant to § 66-34-205. The person paying the sums pursuant to a court order bears no liability to the owner, prime contractor, or remote contractor for the payment. All other claims, demands, disputes, controversies, and differences that may arise between the owner, prime contractor, or prime contractors, and remote contractors may be, upon written agreement of all parties concerned, settled by arbitration conducted pursuant to the Uniform Arbitration Act, compiled in title 29, chapter 5, part 3, or the Federal Arbitration Act (9 U.S.C. § 1 et seq.), as may be applicable.

(g) Subsections (c), (d), and (j) do not apply to the state and any department, board, or agency thereof, including the University of Tennessee; counties and municipalities, and all departments, boards, or agencies thereof, including all school and education boards; and any other subdivision of the state.

(h) This section applies to all prime contracts and all subcontracts thereunder for the improvement of real property when the contract amount of the prime contract is five hundred thousand dollars ($500,000) or greater, notwithstanding the amount of the subcontracts.

(i) Compliance with this section is mandatory, and shall not be waived by

contract.

(j) Failure to deposit the retained funds into an escrow account as provided in this section, within seven (7) days of receipt of written notice regarding the failure, is a Class A misdemeanor.

66-34-201. Prime contractor entitled to payment from owner.

Performance by a prime contractor in accordance with a written contract with an owner for improvement of real property entitles the prime contractor to payment from the owner.

66-34-202. Application for payment for work — Payment according to schedule for payments — Review of application by owner's agent.

(a) If a prime contractor has performed in accordance with the prime contractor's written contract with the owner, then the owner shall pay to the prime contractor the full amount earned by the prime contractor, less only those amounts withheld in accordance with § 66-34-203. The payment must be made in accordance with the schedule for payments established within the contract and within thirty (30) days after application for payment is timely submitted by the prime contractor to the owner, in accordance with the schedule.

(b) Failure of an architect, engineer, or other agent employed by the owner to review and approve an application for payment for work which has been performed in accordance with the contract does not excuse the owner from making payment in accordance with this chapter. This section does not require payment for work not performed if an architect, engineer, or other agent has certified that a contractor has not completed performance for a portion of work covered by the application for payment.

66-34-203. Withholding of payment or retainage by owner.

This chapter does not prevent the owner from reasonably withholding payment or a portion of a payment to the prime contractor, as long as the withholding is in accordance with the written contract between the owner and the prime contractor. The owner may also withhold a reasonable amount of retainage as specified in the written contract between the owner and the prime contractor, as long as the retainage amount does not exceed five percent (5%) of the amount of the contract.

66-34-204. Payment of retainage by owner.

When an owner:

(1) Has received a use and/or occupancy permit for an improvement from a governmental agency lawfully issuing such permit;

(2) Has received a certificate of substantial completion from an architect or engineer charged with supervision of the construction of an improvement; or

(3) Begins to use or could have begun to use an improvement;

the owner shall, after any such event and pursuant to the terms of the written contract, pay to the prime contractor all retainage the owner may have withheld pursuant to the written contract, except any sum which the owner

may reasonably withhold in accordance with the written contract between the owner and the prime contractor; the retainage must be paid within ninety (90) days after the date of the occurrence of an event included in subdivision (1), (2) or (3).

66-34-205. Sums intended as payment to be held in trust.

(a) Any sums allocated by the owner or provided or committed to the owner by a third party that are intended to be used as payment for improvements made to real property by virtue of a written contract between the owner and the prime contractor must be held by the owner or third party in trust for the benefit and use of the prime contractor and its remote contractors, and are subject to all legal and equitable remedies.

(b) The presence of an otherwise valid agreement to arbitrate does not prevent a prime contractor or remote contractor from seeking equitable relief, including injunctive relief, as permitted by § 66-34-602 against any owner, prime contractor, or remote contractor.

(c) The bankruptcy or insolvency of any party is not a valid defense for the failure of an owner or other third party that controls or holds those sums described in subsection (a), as well as all retainage, to release those sums when they are otherwise due.

(d) This section does not apply to the state, including its departments, boards, or commissions, or to any institution of higher education.

66-34-301. Remote contractor entitled to payment from prime contractor.

Performance by a remote contractor in accordance with a written contract with a prime contractor for improvement of real property entitles the remote contractor to payment from the prime contractor.

66-34-302. Application for payment for work — Payment according to schedule for payments — Interest.

(a) If a remote contractor has performed in accordance with the remote contractor's written contract with the prime contractor, then the prime contractor shall pay to the remote contractor the full amount earned by the remote contractor, subject only to any condition precedent for payment clause in the contract, and less only those amounts withheld in accordance with § 66-34-303. The payment must be made in accordance with the schedule for payments established within the contract and within thirty (30) days after application for payment is timely submitted by the remote contractor to the prime contractor, in accordance with the schedule.

(b) The prime contractor shall also pay the remote contractor its pro rata share of any interest provided for in § 66-34-601 that has been received by the prime contractor.

66-34-303. Withholding of payment or retainage by prime contractor.

This chapter does not prevent the prime contractor from reasonably withholding payment or a portion of payment to the remote contractor, as long as the withheld payment is in accordance with the written contract between the prime contractor and the remote contractor. The prime contractor may also

withhold a reasonable amount of retainage as specified in the written contract between the prime contractor and remote contractor; except, that the retainage amount must not exceed five percent (5%) of the amount of the contract.

66-34-304. Payments to be held in trust by prime contractor.

Any sums received by the prime contractor as payment for work, services, equipment, and materials supplied by the remote contractor for improvements to real property must be held by the prime contractor in trust for the benefit and use of the remote contractor, and are subject to all legal and equitable remedies.

66-34-401. Payment by remote contractor to remote contractor.

A remote contractor contracting in writing with another remote contractor for the improvement of real property shall make payment to the other remote contractor in accordance with part 3 of this chapter.

66-34-501. Payment to architect or engineer — Governing provisions.

An architect or engineer furnishing design or contract administration services to an owner, prime contractor, or remote contractor for the improvement of real property is entitled to payment in accordance with part 2 of this chapter, if the architect or engineer contracts in writing with the owner; or in accordance with part 3 of this chapter, if the architect or engineer contracts in writing with a prime contractor or remote contractor.

66-34-601. Interest.

Any payment not made in accordance with this chapter accrues interest, from the date due until the date paid, at the rate of interest for delinquent payments provided in written contract or, if no interest rate is specified in a written contract, then one and one-half percent (1.5%) per month.

66-34-602. Nonpayment — Notice of intent to seek relief under chapter — Remedies — Attorney's fees — Bond.

(a)(1) A prime contractor who has not received payment from an owner, or a remote contractor who has not received payment from a prime contractor or other remote contractor, in accordance with this chapter, or any prime contractor or remote contractor that intends to seek to recover funds as permitted by § 66-34-205 and this section, shall notify the party failing to make payment of the notifying party's intent to seek relief against that party as provided in this chapter.

(2) The notification must be made by registered or certified mail, return receipt requested, or by another commercial delivery service that provides written confirmation of delivery.

(3) If the notified party does not, within ten (10) calendar days after receipt of the notice, make payment or provide to the notifying party a response giving adequate legal reasons for failure of the notified party to make payment, then the notifying party may, in addition to all other remedies available at law or in equity, sue for equitable relief, including injunctive relief, for continuing violations of this chapter in the chancery court of the county in which the real property is located.

(4) The failure to make the only payment due under the contract may be considered a continuing violation under this chapter.

(5) The notification required by this part may be sent separately or as part of any notice of nonpayment or other notice required under the contract and may be in substantially the following form:

This letter shall serve as notice pursuant to the Tennessee Prompt Pay Act, Tenn. Code Ann. §§ 66-34-101 et seq., of [prime contractor or remote contractor]'s intent to seek relief under the Prompt Pay Act. [Prime contractor or remote contractor] furnished [description of labor, materials, or services furnished] in furtherance of improvements to real property located at [property description] pursuant to its written contract with [lender, owner, prime contractor, or remote contractor]. [Prime contractor or remote contractor] first furnished labor, materials, or services on [insert first date] and ["is still continuing to perform" or "last furnished labor, materials, or services on (insert date)"]. If [owner, prime contractor, and/or remote contractor] fail(s) to make payment, arrange for payment, or provide a response setting forth adequate legal reasons for the failure to make payment to [prime contractor or remote contractor] within ten (10) days of your receipt of this letter, then [prime contractor or remote contractor] may, in addition to all other remedies at law or in equity, file a lawsuit for equitable relief, including injunctive relief, for continuing violations of this chapter.

(b)(1) If an owner does not make payment to a prime contractor or furnish a response setting forth adequate legal reasons for the owner's failure to make payment within ten (10) days of receipt of the notice required by subsection (a), then the prime contractor may stop work until payment is received or until the owner provides a response setting forth adequate legal reasons for the owner's failure to make payment, as long as the prime contractor is not otherwise in default of the written contract. If, in accordance with subsection (a), the owner makes payment or provides a response setting forth adequate legal reasons for the failure to pay the prime contractor, then the prime contractor shall not stop work pursuant to this section.

(2) If a prime contractor does not make payment to a remote contractor or furnish a response setting forth adequate legal reasons for the prime contractor's failure to make payment within ten (10) days of receipt of the notice required by subsection (a), then the remote contractor may stop work until payment is received or until the prime contractor provides a response setting forth adequate legal reasons for the prime contractor's failure to make payment, as long as the remote contractor is not otherwise in default of the written contract. If, in accordance with subsection (a), the prime contractor makes payment or provides a response setting forth adequate legal reasons for the failure to pay the remote contractor, then the remote contractor shall not stop work pursuant to this section.

(c) Any work stoppage by a prime contractor or a remote contractor in accordance with this section entitles the prime contractor or remote contractor to an extension of the contract schedule, if any, equal to the length of the work stoppage.

(d) Reasonable attorney's fees may be awarded against the nonprevailing party if the nonprevailing party acted in bad faith.

(e) A bond in the amount claimed or ordered to be paid must be filed with good sureties to be approved by the clerk prior to the issuance of any injunctive relief.

66-34-603. Additional rights of prime contractors and remote contractors — Reasonable assurances.

(a) In addition to any rights provided for under any contract:

(1) Prior to visible commencement of operations, and upon written request by a prime contractor, the owner shall furnish a prime contractor reasonable evidence the owner has procured a loan, which may be secured by a mortgage or other encumbrance, or has otherwise made financial arrangements sufficient to make all payments in accordance with the contract;

(2) After visible commencement of operations, a prime contractor or a remote contractor may, upon the owner's failure to make payments as required by the written contract, provide notice in accordance with § 66-34-602(a). Included within the notice, a prime contractor or remote contractor may request that the owner provide reasonable evidence that the owner has made financial arrangements sufficient to fulfill its obligation to make all payments in accordance with the written contract;

(3) An owner shall provide a response to a demand for reasonable assurances within ten (10) days of receipt of the request that:

(A) Provides reasonable evidence that the owner has made financial arrangements sufficient to fulfill the owner's obligation to make all payments in accordance with the written contract, including the information set forth in § 66-34-104(d); or

(B) Provides adequate legal reasons for the owner's failure to make payment of the sums owing to the requesting party;

(4) If an owner responds to a demand for adequate assurance with reasonable evidence that the owner has made financial arrangements sufficient to fulfill the owner's obligation to make all payments in accordance with the written contract, then the owner shall not materially vary the owner's financial arrangements from those disclosed under this section without prior notice to the prime contractor or remote contractor; and

(5) A demand for reasonable assurances may be sent separately or as part of any notice of nonpayment, notice pursuant to § 66-34-602(a), or other notice required or permitted under the contract, and may be in substantially the following form:

[Prime contractor or remote contractor] furnished labor, materials, or services in furtherance of improvements to real property located at [property description] pursuant to its written contract with [owner, prime contractor, or remote contractor]. As of the date of this letter, [owner, prime contractor, or remote contractor] owes [prime contractor or remote contractor] the sum of [amount past due], which is past due or for which [prime contractor or remote contractor] asserts it has not been paid from [owner]. Such amounts were due on or before [insert due date] pursuant to the written contract between the parties. Pursuant to T.C.A. § 66-34-603, [prime contractor or remote contractor] demands [owner] furnish reasonable evidence that [owner] has made financial arrangements sufficient to fulfill its obligation to make all payments in accordance with the written contract or setting forth adequate legal reasons for your failure to make payment, within ten (10) days of your receipt of this letter.

(b) This section may not be waived by contract.

(c) This section does not apply to the state and any department, board, or agency thereof, including the University of Tennessee; counties and munici-

palities and all departments, boards, or agencies thereof, including all school and education boards; and any other subdivision of this state.

66-34-701. Prohibited waiver — Applicability of provisions.

As a matter of public policy, except as specifically noted, compliance with §§ 66-11-104, 66-34-205, 66-34-304, 66-34-602, and 66-34-603 may not be waived by contract and these sections are applicable to all private contracts and all construction contracts with this state, any department, board, or agency thereof, including the University of Tennessee, all counties and municipalities and all departments, boards, or agencies thereof, including all school and education boards, and any other subdivision of the state.

66-34-703. Applicability of chapter.

(a) This chapter does not apply to any bank, savings bank, savings and loan association, industrial loan and thrift company, other regulated financial institution, or insurance company.

(b) Notwithstanding subsection (a), if a bank, savings bank, savings and loan association, industrial loan and thrift company, other regulated financial institution, or insurance company acts in the capacity of an original owner in the event of building its own structure or assumes a project due to its debtor's default and proceeds with completion of the project, then the entity is subject to this chapter, except for §§ 66-34-104(c) and (j); however, the retained amount may be deposited in an account within the entity's own institution.

(c) Notwithstanding subsection (a) or any other provision of this chapter to the contrary:

(1) A bank, savings and loan association, industrial loan and thrift company, other regulated financial institution, or insurance company shall pay any sums held in trust pursuant to § 66-34-205 in accordance with an order of any court issued pursuant to § 66-34-602; and

(2) A bank, savings and loan association, industrial loan and thrift company, other regulated financial institution, or insurance company is not liable for damages pursuant to § 66-34-104(c) based on the failure of an owner to place retainage in a separate interest-bearing, escrow account as required by § 66-34-104(a).

66-34-704. Agreement limiting liability of person furnishing labor, materials, or services.

Without limiting any existing law or regulation, it is not against the public policy or public interest of this state for a provision in any agreement relating to the design, planning, supervision, observation of construction, repair, or construction of an improvement to real property to limit the liability of the person furnishing the labor, materials, or services to a reasonable monetary amount.

66-36-101. Chapter definitions.

As used in this chapter:

(1) "Action" means any civil action or binding dispute resolution proceeding for damages or indemnity asserting a claim for damage to or loss of commercial property caused by an alleged construction defect, but does not include any civil action or arbitration proceeding asserting a claim for

alleged personal injuries arising out of an alleged construction defect;

(2) "Claimant" means an owner, including a subsequent purchaser, tenant, or association, who asserts a claim against a prime contractor, remote contractor, or design professional concerning a construction defect;

(3) "Commercial property" means all property that is not residential property;

(4) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction or remodeling of an improvement resulting from:

(A) Defective material, products, or components used in the construction or remodeling;

(B) A violation of the applicable codes in effect at the time of construction or remodeling;

(C) A failure of the design of an improvement to meet the applicable professional standards of care at the time of governmental approval, construction, or remodeling; or

(D) A failure to construct or remodel an improvement in accordance with accepted trade standards for good and workmanlike construction at the time of construction or remodeling;

(5) "Design professional" means a person licensed in this state as an architect, interior designer, landscape architect, engineer, or surveyor, regardless of whether the person is a prime contractor or remote contractor;

(6) "Improvement" has the same meaning as defined in § 66-11-101;

(7) "Notice of claim" means a written notice sent by a claimant to the last known address of a prime contractor, remote contractor, or design professional against whom the claimant asserts a construction defect that describes the claim in reasonable detail sufficient to determine the general nature of the defect, including a general description of the type and location of the construction that the claimant alleges to be defective and any damages claimed to have been caused by the defect;

(8) "Prime contractor" has the same meaning as defined in § 66-11-101;

(9) "Remote contractor" has the same meaning as defined in § 66-11-101;

(10) "Residential property" means property upon which a dwelling or improvement is constructed or to be constructed consisting of one (1) dwelling unit intended as a residence of a person or family; and

(11) "Service" means personal service or delivery by certified mail to the last known address of the addressee, or as otherwise allowed by contract.

66-36-103. Notice of claim after discovery of construction defect — Inspection — Written response — Settlement offer — Tolling of statute of limitations.

(a) In actions brought against a prime contractor, remote contractor, or design professional related to an alleged construction defect, the claimant shall, before filing an action, serve written notice of claim on the prime contractor, remote contractor, or design professional, as applicable. The claimant shall endeavor to serve the notice of claim within fifteen (15) days after discovery of an alleged defect, or as required by contract. Unless otherwise prohibited by contract, the failure to serve notice of claim within fifteen (15) days does not bar the filing of an action, subject to § 66-36-102.

(b) Within ten (10) business days after service of the notice of claim, the

prime contractor, remote contractor, or design professional may inspect the structure to assess each alleged construction defect. The claimant shall provide the prime contractor, remote contractor, or design professional and its lower-tier remote contractors or agents reasonable access to the improvement during normal working hours to inspect the improvement, to determine the nature and cause of each alleged construction defect, and the nature and extent of any corrections, repairs, or replacements necessary to remedy each defect. The inspection may include destructive testing. Prior to performing any destructive testing, the person who desires to perform the testing shall notify the claimant in writing of the type of testing to be performed, the anticipated damage to the improvement that will be caused by the testing, and the anticipated corrections or repairs that will be necessary to correct or repair any damage caused by the testing. The person performing the testing shall correct and repair any damage to the improvement caused by the testing.

(c) Within ten (10) days after service of the notice of claim, the prime contractor, remote contractor, or design professional must forward a copy of the notice of claim to each prime contractor, remote contractor, or design professional who it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular prime contractor, remote contractor, or design professional is responsible. Each such prime contractor, remote contractor, or design professional may inspect the improvement as provided in subsection (b) within ten (10) business days after receiving a copy of the notice.

(d) Within ten (10) business days after receiving a copy of the notice of claim, the prime contractor, remote contractor, or design professional must serve a written response to the prime contractor, remote contractor, or design professional who served a copy of the notice of claim. The written response must include a report of the scope of any inspection of the improvement; the findings and results of the inspection; a statement of whether the prime contractor, remote contractor, or design professional is willing to make corrections or repairs to the improvement or whether it disputes the claim; a description of any corrections or repairs it is willing to make to remedy the alleged construction defect; and a timetable for the completion of such corrections or repairs.

(e) Within thirty (30) days after receiving the notice of claim, each prime contractor, remote contractor, or design professional must serve a written response to the claimant. The written response must provide:

(1) A written offer to remedy the alleged construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a detailed description of the corrections or repairs necessary to remedy the defect, and a timetable for the completion of the repairs;

(2) A written offer to compromise and settle the claim by monetary payment to be paid within thirty (30) days after the claimant's acceptance of the offer; or

(3) A written statement that the prime contractor, remote contractor, or design professional disputes the claim and will not remedy the defect or compromise and settle the claim.

(f) If the prime contractor, remote contractor, or design professional offers to remedy the alleged construction defect or compromise and settle the claim by monetary payment, then the written response must contain a statement that

the claimant is deemed to have accepted the offer if, within fifteen (15) days after service to the written response, the claimant does not serve a written rejection of the offer on the prime contractor, remote contractor, or design professional.

(g) If the prime contractor, remote contractor, or design professional does not respond to the claimant's notice of claim within the time provided in subsection (e), then the claimant may, without further notice, proceed with an action against the prime contractor, remote contractor, or design professional for the claim described in the notice of claim.

(h) A claimant who rejects a settlement offer made by the prime contractor, remote contractor, or design professional must serve written notice of the rejection on the prime contractor, remote contractor, or design professional within fifteen (15) days after service of the settlement offer. The claimant's rejection must contain the settlement offer with the word "rejected" printed on it.

(i) If the claimant accepts the offer of a prime contractor, remote contractor, or design professional and the prime contractor, remote contractor, or design professional does not make the payment, correction, or repair the defect within the agreed time and in the agreed manner, then the claimant may, without further notice, proceed with an action against the prime contractor, remote contractor, or design professional. If a claimant accepts a prime contractor, remote contractor, or design professional's offer and the prime contractor, remote contractor, or design professional makes payment, correction, or repairs the defect within the agreed time and in the agreed manner, then the claimant is barred from proceeding with an action against the prime contractor, remote contractor, or design professional for the claim described in the notice of claim.

(j) If the claimant accepts the offer of a prime contractor, remote contractor, or design professional to correct or repair an alleged construction defect, then the claimant shall provide the prime contractor, remote contractor, or design professional and their remote contractors or other agents reasonable access to the claimant's improvement during normal working hours to perform the correction or repair by the agreed-upon timetable as stated in the offer.

(k) The failure of a claimant or a prime contractor, remote contractor, or design professional to follow the procedures in this section is admissible in an action. However, this section does not prohibit or limit the claimant from making any necessary emergency corrections or repairs to the improvement. In addition, the offer of a prime contractor, remote contractor, or design professional to remedy an alleged construction defect or to compromise and settle the claim by monetary payment does not constitute an admission of liability with respect to the defect.

(*l*) A claimant's written notice of claim under subsection (a) tolls the applicable statute of limitations until the later of:

(1) One hundred eighty (180) days after the prime contractor, remote contractor, or design professional receives the notice; or

(2) Ninety (90) days after the end of the correction or repair period stated in the offer, if the claimant has accepted the offer. By stipulation of the parties, the period may be extended and the statute of limitations is tolled during the extension.

(m) The procedures in this section apply to each alleged construction defect. However, a claimant may include multiple defects in one (1) notice of claim.

(n) This chapter does not:

(1) Bar, limit, or replace any rights, obligations, or duties under a contract that provides for notice and opportunity to cure any construction defects. Those contractual provisions control, take precedence, and are in lieu of any obligation or right provided by this chapter;

(2) Bar or limit any rights, including the right of specific performance to the extent that right would be available in the absence of this chapter, any causes of action, or any theories on which liability may be based, except as specifically provided in this chapter;

(3) Bar or limit any defense, or create any new defense, except as specifically provided in this chapter;

(4) Create any new rights, causes of action, or theories on which liability may be based; or

(5) Extend any existing statute of limitations except as specifically provided in subsection (*l*).

67-4-1401. Part definitions. [Effective January 1, 2021. See version effective until January 1, 2021.]

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

(1) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person;

(2) "Hotel" means any structure or space, or any portion thereof, that is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel, short-term rental unit or any place in which rooms, lodgings or accommodations are furnished to transients for consideration;

(3) "Municipality" means an incorporated city that has adopted home rule in accordance with the Constitution of Tennessee, article XI, § 9;

(4) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel;

(5) "Operator" means the person operating the hotel, whether as owner, lessee or otherwise;

(6) "Person" means any individual, or group of individuals, that occupies the same room;

(7) "Residential dwelling" means a cabin, house, or structure used or designed to be used as an abode or home of a person, family, or household, and includes a single-family dwelling, a portion of a single-family dwelling, or an individual residential dwelling in a multi-dwelling building, such as an apartment building, condominium, cooperative, or timeshare;

(8) "Short-term rental unit" means a residential dwelling that is rented wholly or partially for a fee for a period of less than thirty (30) continuous days and does not include a hotel as defined in § 68-14-302 or a bed and breakfast establishment or a bed and breakfast homestay as those terms are

defined in § 68-14-502;

(9) "Short-term rental unit marketplace" means any person or entity that provides a platform for compensation, through which a third party offers to rent a short-term rental unit to an occupant; and

(10) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.

67-4-1405. Remittance of tax. [Effective until January 1, 2021. See version effective January 1, 2021.]

(a) The tax levied shall be remitted by all operators who lease, rent or charge for rooms or spaces in hotels within the municipality, to such officer as may by the ordinance be charged with the duty of collection of that tax, the tax to be remitted to such officer not later than the twentieth day of each month for the preceding month. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the municipality entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for remitting the tax levied pursuant to this part, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the officer in the form of a deduction in submitting the operator's report and paying the amount due by such operator; provided, that the amount due was not delinquent at the time of payment.

67-4-1405. Remittance of tax. [Effective January 1, 2021. See version effective until January 1, 2021.]

(a) The tax levied shall be remitted by all operators who lease, rent or charge for rooms or spaces in hotels within the municipality, to such officer as may by the ordinance be charged with the duty of collection of that tax, the tax to be remitted to such officer not later than the twentieth day of each month for the preceding month. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the municipality entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for remitting the tax levied pursuant to this part, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted to the officer in the form of a deduction in submitting the operator's report and paying the amount due by such operator; provided, that the amount due was not delinquent at the time of payment.

(c) Notwithstanding this part to the contrary, on or after January 1, 2021, the tax levied pursuant to this part, when levied upon the occupancy of a short-term rental unit secured through a short-term rental unit marketplace, must be collected and remitted in accordance with chapter 4, part 15 of this title.

67-4-1413. Collection and remittance of tax on short-term rental unit. [Effective January 1, 2021.]

Notwithstanding any law to the contrary, on or after January 1, 2021, tax

levied upon the privilege of occupancy of a short-term rental unit secured through a short-term rental unit marketplace, pursuant to any private act, must be collected and remitted in accordance with title 67, chapter 4, part 15.

67-4-1425. Limitations on levy of tax.

(a) After May 12, 1988, any private act that authorizes a city or county to levy a tax on the privilege of occupancy of a hotel shall limit the application of such tax as follows:

(1) A city shall only levy such tax on occupancy of hotels located within its municipal boundaries;

(2) A city shall not be authorized to levy such tax on occupancy of hotels if the county in which such city is located has levied such tax prior to the adoption of the tax by the city; and

(3) A county shall only levy such tax on occupancy of hotels located within its boundaries but outside the boundaries of any municipality that has levied a tax on such occupancy prior to the adoption of such tax by the county.

(b) This section shall be applied prospectively only and all private acts levying taxes on the privilege of occupancy of hotels enacted prior to May 12, 1988, shall remain in full force and effect. For the purposes of this section, "enacted" means passed by both houses of the general assembly and signed by the governor and approved in accordance with the Constitution of Tennessee, article XI, § 9.

(c) This section does not apply in any county, excluding any county with a metropolitan form of government, that:

(1) Contains or borders a county that contains an airport designated as a regular commercial service airport in the international civil aviation organization (ICAO) regional air navigation plan; and

(2) Contains a government-owned convention center of at least fifty thousand square feet (50,000 sq. ft.) with an attached, adjoining, or adjacent hotel or motel facility; or

(3) Contains an airport with regularly scheduled commercial passenger service, and the creating municipality of the metropolitan airport authority for the airport is not located within such county. The tax levied on occupancy of hotels by cities located within such a county may only be used for tourism as defined by § 7-4-101;

provided, however, that a municipality located in any county to which this subsection (c) applies shall not be authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount exceeding five percent (5%) of the consideration charged by the operator; provided, further, that, if a municipality located in such county is incorporated under the general law, then such municipality is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. Such ordinance shall set forth the manner of collection and administration of such privilege tax.

(d) This section shall not apply in any county having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000), in any county having a population of not less than thirty-five thousand fifty (35,050) nor more than thirty-five thousand seventy (35,070), nor in any county

having a population of not less than one hundred eighteen thousand four hundred (118,400) nor more than one hundred eighteen thousand seven hundred (118,700), according to the 1990 federal census or any subsequent federal census.

(e) This section does not apply to any city that has constructed a qualifying project or projects under the Convention Center and Tourism Development Financing Act of 1998, compiled in title 7, chapter 88. Further, § 67-4-503 shall not be applicable to such cities as it relates to the authority to levy an occupancy tax.

(f) This section shall not apply in any county having a population of not less than twenty-five thousand five hundred seventy-five (25,575) nor more than twenty-five thousand eight hundred fifty (25,850), according to the 2000 federal census or any subsequent federal census.

(g) This section shall not apply in any municipality that is located within the boundaries of all of the following three (3) counties: a county having a population of not less than seventy-one thousand three hundred (71,300) nor more than seventy-one thousand four hundred (71,400), a county having a population of not less than nineteen thousand five hundred (19,500) nor more than nineteen thousand seven hundred seventy-five (19,775), and a county having a population of not less than fifty-one thousand nine hundred (51,900) nor more than fifty-two thousand (52,000), all according to the 2000 federal census or any subsequent federal census; provided, that the municipality is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the municipality of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(h) This section shall not apply in any municipality having a population of not less than five thousand two hundred (5,200) nor more than five thousand three hundred (5,300), according to the 2000 federal census or any subsequent federal census, that is located within a county having a population of not less than fifty-one thousand nine hundred (51,900) nor more than fifty-two thousand (52,000), according to the 2000 federal census or any subsequent federal census; provided, that the municipality is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the municipality of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(i) This section shall not apply in any municipality having a population of not less than seven thousand three hundred fifty (7,350) nor more than seven thousand four hundred and ten (7,410), according to the 2000 federal census of population or any subsequent federal census located within a county having a population of not less than twenty-five thousand four hundred and fifty (24,450) nor more than twenty-five thousand five hundred and fifty (25,550), according to the 2000 federal census of population or any subsequent federal census. Any such municipality shall be authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the municipality of each transient in an amount of the consideration charged by the operator as set by ordinance of the governing body. All proceeds received by the municipality from

such tax shall be dedicated solely for tourism development. The ordinance shall further set forth the manner of collection and administration of the privilege tax.

(j) This section shall not apply in any city having a population of not less than six thousand nine hundred (6,900) nor more than seven thousand (7,000), according to the 2010 federal census or any subsequent federal census, that is located within a county having a population of not less than thirty-five thousand six hundred (35,600) nor more than thirty-five thousand seven hundred (35,700), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. All proceeds received by the city from such tax shall be dedicated solely for tourism development. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(k) This section shall not apply in any city having a population of not less than thirty-four thousand six hundred (34,600) nor more than thirty-four thousand seven hundred (34,700), according to the 2010 federal census or any subsequent federal census, that is located within any county having a population of not less than eighty thousand nine hundred (80,900) nor more than eighty-one thousand (81,000), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized, after notice and a public hearing, to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The public shall have not less than thirty (30) days to comment on the levying of the tax after receiving notice from the city and before the public hearing. All proceeds received by the city from the tax shall be dedicated solely for tourism development in Maury County. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(*l*) This section shall not apply in any city having a population of not less than six thousand eight hundred twenty (6,820) nor more than six thousand eight hundred thirty (6,830), according to the 2010 federal census or any subsequent federal census, that is located within any county having a population of not less than thirty-three thousand three hundred (33,300) nor more than thirty-three thousand four hundred (33,400), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized, after notice and public hearing, to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The public shall have not less than thirty (30) days to comment on the levying of the tax after receiving notice from the city and before the public hearing. All proceeds received by the city from the tax shall be used for tourism development purposes. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(m) This section shall not apply in any county having a population of not less than thirteen thousand seven hundred (13,700) nor more than thirteen thousand seven hundred fifty (13,750), according to the 2010 federal census or

any subsequent federal census; provided, that the county is authorized to levy a privilege tax by resolution adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The resolution shall set forth the manner of collection and administration of the privilege tax.

(n) Notwithstanding this part to the contrary, by ordinance adopted by a two-thirds (⅔) vote of its legislative body, any municipality having a population of not less than sixty-three thousand (63,000) nor more than sixty-three thousand five hundred (63,500), according to the 2010 federal census or any subsequent federal census, is authorized to adjust the rate of the municipality's privilege tax upon the privilege of occupancy in any hotel located within the municipality of each transient; provided, however, any adjustment shall be made one (1) time only and shall not exceed two percent (2%) of the consideration charged to the transient by the operator. Any proceeds received by the municipality from any adjustment in the rate shall be used solely for tourism.

(o) This section shall not apply in any city having a population of not less than twenty-nine thousand thirty (29,030) nor more than twenty-nine thousand forty (29,040), which is located within 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), or which is located within any county having a population of not less than eighty thousand nine hundred (80,900) nor more than eighty-one thousand (81,000), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed three percent (3%) of the consideration charged by the operator. The proceeds from such tax shall be deposited in a special revenue fund, separate from the general fund, and used solely for tourism development purposes. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(p) This section shall not apply in any city having a population of not less than two thousand eight hundred (2,800) nor more than three thousand (3,000) that is located within any county having a population of not less than fifty-one thousand four hundred (51,400) nor more than fifty-one thousand five hundred (51,500), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed two percent (2%) of the consideration charged by the operator. All proceeds received by the city from the tax shall be used solely to promote tourism in the city and for no other purpose. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(q) This section shall not apply in any city having a population of not less than six thousand four hundred forty (6,440) nor more than six thousand four hundred forty-nine (6,449), located within two counties, one of which having a population of not less than sixty-six thousand two hundred (66,200) nor more than sixty-six thousand three hundred (66,300) and the other having a population of not less than one hundred sixty thousand six hundred (160,600)

nor more than one hundred sixty thousand seven hundred (160,700), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized, after notice and public hearing, to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed two and one-half percent (2.5%) of the consideration charged by the operator. All proceeds received by the city from the tax shall be used solely for tourism development purposes. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(r) This section shall not apply in any city having a population of not less than thirteen thousand six hundred (13,600) nor more than thirteen thousand six hundred nine (13,609), according to the 2010 federal census or any subsequent federal census, that is located within any county having a population of not less than thirty-nine thousand eight hundred (39,800) nor more than thirty-nine thousand nine hundred (39,900), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. All proceeds received by the city from the tax shall be used solely for tourism development purposes. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(s) This section shall not apply in any city having a population of not less than two thousand seven hundred fifty (2,750) nor more than two thousand seven hundred fifty-nine (2,759) that is located within any county having a population of not less than thirty-nine thousand one hundred (39,100) nor more than thirty-nine thousand two hundred (39,200), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed two and one-half percent (2.5%) of the consideration charged by the operator. All proceeds received by the city from the tax shall be used solely to promote tourism and economic development in the city and for no other purpose. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(t) This section shall not apply in any city that is situated in two (2) or more counties and having a population of not less than eleven thousand four hundred eighty (11,480) nor more than eleven thousand four hundred eighty-nine (11,489), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed two and one-half percent (2.5%) of the consideration charged by the operator. All proceeds received by the city from such tax shall be dedicated solely for tourism development. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(u) This section does not apply in any city that is situated in two (2) or more counties and having a population of not less than twenty thousand six hundred (20,600) nor more than twenty thousand seven hundred (20,700), according to the 2010 federal census or any subsequent federal census; provided, that the

city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed four percent (4%) of the consideration charged by the operator. All proceeds received by the city from the tax must be used solely for tourism development. The ordinance must set forth the manner of collection and administration of the privilege tax.

(v) This section shall not apply in any city having a population of not less than four thousand one hundred forty (4,140) nor more than four thousand one hundred forty-nine (4,149) that is located within any county having a population of not less than thirty-nine thousand one hundred (39,100) nor more than thirty-nine thousand two hundred (39,200), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. All proceeds received by the city from the tax shall be used solely to promote tourism and economic development in the city and for no other purpose. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(w) This section does not apply to any city having a population of not less than fifty-one thousand (51,000) nor more than fifty-two thousand (52,000), according to the 2010 federal census or any subsequent federal census, located in a county with a population of not less than one hundred sixty thousand six hundred (160,600) nor more than one hundred sixty thousand seven hundred (160,700), according to the 2010 federal census or any subsequent census; provided, that the city may, after notice and a public hearing, levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed two and three-fourths percent (2.75%) of the consideration charged by the operator. All proceeds received by the city from the tax must be used solely for tourism development purposes. The ordinance must set forth the manner of collection and administration of the privilege tax.

(x) This section shall not apply in any city having a population of not less than thirty thousand (30,000) nor more than thirty thousand five hundred (30,500) that is located in a county having a population of not less than one hundred sixty thousand six hundred (160,600) nor more than one hundred sixty thousand seven hundred (160,700), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. All proceeds received by the city from such tax shall be dedicated solely for tourism development. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(y) This section shall not apply in any city having a population of not less than ten thousand seven hundred (10,700) nor more than ten thousand eight hundred (10,800) that is located within any county having a population of not less than fifty-six thousand (56,000) nor more than fifty-six thousand one hundred (56,100), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by

ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed two percent (2%) of the consideration charged by the operator. All proceeds received by the city from the tax shall be used solely to promote tourism and economic development in the city and for no other purpose. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(z) This section does not apply in any county having a population of not less than fifty-two thousand seven hundred (52,700) nor more than fifty-two thousand eight hundred (52,800), according to the 2010 federal census or any subsequent federal census; provided, that the county is authorized to levy a privilege tax by resolution adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel or motel of each transient in an amount not to exceed two and one-half percent (2.5%) of the consideration charged by the operator. The revenue generated by this privilege tax must be used to support local tourism and economic development. The resolution must set forth the manner of collection and administration of the privilege tax.

(aa) This section does not apply in any city having a population of not less than six thousand ninety (6,090) nor more than six thousand one hundred (6,100) that is located within any county having a population of not less than eighteen thousand three hundred one (18,301) nor more than eighteen thousand four hundred (18,400), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed two and a half percent (2.5%) of the consideration charged by the operator. All proceeds received by the city from the tax must be used solely to promote tourism and economic development in the city and for no other purpose. The ordinance must set forth the manner of collection and administration of the privilege tax.

(bb) This section does not apply in any city having a population of not less than four thousand five hundred forty (4,540) nor more than four thousand five hundred forty-nine (4,549) that is located within any county having a population of not less than thirty-nine thousand one hundred (39,100) nor more than thirty-nine thousand two hundred (39,200), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city on each transient in an amount not to exceed two and one-half percent (2.5%) of the consideration charged by the operator. All proceeds received by the city from the tax must be used solely to promote tourism and economic development in the city and for no other purpose. The ordinance must set forth the manner of collection and administration of the privilege tax.

(cc) This section does not apply in any city having a population of not less than thirty thousand four hundred thirty (30,430) nor more than thirty thousand four hundred thirty-nine (30,439) that is located within any county having a population of not less than seventy-two thousand three hundred (72,300) and not more than seventy-two thousand four hundred (72,400), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of

occupancy in any hotel located within the city on each transient in an amount not to exceed three percent (3%) of the consideration charged by the operator. All proceeds received by the city from the tax must be used solely to promote tourism and economic development in the city and for no other purpose. The ordinance must set forth the manner of collection and administration of the privilege tax.

(dd) This section shall not apply in any city having a population of not less than two thousand one hundred ninety (2,190) nor more than two thousand one hundred ninety-nine (2,199) that is located inside a county having a population of not less than fifty-one thousand four hundred (51,400) nor more than fifty-one thousand five hundred (51,500), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (⅔) vote of its governing body upon the privilege of occupancy in any hotel located within the city of each transient in an amount not to exceed three and one-half percent (3.5%) of the consideration charged by the operator. All proceeds received by the city from the tax shall be used solely to promote tourism and economic development in the city and for no other purpose. The ordinance shall set forth the manner of collection and administration of the privilege tax.

(ee) This section does not apply in any city having a population of not less than one thousand four hundred eighty (1,480) nor more than one thousand four hundred eighty-nine (1,489) that is located within a county having a population of not less than thirteen thousand seven hundred (13,700) nor more than thirteen thousand seven hundred fifty (13,750), according to the 2010 federal census or any subsequent federal census; provided, that the city is authorized to levy a privilege tax by ordinance adopted by a two-thirds (2/3) vote of its governing body upon the privilege of occupancy in any hotel located within the city on each transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. All proceeds received by the city from the tax must be used solely to promote tourism development in the city and for no other purpose. The ordinance must set forth the manner of collection and administration of the privilege tax.

67-4-1501. Part definitions. [Effective January 1, 2021.]

As used in this part:

(1) "Consideration" means the consideration charged, whether or not received, for the occupancy in a short-term rental unit valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property, and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition implies that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person;

(2) "Department" means the department of revenue;

(3) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings, or accommodations in a short-term rental unit;

(4) "Residential dwelling" means a cabin, house, or structure used or designed to be used as an abode or home of a person, family, or household, and includes a single-family dwelling, a portion of a single-family dwelling, or an individual residential dwelling in a multi-dwelling building, such as

an apartment building, condominium, cooperative, or timeshare;

(5) "Short-term rental unit" means a residential dwelling that is rented wholly or partially for a fee for a period of less than thirty (30) continuous days and does not include a hotel as defined in § 68-14-302 or a bed and breakfast establishment or a bed and breakfast homestay as those terms are defined in § 68-14-502;

(6) "Short-term rental unit marketplace" means any person or entity operating in this state that provides a platform for compensation, through which a third party offers to rent a short-term rental unit to an occupant;

(7) "Short-term rental unit provider" means any person or entity engaged in renting any short-term rental unit offered through a short-term rental unit marketplace;

(8) "Short-term rental unit transaction" means any transaction in which there is a charge to an occupant by a short-term rental unit provider for the occupancy of a short-term rental unit; and

(9) "Transient" means any person who exercises occupancy or is entitled to occupancy of any short-term rental unit for a period of less than thirty (30) continuous days.

67-4-1502. Registration of short-term rental unit marketplace — Collection and remittance of tax. [Effective January 1, 2021.]

(a) A short-term rental unit marketplace shall register with the department for the collection and remittance of all the following taxes with respect to the consideration charged for the occupancy of a short-term rental unit:

(1) The privilege tax imposed pursuant to title 7, chapter 4, part 1;

(2) The privilege tax imposed pursuant to title 7, chapter 4, part 2;

(3) The privilege tax imposed pursuant to title 67, chapter 4, part 14; and

(4) Any privilege tax on the occupancy of a room provided by any hotel, motel, or similar establishment to a transient for a consideration, where the tax is imposed pursuant to a private act.

(b) Any tax collected pursuant to subsection (a) must be collected by the short-term rental unit marketplace and remitted to the department, in the same manner as provided by chapter 6 of this title with respect to sales and use tax. The tax collected pursuant to subsection (a) must be collected at the rate adopted by the city, county, or metropolitan government.

67-4-1503. Collection and remittance of tax — Monthly report and remittance — Audits — Confidentiality of information. [Effective January 1, 2021.]

For purposes of this part:

(1) A short-term rental unit marketplace shall, with respect to each short-term rental unit transaction facilitated by the short-term rental unit marketplace, collect and remit the taxes set out in § 67-4-1502(a), even if the transaction is occasional or isolated as contemplated in § 67-6-102(8)(B);

(2) A short-term rental unit marketplace shall report its taxes collected pursuant to § 67-4-1502(a) on a monthly basis and remit the aggregate total amounts for each respective jurisdiction for each month;

(3) Taxes payable by a short-term rental unit marketplace in accordance with § 67-4-1502(a) are subject to audit only by the department at the commissioner's sole discretion. Audits of a short-term rental unit marketplace

must be conducted solely on the basis of the tax identification number associated with each short-term rental unit marketplace and shall not be conducted directly or indirectly on any individual short-term rental unit provider or any transient to whom short-term rental units are furnished. An audit described in this subdivision (3) must be conducted on the basis of returns filed by the short-term rental unit marketplace with the department, and if requested by the short-term rental unit marketplace, must include all tax types for which the short-term rental unit marketplace is required to collect and remit pursuant to § 67-4-1502(a); and

(4) If a short-term rental unit marketplace is required to disclose any personally identifiable information relating to any short-term rental unit provider or transient to whom a short-term rental unit is furnished, such information is confidential pursuant to § 67-1-1702.

67-4-1504. Prohibited advertising and statements relating to tax. [Effective January 1, 2021.]

A short-term rental unit marketplace shall not advertise or state in any manner, whether directly or indirectly, that any tax set out in § 67-4-1502(a)(1)-(4), in whole or in part, will be assumed or absorbed by the short-term rental unit provider, not be added to the occupancy, or be refunded.

67-4-1505. Applicable administrative and enforcements provisions. [Effective January 1, 2021.]

A short-term rental unit marketplace that collects the taxes set out in § 67-4-1502(a) is subject to the administration and enforcement provisions in chapter 6, parts 4 and 5 of this title.

67-4-1506. Monthly distribution of collected taxes — Deduction of administrative fee. [Effective January 1, 2021.]

The department shall distribute the taxes collected pursuant to this part on a monthly basis to the applicable local governing body in which the short-term rental unit was located and for which the tax was collected. The department may deduct an administration fee of one and one hundred twenty-five thousandths percent (1.125%) of the collected tax to cover its expenses of administering the collection and distribution of the tax.

67-4-1507. Promulgation of rules. [Effective January 1, 2021.]

The department may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, not inconsistent with this chapter, other laws, or the constitution of this state or the United States, for the enforcement of this chapter and the collection of revenues under this chapter.

67-4-1508. Inapplicability of part — Applicability of section. [Effective January 1, 2021.]

This part is not applicable when, upon January 1, 2021, a local governing body is a party to a valid contract that includes terms related to the collection and remittance of the taxes set out in § 67-4-1502(a), with a short-term rental unit marketplace. This section applies only while the contract, or any successor

agreement, remains valid and effective. If the contract terminates and no successor agreement is executed, then the taxes must be collected and remitted in accordance with this part.

67-4-1509. Report on tax rate imposed by local government. [Effective January 1, 2021.]

Annually, on a date determined by the department and on a form created and provided by the department, every local government that imposes a tax set out in § 67-4-1502(a)(1)-(4) shall certify and report to the department the tax rate imposed by the local government. In the event of changes to the rate, the local government shall notify the department, in the manner prescribed by the department. The department shall collect the rate information and make the information accessible to the public.

67-4-1901. Collection and remittance of surcharge or tax — Definition.

(a) Businesses engaged in the rental of motor vehicles shall collect and remit a three percent (3%) surcharge or tax on charges for the retail rental of any private passenger motor vehicle or a vehicle with a maximum gross weight rating classification of Class Four (4) or under as defined by § 55-4-113 or trailers as defined in § 55-1-105 for periods of thirty-one (31) days or less when the vehicle is delivered to the renter in this state. The surcharge or tax shall apply to the gross proceeds from the rental agreement, excluding any sales taxes imposed by chapter 6 of this title. The surcharge or tax as applied in this subsection (a) does not apply to entities or shared vehicle owners engaged in peer-to-peer car sharing or to any gross proceeds from peer-to-peer car sharing.

(b) Any charges related to the rental, including gas, insurance, and other related charges shall be included in the gross proceeds subject to the surcharge or tax, whether or not set out in a separate contract. The surcharge or tax shall not be included in the tax base for purposes of taxes imposed by chapter 6 of this title.

(c) As used in this part:

(1) "Commissioner" means the commissioner of revenue;

(2) "Peer-to-peer car sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program;

(3) "Peer-to-peer car sharing program" means a business platform that connects motor vehicle owners with drivers to enable the sharing of motor vehicles for financial consideration; and

(4) "Shared vehicle owner" has the same meaning as defined in § 55-12-301.

(d) Notwithstanding Section 2 of Chapter 325 of the Public Acts of 2001, on or after April 14, 2016, the department of revenue shall not be required to submit a report to the finance, ways and means committees of the house of representatives and the senate concerning the revenue effects of the amendments made to this section by Chapter 325 of the Public Acts of 2001.

67-4-2009. Credits.

The tax imposed by this part shall be in addition to all other taxes and there shall be no credit allowed upon it except the following:

(1) In accordance with § 56-4-217, there shall be credited upon the tax imposed by this part the net amount of gross premiums tax paid that is measured by a period that corresponds to the excise tax period on which the return is based, plus any amount used to offset payment to the Tennessee guaranty association that has not otherwise been recovered, but not including the gross premiums receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law;

(2) When an audit of an excise tax return for any year not barred by the statute of limitations discloses a change in the amount of tax due, there may be applied upon it as a credit any amount that the taxpayer is otherwise entitled to receive either as a credit under part 4 or 5 of this chapter for excise taxes paid, or as a refund thereof under § 67-1-1802. This tax credit allowance may be applied notwithstanding the statute of limitations or the requirement for approval of certain refunds by the commissioner and the attorney general and reporter if such was made under § 67-1-1802, and also any statutory or regulatory requirement under various items of part 4 or 5 of this chapter that the excise tax be paid prior to the allowance of any credit;

(3)(A) There shall be allowed against the sum total of the taxes imposed by the Franchise Tax Law of 1999, compiled in part 21 of this chapter, and by this part, a credit equal to one percent (1%) of the purchase price of industrial machinery purchased during the tax period covered by the return and located in this state. For purposes of this section, "industrial machinery" means:

(i) "Industrial machinery" as defined by § 67-6-102; or

(ii) "Computer," "computer network," "computer software," or "computer system" as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the required capital investment in Tennessee described in § 67-4-2109(a), if as a result of making such purchase and meeting the other requirements set forth in § 67-4-2109(b), the taxpayer qualifies for the job tax credit provided therein;

(B) The industrial machinery credit taken on any franchise and excise tax return, however, shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before the credit is taken;

(C)(i) Any unused credit may be carried forward in any tax period until the credit is taken; however, the credit may not be carried forward for more than fifteen (15) years;

(ii) If the taxpayer qualifies for the credit provided in subdivision (3)(I)(i), the fifteen-year limitation otherwise applicable to the carry-forward of unused credit shall not apply; provided, that the commissioner of economic and community development and the commissioner of revenue have determined that the allowance of the additional carry-forward is in the best interest of the state;

(iii) Subdivision (3)(C)(ii) shall apply only to applications received and approved by the commissioner of revenue and the commissioner of economic and community development on or before January 1, 2011;

(D) If the industrial machinery, for the purchase of which a tax credit has been allowed, is sold or removed from this state during its useful life according to the depreciation guidelines in effect for excise tax purposes,

the department shall be entitled to recapture a portion of the credit allowed by increasing the franchise and/or excise tax liability of any taxpayer, for the taxable period during which the machinery was sold or removed, in an amount equal to the percentage of useful life remaining on the industrial machinery at the time of sale or removal times the total credit taken on the purchase of the machinery;

(E) For purposes of the allowance of the credit against franchise and excise taxes under this section, any taxpayer who is a lessee of new industrial machinery and the original user of the industrial machinery, including a lessee from an industrial development corporation as defined by title 7, chapter 53, or other tax exempt entity, shall be treated as having purchased the machinery during the tax period in which it is placed in service by the lessee, at an amount equal to its purchase price;

(F) If industrial machinery is leased for a period that constitutes less than eighty percent (80%) of its useful life, then the lessee shall be deemed to have purchased only a portion of the machinery, at an amount determined by multiplying the actual purchase price of the machinery by a fraction, the numerator of which is the lease term, and the denominator of which is the useful life of the leased machinery;

(G) **[Expired July 1, 2015; see (3)(G)(ii)]**

(i) Notwithstanding any law to the contrary, the industrial machinery franchise and excise tax credit provided in this subdivision (3) may be computed by a general partnership that operates a call center in this state that is placed in service by the general partnership on or after June 30, 2003, and that would otherwise qualify for the credit provided in § 67-4-2109(b)(3)(H). The industrial machinery franchise and excise tax credit shall be computed as if the general partnership were subject to franchise and excise tax. With respect to the general partnership tax year during which a credit is so computed, a partner in the general partnership that is subject to franchise and excise tax and that directly holds a first tier ownership interest in the general partnership may take a percentage of the credit that equals the total amount of the credit for the general partnership multiplied by the partner's percentage interest in the general partnership on the last day of the general partnership tax year against the partner's franchise and excise tax liability for the partner's tax year that includes the last day. The industrial machinery franchise and excise tax credit passed through from the general partnership to the first tier partner under this section shall, in the hands of the first tier partner, be subject to applicable provisions and limitations otherwise provided by this section, including carry forward provisions; provided, that in no case shall the credit or a carryover of a credit be taken by a business entity, unless it was a partner in the general partnership and subject to franchise and excise tax at the time the credit was earned by the general partnership;

(ii) This subdivision (3)(G) shall expire on July 1, 2015; provided, that any taxpayer that has filed a business plan with the department prior to July 1, 2015, shall continue to be eligible for the credit;

(H) Notwithstanding any provision to the contrary, a taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national,

or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one hundred percent (100%) of its franchise and/or excise tax liability by the industrial machinery credit provided in this subdivision (3), or any carryforward of the industrial machinery credit, if the commissioner of revenue and the commissioner of economic and community development determine that increasing the percentage of offset above that allowed by subdivision (3)(B) is in the best interests of the state. For purposes of this subdivision (3)(H), "best interests of the state" means a determination that the taxpayer established its headquarters or a warehousing or distribution hub in this state, or converted a regional headquarters or regional warehousing or distribution hub in this state into its national or international headquarters or a national or international warehousing or distribution hub, as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise and/or excise tax liability allowed to be offset, above that otherwise allowed by subdivision (3)(B), and the period during which the increased offset shall continue;

(I)(i) If the taxpayer makes a required capital investment in excess of one billion dollars ($1,000,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to ten percent (10%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(ii) If the taxpayer makes a required capital investment in excess of five hundred million dollars ($500,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to seven percent (7%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(iii) If the taxpayer makes a required capital investment in excess of two hundred fifty million dollars ($250,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to five percent (5%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(iv) If the taxpayer makes a capital investment in excess of one hundred million dollars ($100,000,000) during the investment period, the credit allowed in subdivision (3)(A) shall be equal to three percent (3%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (3)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (3)(I) shall be entitled to the credit for the items listed in subdivision (3)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

(v) The taxpayer shall file a business plan with the commissioner of revenue in order to qualify for the credit provided in this subdivision (3)(I). The business plan shall be filed on or before the last day of the first fiscal year in which the investment is made and shall describe the investment. The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit in this subdivision (3)(I);

(vi) The credit in this subdivision (3)(I) shall begin to apply in the first year of the investment period; however, if the required capital investment is not met during the investment period, the taxpayer shall be subject to an assessment equal to the amount of any credit taken under this subdivision (3)(I) for which the taxpayer failed to qualify, plus interest;

(vii) For purposes of this subdivision (3)(I), unless the context otherwise requires:

(a) "Good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the credit provided in this subdivision (3)(I);

(b) "Investment period" means a period not to exceed three (3) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made. The three-year period for making the required capital investment may, for good cause shown, be extended by the commissioner of economic and community development for a reasonable period not to exceed four (4) years for a taxpayer that meets the requirements of subdivision (3)(I)(i) and not to exceed two (2) years for any other taxpayer; and

(c) "Required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction; and

(J) **[Expired July 1, 2015; see (3)(J)(vi)]**

(i) In addition to the credit provided in subdivision (3)(A), the owner of a qualifying environmental project shall be entitled to a one-time credit in the amount of one and three-fourths percent (1.75%) of the

investment in the qualifying environmental project, and such credit shall have the same carry-forward features, limitations and other attributes as are applicable to job tax credits under § 67-4-2109(b)(1). The owner of a qualifying environmental project shall also be provided six (6) annual credits in the amount of one and three-fourths percent (1.75%) of the investment in the qualifying project, and such credits shall have the same carry-forward features, limitations and other attributes as are applicable to enhanced job tax credits under § 67-4-2109(b)(2)(B)(iii), and the entire investment in the qualifying environmental project shall be treated as exempt required capital investment for purposes of § 67-4-2108(a)(6)(G);

(ii) For purposes of this subdivision (3)(J), a "qualifying environmental project" means a project in which the taxpayer makes an investment in excess of one hundred million dollars ($100,000,000) to eliminate mercury from the manufacturing process and operations of one (1) or more existing chlor-alkali manufacturing and ancillary facilities and equipment in the state;

(iii) The maximum investment in a qualifying environmental project that is eligible for the credits provided under this subdivision (3)(J) is one hundred million dollars ($100,000,000), inclusive of all capital investment and other direct and indirect costs of the project. To be eligible for the credits provided under this subdivision (3)(J), construction of the qualifying environmental project must have commenced on or after January 1, 2011, and construction of the qualifying environmental project must be substantially complete on or before January 1, 2014. The credits provided under this subdivision (3)(J) shall first be available in the later of the year in which the qualifying environmental project is substantially complete or July 1, 2013;

(iv) As a condition to receiving credits under this subdivision (3)(J), the owner of a qualifying environmental project shall agree to maintain an annual average of at least three hundred fifty (350) jobs in the state that meet the requirements set forth in § 67-4-2109(a)(6)(A) for a period of six (6) years after substantial completion of the qualifying environmental project. In the event the owner does not maintain the required number of qualified jobs in a specific year, the annual credit provided under this subdivision (3)(J) for that year shall be reduced in proportion to the percentage of the shortfall;

(v) As a further condition to receiving credits under this subdivision (3)(J), the owner of a qualifying environmental project shall agree to forego any and all claims for credits that may be available to the owner pursuant to § 67-4-2109(b)(1) and (2) in connection with the qualifying environmental project;

(vi) This subdivision (3)(J) shall expire on July 1, 2015; provided, that any taxpayer that has filed a business plan with the department prior to July 1, 2015, shall continue to be eligible for the credit;

(4) A hospital company filing a franchise/excise tax return on a combined basis as required in § 67-4-2014(e), together with all other members of its combined group filing with it, shall be allowed as a credit against the combined annual franchise/excise tax imposed an amount equal to the lesser of the franchise tax or excise tax so that the combined annual franchise/excise tax of the combined group shall be limited to the greater of the two (2) of them; provided, that this credit shall not apply to tax years beginning on

or after January 1, 2007;

(5) A hospital company filing a franchise/excise tax return on a combined basis as described in § 67-4-2014(e), together with all members of its combined group filing with it, shall be allowed as a further credit against the combined annual franchise/excise tax imposed on the group remaining after application of the credit allowed under subdivision (4) an amount equal to four percent (4%) of the cost of medical supplies and medical equipment used by or placed in service by the members of the controlled group in this state during the tax year; provided, that the aggregate amount of the credit allowed to a taxpayer under subdivision (4), together with the credit allowed to a taxpayer under this subdivision (5), shall not exceed nine million dollars ($9,000,000) in any one (1) tax year; and provided, further, that the credit allowed under this subdivision (5) shall not apply to tax years beginning on or after January 1, 2007. A corporation or other entity shall be deemed to have used or placed in service medical supplies and medical equipment used or placed in service by a partnership or limited liability company of which it is a partner or member that would be a hospital company, as defined in § 67-4-2004, if it were a corporation or other entity upon which tax is imposed under this part and part 21 of this chapter, and would be a member of its same controlled group, as defined in § 267(f)(1) of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 267(f)(1), if it were a corporation and its partners or members were shareholders. The amount of the cost of such medical supplies and medical equipment that is attributed to and deemed to have been used or placed in service by such corporation or other entity shall be equal to the pro rata portion of the cost of medical supplies and medical equipment used or placed in service by the partnership or limited liability company in the tax year. Such pro rata portion shall be determined based upon the corporation's or other entity's percentage of the profits and losses of such partnership or limited liability company during such tax year. As used in this subdivision (5), "medical equipment" has the same meaning as "major medical equipment" as set forth in § 68-11-102(10) [repealed], but without the limitation therein as to the cost thereof; and "medical supplies" means all apparatus, consumable products, appliances, and other tangible personal property, except drugs and medicines, used in provision of patient health care services, including all recordkeeping and documentation in connection with such services;

(6)(A) Except for unitary groups of financial institutions, each taxpayer is considered a separate entity; therefore, in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer. With the exception set forth in subdivision (6)(B), a credit carryforward may be taken only by the taxpayer that generated it;

(B) Notwithstanding the provisions contained in subdivision (6)(A), when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee credit carryover of the predecessor that merged out of existence shall be available for carryover on the return of the surviving successor; provided, that the time limitations for the carryover have not expired;

(C) A unitary group of financial institutions may take any qualified credit that was generated by any group member that is in existence as a

member of the group at the end of the group's tax year; provided, that such credit has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the credit was a member of that group; and provided, further, that the credit carryover shall be subject to the limitations set forth in this subdivision (6);

(7) A credit shall be allowed against the tax imposed by this part in an amount equal to the tax imposed by chapter 2 of this title paid by the taxpayer;

(8)(A) There shall be allowed against the sum total of the taxes imposed by the Franchise Tax Law of 1999, and by this part, a credit equal to fifty percent (50%) of the purchase price of brownfield property purchased in this state during the tax period covered by the return for the purpose of a qualified development project;

(B) For the purposes of this subdivision (8), unless the context otherwise requires:

(i) "Brownfield property" means real property that is the subject of an investigation or remediation as a brownfield project under a voluntary agreement or consent order pursuant to § 68-212-224;

(ii) "Capital investment" means an investment in real property, tangible personal property or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction of the real or personal property;

(iii) "Investment period" means a period not to exceed five (5) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made;

(iv) [Deleted by 2020 amendment.]

(v) "Qualified development project" means a project consisting of a capital investment of at least twenty-five million dollars ($25,000,000), located on a brownfield property, and having a business plan approved by the commissioner of revenue in accordance with the applicable provisions of subdivision (8)(E);

(C) The credit allowed pursuant to this subdivision (8) shall apply against the excise tax imposed by this part and the Franchise Tax Law of 1999; provided, however, that such credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before any credit is taken. Any credit authorized under this subdivision (8)(C) that is unused may be carried forward in any tax period until the credit is taken; provided, that the credit may not be carried forward for more than fifteen (15) years;

(D) [Deleted by 2020 amendment.]

(E)(i) The taxpayer shall file a business plan for the development project with the commissioner of revenue in order to qualify for the credit provided in subdivision (8)(A). The plan must describe the capital investment to be made toward the qualified development project within the investment period and also include a determination by the commis-

sioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development pursuant to subdivision (8)(H) that the credit is in the best interest of the state;

(ii) [Deleted by 2020 amendment.]

(iii) Qualifying plans shall be approved by the commissioner of revenue. At such time, an approval letter authorizing the credit, the value of the credit and the terms of the credit shall be issued. A copy of the approval letter shall be filed by the taxpayer with the department of revenue in any year in which the taxpayer utilizes the credit;

(iv) The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit in this subdivision (8);

(F) In order to receive the credit, the taxpayer must submit a claim for the credit, along with documentation as required by the commissioner showing that the capital investment was made toward the qualified development project during the investment period. The taxpayer shall not be eligible to receive the credit until the minimum capital investment required by subdivision (8)(B)(v) has been met;

(G) The commissioner shall review the claim for the credit and notify the taxpayer of the approved tax credit amount. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the approved amount;

(H) Notwithstanding any provision of this subdivision (8) to the contrary, no credit shall be allowed unless the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development determine, in their sole discretion, that the credit is in the best interest of the state. For purposes of this subdivision (8)(H), "best interest of the state" means a determination by the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development that the qualified development project is a result of the credit provided in subdivision (8)(A) and that the economic benefits to this state resulting from the qualified development project outweigh the anticipated amount of the credit; and

(I) For a qualified development project in which the taxpayer receives the brownfield property from a county, municipality, or industrial development board as defined in § 7-53-101 for a sale price of less than one dollar ($1.00), the amount of any credit authorized under this subdivision (8) is fifty percent (50%) of the most recent purchase price of the brownfield property that was paid by the county, municipality, or industrial development board; and

(9)(A) Notwithstanding subdivision (8), there shall be allowed against the sum total of the taxes imposed by the Franchise Tax Law of 1999 and by this part, a credit equal to seventy-five percent (75%) of the purchase price of brownfield property purchased in a tier 3 or tier 4 enhancement county in this state during the tax period covered by the return for the purpose of a qualified development project;

(B) For the purposes of this subdivision (9), unless the context otherwise requires:

(i) "Brownfield property" means real property that is the subject of an investigation or remediation as a brownfield project under a voluntary agreement or consent order pursuant to § 68-212-224;

(ii) "Capital investment" means an investment in real property, tangible personal property, or computer software owned or leased in this state valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the earlier of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for lease, purchase, or construction of the real or personal property;

(iii) "Investment period" means a period not to exceed five (5) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made; and

(iv) "Qualified development project" means a project consisting of a capital investment of at least five million dollars ($5,000,000), located on a brownfield property, and having a business plan approved by the commissioner of revenue in accordance with the applicable provisions of subdivision (9)(D);

(C) The credit allowed pursuant to this subdivision (9) shall apply against the excise tax imposed by this part and the Franchise Tax Law of 1999; provided, however, that such credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed seventy-five percent (75%) of the combined franchise and excise tax liability shown on the return before any credit is taken. Any credit authorized under this subdivision (9)(C) that is unused may be carried forward in any tax period until the credit is taken; provided, that the credit may not be carried forward for more than fifteen (15) years;

(D)(i) The taxpayer shall file a business plan for the qualified development project with the commissioner of revenue prior to the investment period in order to qualify for the credit provided in subdivision (9)(A). The plan shall describe the capital investment to be made toward the qualified development project within the investment period and shall also include a determination by the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development pursuant to subdivision (9)(G) that the credit is in the best interest of the state;

(ii) Qualifying plans shall be approved by the commissioner of revenue. At such time, an approval letter authorizing the credit, the value of the credit, and the terms of the credit shall be issued. A copy of the approval letter must be filed by the taxpayer with the department of revenue in any year in which the taxpayer utilizes the credit; and

(iii) The commissioner of revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the information contained in the business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit pursuant to this subdivision (9);

(E) In order to receive the credit, the taxpayer must submit a claim for the credit, along with documentation as required by the commissioner showing that the capital investment was made toward the qualified development project during the investment period. The taxpayer shall not be eligible to receive the credit until the minimum capital investment

required by subdivision (9)(B)(iv) has been met;

(F) The commissioner shall review the claim for the credit and notify the taxpayer of the approved tax credit amount. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the approved amount;

(G) Notwithstanding any provision of this subdivision (9) to the contrary, no credit shall be allowed unless the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development determine, in their sole discretion, that the credit is in the best interest of the state. For purposes of this subdivision (9)(G), "best interest of the state" means a determination by the commissioner of finance and administration, the commissioner of revenue, and the commissioner of economic and community development that the qualified development project is a result of the credit provided in subdivision (9)(A) and that the economic benefits to this state resulting from the qualified development project outweigh the anticipated amount of the credit; and

(H) For a qualified development project in which the taxpayer receives the brownfield property from a county, municipality, or industrial development board as defined in § 7-53-101 for a sale price of less than one dollar ($1.00), the amount of any credit authorized under this subdivision (9) is seventy-five percent (75%) of the most recent purchase price of the brownfield property that was paid by the county, municipality, or industrial development board.

67-4-3002. Part definitions.

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

(1) "Business" includes any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include occasional and isolated sales or transactions by a person not routinely engaged in business;

(2) "Cost," as applied to any public use facility, has the same meaning as set forth in § 7-88-103;

(3) "Gross sales" means the sum total of all sales under this part as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this part;

(4) "Municipality" means any incorporated city or county located in this state;

(5) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit;

(6) "Public authority" means any agency, authority or instrumentality described by § 7-88-103;

(7) "Qualified public use facility" or "public use facility" means:

(A) A building, complex, center, or facility described by § 7-88-103;

(B) A full-service hotel with not less than two hundred fifty (250) rooms and related retail, commercial, and parking space that is located in a tourism development zone; or

(C) A mixed-use development, including a full-service hotel with not less than one hundred fifty (150) rooms and including any retail, office, apartment, condominium, or other commercial or residential uses, that is

located in a tourism development zone;

(8)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or servicing for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving the tangible personal property;

(B) "Sale" includes a transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price;

(C) "Sale" includes the furnishing of any of the things or services taxable under this part; and

(D) "Sale" includes sales of tickets, fees or other charges made for admission to amusement or theme parks or other tourist attractions;

(9)(A) "Sales price" means the total amount for which tangible personal property or services rendered is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction from the price on account of the cost of the property sold, the cost of materials used, labor or service cost, losses, or any other expense whatsoever; provided, that "sales price" does not include any additional consideration given by the purchaser for the privilege of making deferred payments, regardless of whether the additional consideration is known as interest, time price differential on conditional sales contracts, carrying charges or any other name by which it is known, and does not include any additional consideration received by a motor vehicle dealer from a lender for the sale or assignment to the lender of a chattel lease or conditional sales contract; provided, further, that the "sales price" shall be reduced by the deductions set forth in § 67-4-711;

(B) "Sales price" for services rendered by a person for an affiliated business entity does not include any amount that is accounted for as a reasonable allocation of cost incurred in providing the service; and

(C) "Sales price" does not include any advertising cost paid by a seller to an auctioneer for the purpose of advertising an auction, when no portion of the payment is retained as profit by the auctioneer, and when the payment has been placed in an escrow or a trust account by the auctioneers on behalf of the seller;

(10)(A) "Services" means and includes every activity, function or work engaged in by a person for profit or monetary gain, except as otherwise provided in this part. Services for profit or monetary gain does not include services rendered by a person for an affiliated business entity; provided, that the services are accounted for as allocations of cost incurred in providing the service without any markup whatsoever; and

(B) "Services" does not include sales of tangible personal property;

(11)(A) "Tangible personal property" means and includes personal property that may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses; and

(B) "Tangible personal property" does not include stocks, bonds, notes, insurance or other obligations or securities, nor does it include any

materials, substances or other items of any nature inserted into or affixed to the human body by duly licensed physicians or dentists or otherwise dispensed by them in the treatment of patients; and

(12) "Tourism development zone" means an area described by § 7-88-103.

67-4-3003. Privilege tax on sales in business activity in a qualified public use facility and in tourism development zones — Ordinance authorizing privilege tax — Petition by voters calling for election — Election — Duration of tax.

(a)(1) The making of sales by engaging in any business or business activity, except for those businesses exempt under § 67-4-712, in a qualified public use facility or in a portion of a qualified public use facility that is designated by an ordinance of the municipality is declared to be a privilege upon which the municipality in which the business or business activity is carried on may levy a privilege tax in an amount not to exceed five percent (5%) of the sales price.

(2) The municipality may also by ordinance levy the privilege tax imposed by this part on businesses in the tourism development zone that are outside the qualified public use facility, that are owned or operated either wholly, partly, or jointly by the owner or operator of the qualified public use facility. Only the municipality that obtained certification of the tourism development zone in which the qualified public use facility is located is authorized to levy the tax pursuant to this part.

(b)(1) No ordinance authorizing the privilege tax in subsection (a) shall take effect unless it is approved by a two-thirds (⅔) vote of the municipal legislative body at two (2) consecutive, regularly scheduled meetings, or unless it is approved by a majority of the number of qualified voters of the municipality voting in an election on the question of whether or not the tax should be levied.

(2) If there is a petition of ten percent (10%) of the qualified voters who voted in the municipality in the last gubernatorial election that is filed with the county election commission within thirty (30) days of final approval of the ordinance by the municipal legislative body, then the county election commission shall call an election on the question of whether or not the tax should be levied in accordance with this section.

(3) The municipal legislative body shall direct the county election commission to call the election, to be held in a regular election or in a special election for the purpose of approving or rejecting the tax levy. The municipality shall pay the cost of any special election.

(4) The ballots used in the election shall have printed on them the substance of the ordinance and the voters shall vote for or against its approval.

(5) The votes cast on the question shall be canvassed and the results proclaimed by the county election commission and certified by it to the municipal legislative body.

(6) The qualifications of voters voting on the question shall be the same as those required for participation in general elections.

(7) All laws applicable to general elections shall apply to the determination of the approval or rejection of this tax levy.

(c)(1) Tax levied pursuant to this part shall continue until the earlier of:

(A)(i) If such qualified public use facility is described in § 67-4-3002(7)(A), the date on which the cumulative amount, apportioned and distributed to the municipality under §§ 7-88-106(a) and 67-4-3005, equals either the cost of the qualified public use facility, plus any interest on indebtedness of the municipality or public authority related to the cost, or any lesser amount of the cost of the qualified public use facility and interest that may be established in authorizing the levy of the tax; or

(ii) If such qualified public use facility is described in § 67-4-3002(7)(B) or (7)(C), the date on which the cumulative amount, apportioned and distributed to the municipality under § 67-4-3005, equals either the cost of the qualified public use facility, plus any interest on indebtedness of the municipality or public authority related to the cost, or any lesser amount of the cost of the qualified public use facility and interest that may be established in authorizing the levy of the tax;

(B) The date on which the qualified public use facility ceases to be a qualified public use facility; or

(C) Thirty (30) years from the date it is reasonably anticipated that the facility will commence operations as a public use facility, at which time the authority of the municipality to levy the tax shall expire and be terminated.

(2) Tax levied pursuant to this part for a qualified public use facility approved pursuant to § 7-88-106(a)(2) shall continue until the earlier of:

(A) Thirty (30) years from the date it is reasonably anticipated that the facility will commence operations as a public use facility; or

(B) The date the cumulative amount apportioned and distributed to the municipality under § 67-4-3005 with respect to such public use facility equals the indebtedness of the municipality or public authority, plus interest thereon, related to the cost of the public use facility payable from such amount.

67-4-3005. Revenues — The qualified public use facility development fund — Deficit and surplus revenue.

(a) The portion of the revenue received by the municipality from the tax, as is designated by the resolution of the municipality enacting the levy of tax set forth in this part, shall be deposited into a fund entitled the "qualified public use facility development fund," which shall be used:

(1) As set forth in § 7-88-106, if such qualified public use facility is described in § 67-4-3002(7)(A), for the purpose of paying the cost of the qualified public use facility and the costs of bonded indebtedness, principal and interest, including expenses of the bond sale or sales, incurred by the municipality or public authority in financing, acquiring, constructing, leasing, equipping, and renovating a qualified public use facility. The remaining revenue shall be deposited in the general fund of the municipality; or

(2) As set forth in this section, if such qualified public use facility is described in § 67-4-3002(7)(B) or (7)(C), for the purpose of paying the cost of the qualified public use facility and the costs of bonded indebtedness, principal and interest, including expenses of the bond sale or sales, incurred by the municipality or public authority in financing, acquiring, constructing, leasing, equipping, and renovating a qualified public use facility. The

remaining revenue shall be deposited in the general fund of the municipality.

(b) If, at the close of any fiscal year, the revenue from the tax is not sufficient to meet the total debt service of the municipality or public authority for bonded indebtedness incurred for the qualified public use facility, the balance, if any, of the debt service not paid by revenue from the tax at the end of the fiscal year shall be accumulated in a separate deficit account that shall bear simple interest at the same rate as the bonds issued by each governmental entity for construction of the qualified public use facilities. If the municipality or public authority has not incurred bonded indebtedness for the qualified public use facility and at the close of any fiscal year, the revenue from the tax is not sufficient to meet the total cost of the qualified public use facility, then the balance, if any, of the cost not paid by revenue from the tax at the end of the fiscal year shall be accumulated in a separate deficit account.

(c) If the revenue from the tax in any fiscal year exceeds the total of the debt service requirements or the total cost of the qualified public use facility for that year, the surplus revenue thus accruing shall be retained by the municipality as a sinking fund for any future debt service requirements or future cost of the qualified public use facility or, alternatively, the surplus may be applied to the reduction of the deficit accounts of the municipality.

67-4-3204. Local option sales and use tax.

(a) Notwithstanding that a local government may levy a surcharge under this chapter on the local option sales and use tax pursuant to chapter 6, part 7 of this title for use in accordance with § 67-4-3205, and in addition to the exemptions authorized by § 67-4-3203(a), the following items shall be exempt from the surcharge:

(1) Water sold to or used by manufacturers and taxed at the state rate of one percent (1%) as authorized in § 67-6-206;

(2) Sales of tangible personal property to a common carrier for use outside the state;

(3) Video programming services as defined in § 67-6-102;

(4) Telecommunication services;

(5) Specified digital products as defined in § 67-6-102; and

(6) Sales of tangible personal property when obtained from any vending machine or device and taxed at the local rate of two and one quarter percent (2.25%) as authorized in § 67-6-702(h).

(b) Any surcharge on the local option sales and use tax shall apply only to the first one thousand six hundred dollars ($1,600) on the sale or use of any single article of personal property as defined in § 67-6-702(d).

(c) [Deleted by 2020 amendment.]

(d) Except as otherwise provided in subsection (a), any surcharge on the local option sales and use tax shall apply equally and uniformly to all sales of tangible personal property, services, and other items subject to the tax, and shall be subject to the same exemptions provided in chapter 6 of this title as are applicable to the tax.

67-5-801. Classification and rate of assessment. [Effective until January 1, 2021. See the version effective on January 1, 2021.]

(a) For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use and

assessed as provided in this section:

(1) **Public Utility Property.** Public utility property shall be assessed at fifty-five percent (55%) of its value;

(2) **Industrial and Commercial Property.** Industrial and commercial property shall be assessed at forty percent (40%) of its value;

(3) **Residential Property.** Residential property shall be assessed at twenty-five percent (25%) of its value; and

(4) **Farm Property.** Farm property shall be assessed at twenty-five percent (25%) of its value.

(b) Where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages, then it shall be apportioned among the subclasses according to guidelines established by rules and regulations of the state board of equalization.

(c)(1) All real property that is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

(A) Immediate prior use, if any;

(B) Location;

(C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;

(D) Other legal restrictions on use;

(E) Availability of water, electricity, gas, sewers, street lighting, and public services;

(F) Size;

(G) Access to public thoroughfares; and

(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2)(A) If, after consideration of all such factors, any such real property does not fall within any of the definitions and classifications in this section, such property shall be classified and assessed as farm or residential property.

(B) When a mobile home attached to real property as described in § 67-5-802 is used as a residence, the assessor of property may presume the classification is residential.

67-5-801. Classification and rate of assessment. [Effective on January 1, 2021. See the version effective until January 1, 2021.]

(a) For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use and assessed as provided in this section:

*(1) **Public Utility Property.** Public utility property shall be assessed at fifty-five percent (55%) of its value;*

*(2) **Industrial and Commercial Property.** Industrial and commercial property shall be assessed at forty percent (40%) of its value;*

*(3) **Residential Property.** Residential property shall be assessed at twenty-five percent (25%) of its value; and*

*(4) **Farm Property.** Farm property shall be assessed at twenty-five percent*

(25%) of its value.

(b)(1) Where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages, then it shall be apportioned among the subclasses according to guidelines established by rules and regulations of the state board of equalization.

(2) Notwithstanding subdivision (b)(1), when a parcel of real property is the principal residence of its owner, contains not more than one (1) rental unit, and is used as a short-term rental unit, as defined by § 13-7-602, the assessor of property should presume the classification of the property is residential.

(3) When a parcel is classified as residential under subdivision (b)(2), the same owner of the property may request residential classification for a maximum of one (1) additional parcel in this state and the assessor of property should presume residential classification when the one (1) additional parcel meets the following conditions:

(A) The parcel of real property contains not more than one (1) rental unit;

(B) The property is used as a short-term rental unit, as defined by § 13-7-602;

(C) The owner of the property lives on the property a minimum of fourteen (14) days each year or at least ten percent (10%) of the number of days the property is rented as a short-term rental unit, whichever is greater; and

(D) The owner of the property annually files a written affidavit with the assessor of property by September 1 of the prior year verifying that the property meets all requirements and the owner has no more than one (1) additional parcel in addition to their principal residence under this section.

(c)(1) All real property that is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

(A) Immediate prior use, if any;

(B) Location;

(C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;

(D) Other legal restrictions on use;

(E) Availability of water, electricity, gas, sewers, street lighting, and public services;

(F) Size;

(G) Access to public thoroughfares; and

(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2)(A) If, after consideration of all such factors, any such real property does not fall within any of the definitions and classifications in this section, such property shall be classified and assessed as farm or residential property.

(B) When a mobile home attached to real property as described in § 67-5-802 is used as a residence, the assessor of property may presume the classification is residential.

67-5-1412. Appeal of county or other local board action to state board authorized.

(a)(1) Any taxpayer, or any owner of property subject to taxation in the state, who is aggrieved by any action taken by the county board of equalization or other local board of equalization has the right to a hearing and determination by the state board of equalization of any complaint made on any of the grounds provided in § 67-5-1407. At any conference or hearing pursuant to part 15 of this chapter, and in the event there may be duplicate appeals filed on any parcel or should the state board of equalization have reason to believe that representation is not duly authorized, the board may require from any agent, or other representative, written authorization signed by the taxpayer.

(2) No agent or other representative shall file an appeal before the county or state boards of equalization without first obtaining written authorization from the taxpayer.

(b)(1) The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in § 67-5-508.

(2) Notwithstanding subdivision (b)(1) or any other law to the contrary, a taxpayer or owner may, with the written consent of the assessor, appeal the valuation of industrial and commercial real and tangible personal property to the local board of equalization, or directly to the state board of equalization. A direct appeal to the state board of equalization must be filed before August 1 of the tax year. The taxpayer or owner shall request, in writing via certified mail, return receipt requested, such concurrence from the assessor within ten (10) days after the date the assessment notice for the property is sent, or by June 1 of the tax year, or such other date as may be prescribed by the assessor, but no later than the adjournment date for the regular annual session of the county board of equalization. The request shall state, at a minimum, the name in which the property is assessed, the parcel identification number, the value sought, the basis for the appeal and the name, address, telephone number and fax number of the person requesting the direct appeal. The assessor shall provide such concurrence at least ten (10) days before the adjournment of the county board. If the assessor does not concur with a direct appeal to the state board, and so states in writing at least ten (10) days before the adjournment of the county board of equalization, then the taxpayer or owner shall appeal first to the local board of equalization. If the assessor fails to act upon the taxpayer's or owner's request at least ten (10) days before the adjournment of the county board, then the state board of equalization shall accept the direct appeal of the taxpayer or owner. A taxpayer or owner filing a direct appeal shall attach a copy of the assessor's concurrence to the appeal form filed with the state board, or, if the assessor failed to act timely on a request for a direct appeal, a taxpayer or owner filing a direct appeal shall attach a copy of the written request for the concurrence and a statement that the assessor of property failed to provide a timely response to the request. All direct appeals to the state board under this subdivision (b)(2) shall be filed before August 1 of the tax year.

(3) [Deleted by 2020 amendment.]

(c) Complaints and appeals to the state board of equalization must be filed

in such format as the board may require by rule, and the board may permit the use of electronic filing including electronic verification and signatures. The appellant has the right to withdraw any complaint and appeal at any time before a decision has been entered on the primary issue of the complaint and appeal.

(d) The assessor of property or taxing jurisdiction also has the right to appeal from any action of the local board of equalization to the state board of equalization in the same manner as provided in subsections (a)-(c).

(e) Appeals to the state board of equalization from action of a local board of equalization must be filed on or before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.

(f) "Taxpayer" as used in this part or part 15 of this chapter, means the owner of the property under appeal or any lessee legally obligated to pay ad valorem taxes for which the property is liable. A lessee obligated to pay some but not all of the taxes for which the property is liable, may appeal the assessment only if the owner consents to the appeal in writing. A property manager, attorney, or other authorized agent may authorize an appeal if the taxpayer has authorized in writing the property manager, attorney, or other authorized agent to do so.

67-5-1512. Certification of board action — Penalties and interest.

(a)(1) Upon the hearing of any appeal and complaint, the state board of equalization or the assessment appeals commission under § 67-5-1502 having made its determination of the assessment of the property subject to the appeal and complaint, the board shall issue, upon request, an official certificate relative to the action of the state board or the assessment appeals commission, as the case may be.

(2) The official certificate shall show the description of the property and the assessment as determined by the state board of equalization or the assessment appeals commission, as the case may be.

(3) The board shall provide written notice of its final actions on appeals and complaints to the parties and to others upon request. Written notice includes notification by electronic means, and the record of actions or notice may be preserved in digital or electronic format.

(b)(1) Penalty and interest otherwise due on delinquent property taxes does not accrue while an appeal of the assessment is pending before the county or state boards of equalization if the taxpayer, before the delinquency date, pays the undisputed portion or pays the full tax due.

(2) For purposes of this subsection (b), "undisputed portion" means the amount the taxpayer would owe based on the taxpayer's good faith claim for relief.

(3) If the full tax due is paid, the city or county collecting official may decline to accept the disputed portion of tax.

(4) Delinquency penalty and interest postponed under this subsection (b) begins to accrue thirty (30) days after issuance of the final assessment certificate of the state board of equalization and until the tax is paid.

(5) On motion of the city or county to whom tax is owed, the state board of equalization shall dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the appeal, or who fails to pay at least the undisputed tax related to a properly appealed assessment.

(c) Any additional tax due following the appeal will accrue interest from the delinquency date at the composite prime rate published by the federal reserve board as of the delinquency date, minus two (2) points.

(d)(1) Any tax found refundable following the appeal will accrue interest from the delinquency date at the composite prime rate published by the federal reserve board as of the delinquency date, minus two (2) points.

(2) Sixty (60) days after issuance of the final assessment certificate of the state board of equalization, the interest rate on a deferred refund shall increase two (2) points until the refund is finally paid.

(3) For purposes of this subsection (d), "deferred refund" means the amount owed to the taxpayer, excluding any penalties and interest.

67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective until July 1, 2021. See the version effective on July 1, 2021.]

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

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing,

including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

(i) Advice and counseling regarding marketing and advertising;

(ii) Strategic planning for marketing and advertising;

(iii) Consumer research;

(iv) Account planning;

(v) Public relations;

(vi) Design;

(vii) Layout;

(viii) Preparation of preliminary art;

(ix) Creative consultation, coordination, media placement, direction and supervision;

(x) Script and copywriting;

(xi) Editing;

(xii) Supervision of the production of advertising materials, including quality control;

(xiii) Direct mail; and

(xiv) Account management services;

(B) "Advertising services" does not include the production of final artwork or advertising materials;

(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;

(5) "Aircraft" has the same meaning used in § 42-1-101;

(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;

(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this subdivision (7):

(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging

services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;

(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county, or metropolitan library system, "business" does not include sales, including online sales, that the charitable entity elects to make in lieu of two (2) semiannual temporary sales periods; provided, that the sales do not exceed three hundred thousand dollars ($300,000) per calendar year; and provided further, that the election by the charitable entity must remain in effect for no less than four (4) years. For a community foundation described in 26 U.S.C. § 170(c)(2), "business" does not include sales that the community foundation elects to make in lieu of two (2) semiannual temporary sales periods; provided, that in any calendar year, the sales shall take place during no more than two (2) auctions, which last no more than twenty-four (24) hours, in each county designated to receive charitable support from a fund or trust that comprises a component part of the community foundation, as described in 26 CFR § 1.170A-9(f)(11)(ii);

(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128

[repealed], is not included in "business." "Business" shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;

(9) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(10) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(11) "Certified service provider" means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(12) "Clothing" means all human wearing apparel suitable for general use;

(13) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(14) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(15) "Commissioner" means and includes the commissioner of revenue or the commissioner's duly authorized assistants;

(16) "Common carrier" means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;

(17) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(18) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(19) "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or maintenance of computer software on the part of the seller;

(20) "Construction machinery" means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of

permanent improvements to real estate;

(21) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(22) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(23) "Dealer" means every person, as used in this chapter, including Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax

due thereon has been paid;

(L) Sells at retail or charges admission, dues or fees as defined in this chapter;

(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators; or

(N) Acts as a marketplace facilitator;

(24) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(25)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

(26) "Delivery network company" means a business entity that maintains an internet website or mobile application used to facilitate delivery services for the sale of local products;

(27) "Delivery services" means the pickup of one (1) or more local products from a local merchant and delivery of the local products to a customer. "Delivery services" do not include any delivery requiring over fifty (50) miles of travel from the local merchant to the customer;

(28) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (28)(A)(i)-(v);

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;

(29) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (29), "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" does not include audio greeting cards sent by electronic mail;

(30) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

(31) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction and nonfiction and short stories. "Digital books" does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(32) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(33) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(34) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

(35) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(36)(A) "Durable medical equipment" means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) "Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that the repair and replacement parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include

mobility enhancing equipment;

(37) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(38) "Energy resource recovery facility" means a facility for the production of energy in the form of steam or chilled water from the controlled burning of combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;

(39) "Fabricating or processing tangible personal property for resale" means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. "Fabricating or processing tangible personal property for resale" shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). "Fabricating or processing tangible personal property for resale" shall not include any other type of repair services. "Fabricating or processing tangible personal property for resale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(40) "Final artwork" means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(41) "Flea market" means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market" does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;

(42) "Flea market operator" means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market operator" does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a not-for-profit corporation;

(43) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic

beverages, tobacco, candy, dietary supplements, or prepared food;

(44) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;

(45) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(46) "Industrial machinery" means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the principal business of the sale of building supplies either within or without this state, or such use by a county, municipality, or water and wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 6, or a contractor pursuant to a contract with the county, municipality, or water and wastewater treatment authority for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

(a) The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;

(b) The removal, handling and replacement of overburden and spoils materials; or

(c) The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;

(ii) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (46)(A) when such utiliza-

tion is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (46)(B), "remanufacturing" means making new or different products with new or different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(b) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent;

(ii) To "package," as used in subdivision (46)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (46)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1)

year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years. "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility, that meets the requirements set out in this subdivision (46)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under chapter 185 of the Public Acts of 1995, or are configuring, testing or packaging computer products. "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:

(a) A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;

(b) An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (46)(H)(i), through an additional investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;

(c) A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars ($10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building, over a period not exceeding three (3) years; or

(d) An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars ($20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars ($10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equipment for such a building, together with an investment in excess of ten million dollars ($10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;

(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (46)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would

otherwise have been due;

(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and conditions of subdivision (46)(H), except:

(i) The required investment in excess of ten million dollars ($10,000,000) may also be made in a previously occupied facility:

(a) Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or

(b) Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (46)(I)(i)(*a*), made no later than one (1) year after the date of the lease agreement; and

(ii) Any purchases exempted from tax for use in the facility described in this subdivision (46)(I) must be made no later than one (1) year after the purchase of the building under subdivision (46)(I)(i)(*a*), or no later than one (1) year after the date of the lease agreement under subdivision (46)(I)(i)(*b*);

(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale;

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (46)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center;

(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion;

(M) "Industrial machinery" also includes machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts, and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the purpose of research and development;

(47) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;

(48) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;

(49) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;

(50) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(51) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A "lease or rental" may include future options to purchase or extend;

(A) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments;

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (51), an operator must do more than maintain, inspect, or set-up the tangible personal property; or

(iv) Providing a dumpster or other container for waste or debris removal for a fixed or indeterminate period of time along with the delivery and pickup of the dumpster. A condition of this exclusion is that the provider of the dumpster is exclusively responsible for delivery and pickup of the dumpster;

(B) "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (51) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code (26 U.S.C.), or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (51) shall be applied only prospectively from the date of adoption [January 1, 2008] and shall have no retroactive impact on existing leases or rentals;

(52) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(53) "Local merchant" means a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with the delivery network company;

(54) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(55) "Marketplace" means a physical or electronic place, platform, or forum, including, but not limited to, a store, booth, internet website, catalog, or dedicated sales software application, where tangible personal property or any of the things or services taxable under this chapter are offered for sale;

(56) "Marketplace facilitator":

(A) Means a person, including any affiliate of the person, that:

(i) For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's tangible personal property or things or services taxable under this chapter through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and

(ii) Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser of the marketplace seller's tangible personal property or things or services taxable under this chapter and transmits payment to the marketplace seller;

(B) Does not include:

(i) A person who exclusively provides advertising services, including listing products for sale, so long as the person does not also engage directly or indirectly through one (1) or more affiliated persons in those activities described in subdivision (56)(A) that are unrelated to advertising services;

(ii) A person whose activity with respect to marketplace sales is limited to providing payment processing services between two (2) or more parties;

(iii) A derivatives clearing organization, designated contract market, or foreign board of trade or swap execution facility that is registered with the Commodity Futures Trading Commission ("CFTC registered platforms"), or any clearing members, futures commission merchants, or brokers using the services of CFTC registered platforms; or

(iv) A person that is a delivery network company; except, that a delivery network company that meets the definition set forth in subdivision (56)(A) may elect, in a reasonable manner and duration prescribed by the department, to be deemed a marketplace facilitator pursuant to this chapter; and

(C) Includes a peer-to-peer car sharing program as defined in § 67-4-1901;

(57) "Marketplace seller" means a person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator;

(58) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252 (4 U.S.C. § 124(7));

(59) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include durable

medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(60) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(61) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(62) "Model 3 seller" means a seller that has sales in at least five (5) states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars ($500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (62), a seller includes an affiliated group of sellers using the same proprietary system;

(63) "OEM headquarters company" means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (63), "affiliate" has the same meaning as provided in § 67-4-2004;

(64) "OEM headquarters company vehicle" means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner;

(65)(A) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter-drug" label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredients contained in the compound, substance or preparation;

(B) "Over-the-counter-drug" does not include grooming and hygiene products;

(66) "Permanent location" does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(67) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. "Person" further includes any political subdi-

vision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(68) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;

(69) "Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards or similar materials;

(70) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(71) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(72)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;

(B) "Prepared food" in subdivision (72)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses;

(73) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;

(74) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions of computer software does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than

the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(75) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(76)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement, corrective, or supportive device worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

(i) Corrective eyeglasses; or

(ii) Contact lenses;

(77) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;

(78) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

(79) "Qualified data center" means a data center that has made a required capital investment in excess of one hundred million dollars ($100,000,000) during an investment period not to exceed three (3) years and that creates at least fifteen (15) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (79), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (79), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (79) may be extended by

the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (79), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

(80) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock;

(81)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner;

(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

(a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;

(b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;

(c) Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and

(d) Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property;

(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;

(iii) Nothing in this subdivision (81) shall be construed as amending

or otherwise effecting the exemption provided in § 67-6-392;

(82) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(83) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter and every marketplace facilitator;

(84)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;

(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;

(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;

(F) "Sale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (84), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;

(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer

of title upon completion of the required payments;

(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments;

(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or loading of computer software into a computer; and

(L) "Sale" includes any sale, as otherwise defined in this subdivision (84), made or facilitated by a marketplace facilitator;

(85)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the

purchaser; and

(iv) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;

(86) "School art supplies" means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of "school art supplies":

(A) Clay and glazes;

(B) Paintbrushes for artwork;

(C) Paints, acrylic, tempera, and oil;

(D) Sketch and drawing pads; and

(E) Watercolors;

(87) "School computer supplies" means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of "school computer supplies":

(A) Computer printers;

(B) Computer storage media, diskettes, compact disks;

(C) Handheld electronic schedulers, except devices that are cellular phones;

(D) Personal digital assistants, except devices that are cellular phones; and

(E) Printer supplies for computers, printer paper, printer ink;

(88) "School instructional materials" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of "school instructional materials":

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks;

(89) "School supplies" means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of "school supplies":

(A) Binders;

(B) Blackboard chalk;

(C) Book bags;

(D) Calculators;

(E) Cellophane tape;

(F) Compasses;

(G) Composition books;
(H) Crayons;
(I) Erasers;
(J) Folders, expandable, pocket, plastic and manila;
(K) Glue, paste, and paste sticks;
(L) Highlighters;
(M) Index cards;
(N) Index card boxes;
(O) Legal pads;
(P) Lunch boxes;
(Q) Markers;
(R) Notebooks;
(S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
(T) Pencil boxes and other school supply boxes;
(U) Pencil sharpeners;
(V) Pencils;
(W) Pens;
(X) Protractors;
(Y) Rulers;
(Z) Scissors; and
(AA) Writing tablets;

(90) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service address means the location of the customer's place of primary use;

(91) "Software" means computer software;

(92) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (92), "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

(93) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(94) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(95)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity,

water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(C) "Tangible personal property" does not include fiber-optic cable after it has become attached to a utility pole, building, or other structure or installed underground. Such fiber-optic cable is deemed realty for purposes of this chapter upon installation;

(96)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added;

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service (47 U.S.C. § 522(6)), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

(97) "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;

(98) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;

(99) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

(100)(A) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course

of business;

(B) "Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and

(C) "Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;

(101) "Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;

(102) "Video game digital product" means the right to access and use computer software that facilitates human interaction with a user interface to generate visual feedback for amusement purposes, when possession of the computer software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis;

(103)(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology;

(B) "Video programming services" does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(104) "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective on July 1, 2021. See the version effective until July 1, 2021.]

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

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable

year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

(i) Advice and counseling regarding marketing and advertising;

(ii) Strategic planning for marketing and advertising;

(iii) Consumer research;

(iv) Account planning;

(v) Public relations;

(vi) Design;

(vii) Layout;

(viii) Preparation of preliminary art;

(ix) Creative consultation, coordination, media placement, direction and supervision;

(x) Script and copywriting;

(xi) Editing;

(xii) Supervision of the production of advertising materials, including quality control;

(xiii) Direct mail; and

(xiv) Account management services;

(B) "Advertising services" does not include the production of final artwork or advertising materials;

(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;

(5) "Aircraft" has the same meaning used in § 42-1-101;

(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;

(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this subdivision (7):

(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) "Bundled transaction" means the retail sale of two (2) or more products, except real property and services to real property where:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one (1) non-itemized price;

(B) A "bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(C) "Distinct and identifiable products" does not include:

(i) Packaging, such as containers, boxes, sacks, bags, and bottles, or other materials, such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale of the products. Examples of packaging that is incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge;

(iii) Items included in the definition of sales price, pursuant to subdivision (85);

(D) "One non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list;

(E) A transaction that otherwise meets the definition of a bundled

transaction is not a bundled transaction if it is:

(i) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The retail sale of services where one (1) service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(iii) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis;

***(a)** "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products;*

***(b)** Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis; and*

***(c)** Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or*

*(iv)**(a)** The retail sale of exempt tangible personal property and taxable tangible personal property, where:*

***(1)** The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies; and*

***(2)** The seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property;*

***(b)** Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction;*

(9)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;

(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is not regularly sold by the person or is regularly sold by the person only

during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county, or metropolitan library system, "business" does not include sales, including online sales, that the charitable entity elects to make in lieu of two (2) semiannual temporary sales periods; provided, that the sales do not exceed three hundred thousand dollars ($300,000) per calendar year; and provided further, that the election by the charitable entity must remain in effect for no less than four (4) years. For a community foundation described in 26 U.S.C. § 170(c)(2), "business" does not include sales that the community foundation elects to make in lieu of two (2) semiannual temporary sales periods; provided, that in any calendar year, the sales shall take place during no more than two (2) auctions, which last no more than twenty-four (24) hours, in each county designated to receive charitable support from a fund or trust that comprises a component part of the community foundation, as described in 26 CFR § 1.170A-9(f)(11)(ii);

(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128 [repealed], is not included in "business." "Business" shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;

(10) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(11) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(12) "Certified service provider" means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(13) "Clothing" means all human wearing apparel suitable for general use;

(14) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(15) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(16) "Commercial air carrier" means an entity authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce;

(17) "Commissioner" means and includes the commissioner of revenue or the commissioner's duly authorized assistants;

(18) "Common carrier" means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;

(19) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(20) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(21) "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or maintenance of computer software on the part of the seller;

(22) "Construction machinery" means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of permanent improvements to real estate;

(23) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(24) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(25) "Dealer" means every person, as used in this chapter, including Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove

that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;

(L) Sells at retail or charges admission, dues or fees as defined in this chapter;

(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators; or

(N) Acts as a marketplace facilitator;

(26) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(27)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property

compared to the total weight of all property in the shipment;

(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

(28) "Delivery network company" means a business entity that maintains an internet website or mobile application used to facilitate delivery services for the sale of local products;

(29) "Delivery services" means the pickup of one (1) or more local products from a local merchant and delivery of the local products to a customer. "Delivery services" do not include any delivery requiring over fifty (50) miles of travel from the local merchant to the customer;

(30) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (30)(A)(i)-(v);

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;

(31) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (31), "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" does not include audio greeting cards sent by electronic mail;

(32) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

(33) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction and nonfiction and short stories. "Digital books" does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(34) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to

addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(35) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(36) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

(37) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(38)(A) "Durable medical equipment" means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) "Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that the repair and replacement parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include mobility enhancing equipment;

(39) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(40) "Energy resource recovery facility" means a facility for the production of energy in the form of steam or chilled water from the controlled burning of combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;

(41) "Fabricating or processing tangible personal property for resale" means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. "Fabricating or processing tangible personal property for resale" shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). "Fabricating or processing tangible personal property for resale" shall not include any other type of repair services. "Fabricating or processing tangible personal property for resale" includes the processing of photographic

film into negatives and/or photographic prints for resale;

(42) "Final artwork" means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(43) "Flea market" means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market" does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;

(44) "Flea market operator" means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market operator" does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a not-for-profit corporation;

(45) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food;

(46) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;

(47) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(48) "Industrial machinery" means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the

principal business of the sale of building supplies either within or without this state, or such use by a county, municipality, or water and wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 6, or a contractor pursuant to a contract with the county, municipality, or water and wastewater treatment authority for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

(a) *The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;*

(b) *The removal, handling and replacement of overburden and spoils materials; or*

(c) *The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;*

(ii) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (48)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (48)(B), "remanufacturing" means making new or different products with new or different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or

processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) *Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or*

(b) *One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent;*

(ii) To "package," as used in subdivision (48)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (48)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer, directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years. "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility, that meets the requirements set out in this subdivision (48)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under the provisions of chapter 185 of the Public Acts of 1995, or are configuring, testing or packaging computer products. "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:

(a) *A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;*

(b) *An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (48)(H)(i), through an addi-*

tional investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;

(c) *A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars ($10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building, over a period not exceeding three (3) years; or*

(d) *An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars ($20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars ($10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equipment for such a building, together with an investment in excess of ten million dollars ($10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;*

(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (48)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due;

(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and conditions of subdivision (48)(H), except:

(i) The required investment in excess of ten million dollars ($10,000,000) may also be made in a previously occupied facility:

(a) *Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or*

(b) *Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (48)(I)(i)(**a**), made no later than one (1) year after the date of the lease agreement; and*

*(ii) Any purchases exempted from tax for use in the facility described in this subdivision (48)(I) must be made no later than one (1) year after the purchase of the building under subdivision (48)(I)(i)(**a**), or no later than one (1) year after the date of the lease agreement under subdivision (48)(I)(i)(**b**);*

(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale;

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (48)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center;

(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion; and

(M) "Industrial machinery" also includes machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts, and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the purpose of research and development;

(49) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;

(50) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;

(51) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;

(52) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(53) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A "lease or rental" may include future options to purchase or extend;

(A) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments;

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (53), an operator must do more than maintain, inspect, or set-up the tangible personal property; or

(iv) Providing a dumpster or other container for waste or debris removal for a fixed or indeterminate period of time along with the delivery and pickup of the dumpster. A condition of this exclusion is that the provider of the dumpster is exclusively responsible for delivery and pickup of the dumpster;

(B) "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (53) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code (26 U.S.C.), or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (53) shall be applied only prospectively from the date of adoption [January 1, 2008] and shall have no retroactive impact on existing leases or rentals;

(54) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(55) "Local merchant" means a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with the delivery network company;

(56) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(57) "Marketplace" means a physical or electronic place, platform, or forum, including, but not limited to, a store, booth, internet website, catalog, or dedicated sales software application, where tangible personal property or any of the things or services taxable under this chapter are offered for sale;

(58) "Marketplace facilitator":

(A) Means a person, including any affiliate of the person, that:

(i) For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's tangible personal property or things or services taxable under this chapter through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and

(ii) Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the

purchaser of the marketplace seller's tangible personal property or things or services taxable under this chapter and transmits payment to the marketplace seller;

(B) Does not include:

(i) A person who exclusively provides advertising services, including listing products for sale, so long as the person does not also engage directly or indirectly through one (1) or more affiliated persons in those activities described in subdivision (58)(A) that are unrelated to advertising services;

(ii) A person whose activity with respect to marketplace sales is limited to providing payment processing services between two (2) or more parties;

(iii) A derivatives clearing organization, designated contract market, or foreign board of trade or swap execution facility that is registered with the Commodity Futures Trading Commission ("CFTC registered platforms"), or any clearing members, futures commission merchants, or brokers using the services of CFTC registered platforms; or

(iv) A person that is a delivery network company; except, that a delivery network company that meets the definition set forth in subdivision (58)(A) may elect, in a reasonable manner and duration prescribed by the department, to be deemed a marketplace facilitator pursuant to this chapter; and

(C) Includes a peer-to-peer car sharing program as defined in § 67-4-1901;

(59) "Marketplace seller" means a person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator;

(60) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252 (4 U.S.C. § 124(7));

(61) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include durable medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(62) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(63) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(64) "Model 3 seller" means a seller that has sales in at least five (5) states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars ($500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (64), a seller includes an affiliated group of sellers using the same proprietary system;

(65) "OEM headquarters company" means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (65), "affiliate" has the same meaning as provided in § 67-4-2004;

(66) "OEM headquarters company vehicle" means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner;

(67)(A) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter-drug" label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredients contained in the compound, substance or preparation;

(B) "Over-the-counter-drug" does not include grooming and hygiene products;

(68) "Permanent location" does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(69) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. "Person" further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(70) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;

(71) "Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards or similar materials;

(72) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(73) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other

nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(74)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;

(B) "Prepared food" in subdivision (74)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses;

(75) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;

(76) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions of computer software does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(77) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(78)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement, corrective, or supportive device worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

(i) Corrective eyeglasses; or

(ii) Contact lenses;

(79) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;

(80) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

(81) "Qualified data center" means a data center that has made a required capital investment in excess of one hundred million dollars ($100,000,000) during an investment period not to exceed three (3) years and that creates at least fifteen (15) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (81), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (81), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (81) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (81), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

(82) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock;

(83)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner. Sales of tangible personal property or taxable services made by a dealer to an out-of-state vendor who directs that a dealer act as the out-of-state vendor's agent to deliver or ship tangible personal property or taxable services to the out-of-state vendor's customer, who is a user or consumer, are sales for resale;

(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does

include the following items in the circumstances described:

(a) *Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;*

(b) *Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;*

(c) *Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and*

(d) *Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property;*

(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;

(iii) Nothing in this subdivision (83) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392;

(84) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(85) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter and every marketplace facilitator;

(86)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the

industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;

(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;

(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;

(F) "Sale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (86), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;

(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments;

(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or loading of computer software into a computer; and

(L) "Sale" includes any sale, as otherwise defined in this subdivision (86), made or facilitated by a marketplace facilitator;

(87)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and

any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

***(a)** The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;*

***(b)** The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or*

***(c)** The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;*

(88) "School art supplies" means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of "school art supplies":

(A) Clay and glazes;

(B) Paintbrushes for artwork;

(C) Paints, acrylic, tempera, and oil;

(D) Sketch and drawing pads; and

(E) Watercolors;

(89) "School computer supplies" means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of "school computer supplies":

(A) Computer printers;

(B) Computer storage media, diskettes, compact disks;

(C) Handheld electronic schedulers, except devices that are cellular phones;

(D) Personal digital assistants, except devices that are cellular phones; and

(E) Printer supplies for computers, printer paper, printer ink;

(90) "School instructional materials" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of "school instructional materials":

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks;

(91) "School supplies" means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of "school supplies":

(A) Binders;

(B) Blackboard chalk;

(C) Book bags;

(D) Calculators;

(E) Cellophane tape;

(F) Compasses;

(G) Composition books;

(H) Crayons;

(I) Erasers;

(J) Folders, expandable, pocket, plastic and manila;

(K) Glue, paste, and paste sticks;

(L) Highlighters;

(M) Index cards;

(N) Index card boxes;

(O) Legal pads;

(P) Lunch boxes;

(Q) Markers;

(R) Notebooks;

(S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets;

(92) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service address means the location of the customer's place of primary use;

(93) "Software" means computer software;

(94) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (94), "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

(95) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(96) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(97)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(C) "Tangible personal property" does not include fiber-optic cable after it has become attached to a utility pole, building, or other structure or installed underground. Such fiber-optic cable is deemed realty for purposes of this chapter upon installation;

(98)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added;

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or

information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service, as defined in 47 U.S.C. § 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in ***47 CFR 20.3****;*

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

(99) "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;

(100) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;

(101) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

(102)(A) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business;

(B) "Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and

(C) "Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;

(103) "Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;

(104) "Video game digital product" means the right to access and use computer software that facilitates human interaction with a user interface to generate visual feedback for amusement purposes, when possession of the computer software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis;

(105)(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a televi-

sion broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology;

(B) "Video programming services" does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(106) "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

67-6-104. Apportionment of sales and use tax revenue to commercial development districts in rural, economically distressed counties.

(a) It is the intent of this section to address rural, economically distressed counties experiencing persistent high unemployment and traditionally low levels of family income by apportioning and distributing sales and use tax revenue to commercial development districts in those counties.

(b) For purposes of this section:

(1) "Base tax revenues" means the revenues generated, if any, from the collection of state and local sales and use taxes from all businesses within the certified commercial development district as of the end of the fiscal year of this state immediately prior to the year in which the county, municipality, or industrial development corporation is entitled to receive an allocation of tax revenue pursuant to this section;

(2) "Commercial development district" means one (1) or more parcels of real property located within an eligible county, in which it is reasonably anticipated and projected that state and local sales and use taxes will increase, or be newly generated in the case of a district in which no base tax revenues have been previously generated, as a result of the development of the real property by an amount in excess of the increases in the collection of state and local sales and use tax revenues reasonably projected to occur within that area without regard to the development of the real property. Prior to December 31, 2014, "commercial development district" shall include the development of an area comprised of property acquired from the state by an eligible county or an industrial development corporation established by such eligible county, which property was used by the state as a correctional facility. On and after December 31, 2014, "commercial development district"

may include the development of an area comprised of property acquired from the state by an eligible county or an industrial development corporation established in such eligible county, which property was used by the state as a correctional facility. Each commercial development district shall be certified by the commissioner of finance and administration;

(3) "Eligible county" means:

(A) Prior to December 31, 2014, a county that meets one (1) or more of the following criteria as of December 31, 2014:

(i) Has a per capita income of eighty percent (80%) or less of the national average;

(ii) Has an unemployment rate that is, for the most recent twenty-four-month period for which data are available, at least one percent (1%) greater than the national average unemployment rate, or, for the most recent twelve-month period for which data are available, at least two percent (2%) greater than the state average unemployment rate;

(iii) Has experienced, or is about to experience, a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, as determined by the commissioner of finance and administration, the commissioner of economic and community development, and the commissioner of revenue; or

(iv) Has an area comprised of property acquired from the state by an eligible county or an industrial development corporation established in such eligible county, which property was used by the state as a correctional facility;

(B) On and after December 31, 2014, a distressed rural county that will be identified using a consistent methodology based on a set of broadly available measures of economic well-being that could include county unemployment rate, rate of job growth, personal income per capita, property tax base per capita, percent high school graduates, and percent below poverty. Using this consistent methodology, the commissioner of finance and administration, the commissioner of economic and community development, and the commissioner of revenue shall determine which counties are eligible counties and shall publish a list of the eligible counties meeting the criteria in this subdivision (b)(3)(B) by July 1 of each year; or

(C) On or after January 1, 2021, a county that borders at least three (3) distressed rural counties identified pursuant to subdivision (b)(3)(B);

(4) "Proprietary information" means commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the commissioner under this section, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(5) "Trade secrets" means any materials or processes used directly or indirectly in the business of a person or entity submitting information or documentation related to such materials or processes to the commissioner under this section, and that give the person or entity an advantage or an opportunity to obtain an advantage over competitors who do not know or use them.

(c) In order to receive an allocation of sales and use tax revenues under this section, an eligible county or a municipality located within the eligible county,

or an industrial development corporation established by such eligible county or municipality, must submit a completed application to the commissioner of finance and administration together with an application fee in an amount established by the department of finance and administration. The application shall be developed by the department of finance and administration.

(d) The application shall include, but not be limited to, the following information:

(1) A list of tax parcels composing the proposed commercial development district, including owners and parcel numbers, from which the sales and use tax revenues will be generated;

(2) A map, survey or drawing clearly identifying the boundaries of the proposed commercial development district area;

(3) Written confirmation of the current zoning of the proposed commercial development district;

(4) A description of the financing for the project to be located within the proposed commercial development district;

(5) The number of jobs that the applicant estimates will be created in the proposed commercial development district and the wages, salaries and other compensation that will be paid to those persons holding the jobs;

(6) The estimated development and construction costs of the project to be located in the proposed commercial development district;

(7) A certification from the county that it complied with the criteria required to be eligible;

(8) A resolution or other official action from the governing body of the eligible county requesting consideration of the application and approval of the proposed commercial development district and acknowledging that an increment of sales and use taxes from future activities within the commercial development district will be applied as payments on the indebtedness financing the commercial development district;

(9) If the commercial development district is located in a municipality within an eligible county, a resolution or other official action by the governing body of the municipality requesting consideration of the application and approval of the proposed commercial development district and acknowledging that an increment of sales and use taxes from future activities within the commercial development district will be applied as payments on the indebtedness financing the commercial development district;

(10) An affidavit, on a form provided by the department of finance and administration, signed by the applicant certifying that the proposed commercial development district cannot proceed without the availability of financing under this section along with supporting documentation establishing the need for and the amount of the financing; and

(11) Such financial and other information as may be necessary for the commissioner of finance and administration to evaluate the application.

(e) No action shall be taken with respect to an application until the commissioner of finance and administration determines that the commissioner has received all information that may be relevant or necessary in determining the qualifications of the applicant and the proposed commercial development district.

(f) Each commercial development district shall be certified by the commissioner of finance and administration. Once the commissioner of finance and

administration has received all of the information required by subsection (d), the commissioner may certify, in the commissioner's discretion, the proposed commercial development district as a commercial development district. Each commercial development district shall include at least five million dollars ($5,000,000) in planned capital improvements. Prior to certifying the commercial development district, the commissioner must determine that the commercial development district is not economically feasible without the tax revenue allocation contemplated in this section. Notwithstanding this section to the contrary, no tax revenue allocation shall be allowed unless the commissioners of finance and administration, revenue, and economic and community development determine, in their sole discretion, that the tax revenue allocation is in the best interest of the state. For purposes of this subsection (f), "best interest of the state" means a determination by the commissioners of finance and administration, revenue, and economic and community development that the commercial development district is a result of the tax revenue allocation provided in this section and that the economic benefits to this state resulting from the commercial development district outweigh the anticipated amount of the tax revenue allocation. In evaluating the information submitted with the application the commissioner may consider normal underwriting criteria such as debt capacity, ability to repay, equity and other capital at risk for the project, and the proposed terms of the contemplated indebtedness.

(g)(1) Notwithstanding the allocations provided for in § 67-6-103(a), if real property located in an eligible county is acquired and developed as a commercial development district, and is certified by the commissioner of finance and administration as a commercial development district, then an amount shall be apportioned and distributed to the county, the municipality, or the industrial development corporation equal to the amount of state sales tax revenue derived from five and one-half percent (5.5%) of the tax rate imposed pursuant to § 67-6-202 on all sales in the commercial development district and the amount of local sales tax revenue not dedicated for school purposes pursuant to § 67-6-712(a)(1) derived from all sales in the commercial development district in excess of base tax revenues; provided, that an apportionment and distribution of such amount is authorized under this section for any commercial development district in which no sales and use taxes have been generated for at least five (5) years prior to the apportionment and distribution. Such amount distributed shall be for the exclusive use of the county, municipality or industrial development corporation and shall be used solely for the purpose of paying the indebtedness, principal and interest, and closing costs incurred by the county, municipality or industrial development corporation in financing the commercial development district. For eligible counties as defined in subdivision (b)(3)(A), the period for such distributions shall be twenty (20) years. For eligible counties as defined in subdivision (b)(3)(B) or (b)(3)(C), the commissioner of finance and administration shall determine the period in which distributions will be necessary to provide the financing hereunder, and the period for such distributions shall not exceed twenty (20) years. The distributions shall cease upon the expiration of the applicable distribution period or upon satisfaction of the financing of the commercial development district, whichever occurs first. Following the expiration of the distribution period, all amounts that would have otherwise been distributed to the county, the municipality, or the industrial development corporation shall be allocated as provided elsewhere

without regard to this section.

(2) Notwithstanding any provision of this section to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Section 9, Chapter 529 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Section 4, Chapter 856 of the Public Acts of 2002, shall be distributed to the eligible county, the municipality or the industrial development corporation for the financing contemplated in this section. The revenue shall continue to be allocated as provided in Chapter 529 of the Public Acts of 1992, and Chapter 856 of the Public Acts of 2002, respectively.

(3) If, at the close of any fiscal year, the revenue from the tax is not sufficient to meet the total debt service of the eligible county, the municipality, or the industrial development corporation for indebtedness incurred with respect to the commercial development district, the balance, if any, of the debt service not paid by revenue from the tax at the end of the fiscal year shall be accumulated in a separate deficit account. If the revenue from the tax in any fiscal year exceeds the total of the debt service requirements of the commercial development district for that year, the surplus revenue thus accruing shall be retained by the eligible county, the municipality, or the industrial development corporation as a sinking fund for any future debt service requirements of the commercial development district or, alternatively, to reduce the then outstanding balance of the indebtedness.

(h) The apportionment and distribution of state sales and use taxes to the county, municipality, or industrial development corporation, as provided in this section shall commence at the beginning of the fiscal year after the certification of the commercial development district. The apportionment and payment shall be made by the department of revenue to the county, municipality or industrial development corporation within ninety (90) days of the end of each fiscal year for which the county, municipality or industrial development corporation is entitled to receive an allocation and payment pursuant to this chapter.

(i) The fact that an eligible county filed an application with the commissioner of finance and administration, whether an application was approved, the number of jobs created by a commercial development district, and the wages, salaries and other compensation that will be paid to the persons holding those jobs shall be available for public inspection pursuant to title 10, chapter 7. Any financial information, including, but not limited to, proprietary information and trade secrets contained in an application, or submitted with any accompanying documents or information filed with the application pursuant to this section, shall be confidential and shall not be open to the public for inspection, notwithstanding the public records provisions of title 10, chapter 7. Such financial information, proprietary information and trade secrets shall not be disclosed to any person, except that the commissioner of finance and administration is authorized to make the following disclosures:

(1) Within the department of finance and administration, the department of revenue, and the department of economic and community development in the course of their official duties; and

(2) To the comptroller of the treasury or the comptroller's designee for the purpose of an audit of the department of finance and administration, the department of revenue, or the department of economic and community development.

(j) In addition to other powers and duties prescribed by law, the commis-

sioner of finance and administration shall monitor the financing of commercial development districts pursuant to this section, but the transfer of sales and use tax revenues to pay indebtedness shall be vested with the eligible county, the municipality within the eligible county, or the industrial development corporation established by an eligible county or the municipality. The commissioner shall report annually to the finance, ways and means committees of the senate and the house of representatives, and the state and local government committee of the senate and the state government committee of the house of representatives, regarding each allocation of tax revenues pursuant to this section.

(k) The commissioner of finance and administration is authorized to require an eligible county with a commercial development district to file a report with the department of finance and administration. A report filed by an eligible county may include, but is not limited to, an analysis detailing the progress of the commercial development district, the number of jobs generated by the commercial development district, the wages, salaries and other compensation paid to those holding the jobs, and such additional information as requested by the commissioner of finance and administration.

(*l*) The department of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this section. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(m) The tax revenue allocation available pursuant to this section applies to eligible counties or municipalities located in such eligible counties, or industrial development corporations established by such eligible counties or municipalities, that:

(1)(A) In the case of property located in eligible counties as defined in subdivision (b)(3)(A), have filed an application with the commissioner of finance and administration prior to December 31, 2014;

(B) In the case of property located in eligible counties as defined in subdivision (b)(3)(B), have filed an application with the commissioner of finance and administration on or after December 31, 2014, and prior to December 31, 2020; or

(C) In the case of property located in eligible counties as defined in subdivision (b)(3)(C), have filed an application with the commissioner of finance and administration on or after January 1, 2021, and no later than December 31, 2026; and

(2) Have received the approval of a commercial development district from the commissioner of finance and administration on or before June 30, 2021.

67-6-201. Taxable privilege declared. [Effective until July 1, 2021. See the version effective on July 1, 2021.]

It is declared to be the legislative intent that every person is exercising a taxable privilege who:

(1) Engages in the business of selling tangible personal property at retail in this state;

(2) Uses or consumes in this state any item or article of tangible personal property as defined in this chapter, regardless of the ownership thereof or any tax immunity that may be enjoyed by the owner thereof;

(3) Is the recipient of any of the things or services taxable under this

chapter;

(4) Rents or furnishes any of the things or services taxable under this chapter;

(5) Stores for use or consumption in this state any item or article of tangible personal property as defined in this chapter;

(6) Leases or rents such property, either as lessor or lessee, within this state;

(7) Charges admission, dues or fees taxable under this chapter;

(8) Sells space under this chapter;

(9) Charges a fee for subscription to, access to or use of television services provided by a video programming service provider;

(10) Charges a fee for subscription to, access to or use of television services delivered by a provider of direct-to-home satellite service; or

(11) Acts as a marketplace facilitator as defined in § 67-6-102.

67-6-201. Taxable privilege declared. [Effective on July 1, 2021. See the version effective until July 1, 2021.]

It is declared to be the legislative intent that every person is exercising a taxable privilege who:

(1) Engages in the business of selling tangible personal property at retail in this state;

(2) Uses or consumes in this state any item or article of tangible personal property as defined in this chapter, regardless of the ownership thereof or any tax immunity that may be enjoyed by the owner thereof;

(3) Is the recipient of any of the things or services taxable under this chapter;

(4) Rents or furnishes any of the things or services taxable under this chapter;

(5) Stores for use or consumption in this state any item or article of tangible personal property as defined in this chapter;

(6) Leases or rents such property, either as lessor or lessee, within this state;

(7) Charges admission, dues or fees taxable under this chapter;

(8) Sells space under this chapter;

(9) [Deleted by 2007 amendment, effective July 1, 2021.]

(10) [Deleted by 2007 amendment, effective July 1, 2021.]

(11) Charges a fee for subscription to, access to or use of television services provided by any electronic means, except for video programming services or direct-to-home satellite television services sold by persons subject to the tax in chapter 4, part 24 of this title;

(12) Whether or not the person has a place of business in this state, delivers tangible personal property in this state, if the delivery is made to a consumer in this state or to another person, for redelivery to a consumer in this state pursuant to a retail sale made by the person to the consumer; provided, that this shall not be construed to impose a tax that is invalid either under the commerce clause or the due process clause of the United States constitution; or

(13) Acts as a marketplace facilitator as defined in § 67-6-102.

67-6-393. Exemption for sales tax holiday.

(a) Any exemption provided by this section shall be known as a "sales tax

holiday."

(b)(1) There is exempt from the tax imposed by this chapter the following items of tangible personal property, if sold between 12:01 a.m. on the last Friday of July and 11:59 p.m. the following Sunday:

(A) Clothing with a sales price of one hundred dollars ($100) or less per item;

(B) School supplies with a sales price of one hundred dollars ($100) or less per item;

(C) School art supplies with a sales price of one hundred dollars ($100) or less per item; and

(D) Computers with a sales price of one thousand five hundred dollars ($1,500) or less per item.

(2) The exemption provided by this subsection (b) does not apply to the following:

(A) Computer software;

(B) Clothing accessories or equipment;

(C) Protective equipment;

(D) Sport or recreational equipment;

(E) School instructional material;

(F) School computer supplies;

(G) Any item for use in a trade or business;

(H) The lease or rental of any item; or

(I) Video game consoles.

(c) Each retailer making exempt sales under this section shall report the amount of such sales to the commissioner on the retailer's sales and use tax returns.

(d) The exemption provided in this section shall be subject to the following provisions:

(1) **Layaway Sales.** A sale of eligible property under a layaway sale qualifies for exemption, if:

(A) Final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or

(B) The purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period;

(2) **Coupons and Discounts.** A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold. A coupon that reduces the sales price is treated as a discount, if the seller is not reimbursed for the coupon amount by a third party. If a discount applies to the total amount paid by a purchaser, rather than to the sales price of a particular item, and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales price of the taxable property compared to the total sales price of all property sold in that same transaction;

(3) **Splitting of Items Normally Sold Together.** Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, each shoe of a pair of shoes cannot be sold separately so that the sales price of each shoe is within a sales tax holiday price threshold;

(4) **Rain Checks.** A rain check allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check shall qualify for the exemption, regardless of when the rain check was issued. Issuance of a rain check during the exemption period shall not qualify eligible property for the exemption, if the property is actually purchased after the exemption period;

(5) **Exchanges.** The procedure for an exchange regarding a sales tax holiday is as follows:

(A) If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due, even if the exchange is made after the exemption period;

(B) If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item; and

(C) If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item, if the new item is purchased during the exemption period;

(6) **Delivery Charges.** Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment shall be considered a sale of eligible products. If the shipment includes eligible property and taxable property, including an eligible item with a sales price in excess of the price threshold, the seller should allocate the delivery charge by using:

(A) A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

(B) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller shall tax the percentage of the delivery charge allocated to the taxable property, but does not have to tax the percentage allocated to the eligible property;

(7) **Order Date and Back Orders.** For the purpose of a sales tax holiday, eligible property qualifies for exemption, if:

(A) The item is both delivered to and paid for by the customer during the exemption period; or

(B) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed

shipment. An order is for immediate shipment, notwithstanding that the shipment may be delayed because of a backlog of orders, or because stock is currently unavailable to, or on back order by, the seller;

(8) **Returns.** For a sixty-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given, unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This sixty-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The sixty-day period is not intended to change a seller's policy on the time period during which the seller will accept returns; and

(9) **Different Time Zones.** The time zone of the seller's location determines the authorized time period for a sales tax holiday, when the purchaser is located in one time zone and a seller is located in another.

(e) For purposes of subsection (d), "eligible property" means an item of a type, such as clothing, that qualifies for exemption under this section.

(f)(1) Notwithstanding subsection (b), there is exempt from the tax imposed by this chapter the following items of tangible personal property, if sold between 12:01 a.m. on Friday, July 31, 2020, and 11:59 p.m. on Sunday, August 2, 2020:

(A) Clothing with a sales price of two hundred dollars ($200) or less per item;

(B) School supplies with a sales price of two hundred dollars ($200) or less per item;

(C) School art supplies with a sales price of two hundred dollars ($200) or less per item; and

(D) Electronic devices, including, but not limited to, computers and televisions, with a sales price of three thousand dollars ($3,000) or less per item.

(2) The exemption provided by this subsection (f) does not apply to the following:

(A) Computer software;

(B) Clothing accessories or equipment;

(C) Protective equipment;

(D) Sport or recreational equipment;

(E) School instructional material;

(F) School computer supplies;

(G) Any item for use in a trade or business; or

(H) The lease or rental of any item.

(g) There is exempt from the tax imposed by this chapter the retail sale of food and drink by restaurants and limited service restaurants, as defined in § 57-4-102, if sold between 12:01 a.m. on Friday, August 7, 2020, and 11:59 p.m. on Sunday, August 9, 2020.

67-6-501. Tax collected from dealer — Property management company tax on vacation lodging — Mobile telecommunications service tax — Liability of marketplace facilitator.

(a) Except as otherwise provided in § 67-6-524(b), every dealer making sales, whether within or outside the state, of tangible personal property, for

distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter, is liable for the tax imposed by this chapter.

(b) The tax shall be collected from the dealer as defined in § 67-6-102 and paid at the time and in the manner as provided for in this part.

(c) The tax imposed in this part shall be at the rate provided by law of the retail sales price, as of the moment of sale, or of the purchase price, as of the moment of purchase, as the case may be, shall be collectible from all persons, as defined in § 67-6-102, engaged as dealers, as defined in § 67-6-102, in the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of tangible personal property, or in the furnishing of any of the things or services taxable under this chapter.

(d) When an individual property owner utilizes a property management company to manage a vacation lodging owned by the individual property owner, the tax levied by this chapter on the sales price of such rental shall be imposed on, and shall be remitted by, the property management company to the commissioner. This provision shall not be construed to prohibit the property management company from collecting the tax from the consumer as provided for in § 67-6-502. For the purposes of this subsection (d), the terms "individual property owner," "property management company," and "vacation lodging" shall have the same meanings as in § 67-4-702.

(e) A home service provider's liability for sales taxes due on mobile telecommunications services shall be determined in accordance with the Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116-126). The home service provider's responsibility for determining the place of primary use of the mobile telecommunications services shall be controlled by federal law.

(f) When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or any of the things or services taxable under this chapter, the marketplace facilitator is liable for the taxes imposed by this chapter on the sales price of the tangible personal property or the things or services taxable under this chapter regardless of whether the marketplace seller has a sales tax certificate of registration or would have been required to collect sales or use taxes had the sale not been facilitated by the marketplace facilitator unless:

(1) The marketplace facilitator made or facilitated total sales to consumers in this state of one hundred thousand dollars ($100,000) or less during the previous twelve-month period;

(2) The marketplace facilitator demonstrates, to the satisfaction of the commissioner, that substantially all of the marketplace sellers for whom the marketplace facilitator facilitates sales are registered dealers under this section, in which case the commissioner is authorized to waive the requirements of this subsection (f). If a waiver is granted pursuant to this subdivision (f)(2), the taxes levied under this chapter shall be collectible from the marketplace sellers; or

(3) The marketplace facilitator and the marketplace seller contractually agree that the marketplace seller will collect and remit all applicable taxes under this chapter and the marketplace seller:

(A) Has annual gross sales in the United States of over one billion dollars ($1,000,000,000), including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;

(B) Provides evidence to the marketplace facilitator that it is registered in this state under § 67-6-601; and

(C) Notifies the commissioner in a manner prescribed by the commissioner that the marketplace seller will collect and remit all applicable taxes under this chapter on its sales through the marketplace facilitator and is liable for failure to collect or remit applicable taxes on its sales.

(g) A marketplace seller shall not be obligated to collect and remit or be liable for the taxes levied or imposed by this chapter on any retail sale for which a marketplace facilitator has collected and remitted such tax.

(h) When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or the things or services taxable under this chapter, the marketplace facilitator is not liable for the fee imposed under § 7-88-117, regardless of whether the marketplace seller is located within the district.

67-6-509. Deduction for dealer's accounting costs.

(a) An out-of-state person making sales in Tennessee, who is not required to register for sales and use tax under applicable law, but who nevertheless voluntarily registers to collect and remit use tax on items of tangible personal property sold to Tennessee customers, shall be allowed, for the purpose of compensating such person in accounting for and remitting the tax, a deduction against taxes due, reported and paid to the department as follows:

(1) Two percent (2%) of the first two thousand five hundred dollars ($2,500) on each report; and

(2) One and fifteen one-hundredths percent (1.15%) of amounts over two thousand five hundred dollars ($2,500) on each report.

(b) No deduction from tax shall be allowed if any such report or payment of tax is delinquent.

(c) Notwithstanding subsection (a), a Model 1 seller under the Streamlined Sales and Use Tax Agreement shall not be entitled to the vendor's compensation described in subsection (a).

(d)(1) In addition to any compensation that may be provided under subsection (a), the commissioner is authorized to provide the monetary allowances required to be provided by the state to certified service providers and volunteer sellers pursuant to Article VI of the Streamlined Sales and Use Tax Agreement as it may be amended from time to time.

(2) The monetary allowances shall be in the form of vendor's compensation allowances that certified service providers or volunteer sellers are permitted to retain from taxes due pursuant to this chapter that are to be collected and remitted to this state on sales of the volunteer seller in this state.

(3) The details of the monetary allowances shall, in the case of a Model 1 seller, be outlined in each contract between the Streamlined Sales and Use Tax Agreement governing board and the certified service provider. Vendor's compensation rates on taxes due that may be retained by a volunteer seller that is a Model 2 seller and all other volunteer sellers that are not Model 2 sellers shall be determined by the commissioner in accordance with Article VI of the Streamlined Sales and Use Tax Agreement and the commissioner shall cause the rates and their effective dates to be filed with the secretary of state for publication in the Tennessee Administrative Register.

(4) Vendor's compensation rates published in the Tennessee Administrative Register shall remain in effect until new rates determined by the commissioner and published in the Tennessee Administrative Register become effective.

(e) For purposes of subsection (d), "volunteer seller" means a seller that registered in this state through the Streamlined Central Registration System for sales and use tax purposes, does not have a fixed business location in this state, and otherwise meets the definition of volunteer seller as defined by the Streamlined Sales and Use Tax governing board and "taxes due" means sales or use tax revenue generated for the state by a volunteer seller pursuant to this chapter.

67-6-515. Collection of taxes by marketplace facilitator — Reports — Audit — Relief from liability.

(a) A marketplace facilitator that collects and remits the taxes imposed by this chapter shall collect taxes on sales through its marketplace based upon the address to which the tangible personal property or things taxable under this chapter are shipped; provided, however, that taxes collected by the marketplace facilitator on services sold through its marketplace shall be collected as otherwise provided in this chapter.

(b) A marketplace facilitator shall report the sales and use taxes on sales through its marketplace separately from any sales and use taxes collected on sales made directly by the marketplace facilitator or affiliates of the marketplace facilitator.

(c) The commissioner may, in the commissioner's sole discretion, audit a marketplace facilitator for sales made by marketplace sellers and facilitated by the marketplace facilitator, except with respect to transactions that are subject to § 67-6-501(f)(1)-(3). The commissioner shall not audit or otherwise assess taxes against marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief as provided below or with respect to transactions that are subject to § 67-6-501(f)(1)-(3).

(d) A marketplace facilitator shall be relieved of liability for failure to collect and remit the correct amount of taxes to the extent that the error was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller if the marketplace facilitator demonstrates that it made a reasonable effort to obtain correct and sufficient information from the marketplace seller. This subsection (d) shall not apply if the marketplace facilitator and the marketplace seller are affiliates.

(e) No class action lawsuit may be brought against a marketplace facilitator in this state on behalf of purchasers relating to overcollection of sales or use taxes by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

(f) Nothing in this section affects the obligation of any purchaser to remit sales or use taxes for any taxable transaction for which a marketplace facilitator or seller does not collect and remit sales and use taxes.

67-6-524. Registration of dealers.

(a) Dealers with a physical presence in this state shall register with the department to collect and remit tax in accordance with this chapter.

(b) Dealers with no physical presence in this state shall register with the

department to collect and remit tax in accordance with this chapter if the dealer engages in the regular or systematic solicitation of consumers in this state through any means and made sales that exceeded one hundred thousand dollars ($100,000) to consumers in this state during the previous twelve-month period. Such dealers shall begin to collect and remit the tax by the first day of the third calendar month following the month in which this threshold was met; provided, however, that this subsection (b) does not require a dealer to collect the tax for sales made before October 1, 2020.

67-6-525. Findings related to sales threshold standard.

The general assembly finds that the sales threshold standard required by § 67-6-524(b) matches the benchmark established by South Dakota that was analyzed and found to support it being upheld as constitutional by the supreme court of the United States in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018).

67-6-526. Effect on substantial nexus criteria.

Section 67-6-524 does not change the substantial nexus criteria for determining when a person is required to pay the business tax under § 67-4-717, excise tax under § 67-4-2007, or franchise tax under § 67-4-2105.

67-6-527. [Reserved.]

67-6-601. Certificate of registration — Required — Application. [Effective until July 1, 2021. See the version effective on July 1, 2021.]

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a "certificate of registration" for each place of business.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part.

(c) The commissioner may impose additional or different registration and/or reporting requirements as determined to be necessary by the commissioner in order to administer the allocation provisions of §§ 67-6-103 and 67-6-712, regarding sports authorities and public building authorities and industrial development corporations created pursuant to title 7, chapter 53.

(d) Only for sole purposes of this chapter, including registering with the department, a marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace.

67-6-601. Certificate of registration — Required — Application. [Effective on July 1, 2021. See the versions effective until July 1, 2021.]

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a "certificate of registration" for each place of business.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part.

(c) The commissioner may impose additional or different registration and/or

reporting requirements as determined to be necessary by the commissioner in order to administer the allocation provisions of §§ 67-6-103 and 67-6-712, regarding sports authorities and public building authorities and industrial development corporations created pursuant to title 7, chapter 53.

(d) A person does not have a nexus with this state for sales and use tax purposes by reason of the relationship between the person and a commercial printer or mailer having a presence in this state.

(e) Only for sole purposes of this chapter, including registering with the department, a marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace.

68-1-109. Uncompensated care.

Each hospital shall apply and use the definitions in subdivisions (1) and (2) when reporting on the joint annual reports to the department of health, center for health statistics. The center for health statistics and comptroller of the treasury's office shall use and apply the definitions when auditing or compiling statistics based on the reports or for any related reports or statistics:

(1) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable that are created or acquired in providing services. "Accounts receivable" and "notes receivable" are designations for claims arising from rendering services and are collectible in money in the relatively near future;

(A) A debt must meet these criteria:

(i) The provider must be able to establish that reasonable collection efforts were made;

(ii) The debt was actually uncollectible when claimed as worthless;

(iii) Sound business judgment established that there was no likelihood of recovery at any time in the future; and

(iv) Accounts turned over to a collection agency should be classified as bad debt;

(B)(i) If after reasonable and customary attempts to collect a bill, the debt remains unpaid more than one hundred twenty (120) days from the date the first bill is mailed to the patient, the debt may be deemed uncollectible;

(ii) Bankrupt accounts shall be considered bad debts, unless there is documented evidence that the medical bill caused bankruptcy. Such accounts would then be counted as charity; and

(2) "Charity care" means reductions in charges made by the provider of services because of the indigence or medical indigence of the patient.

(A) The provider should apply the following guidelines for making a determination of indigence or medical indigence:

(i) The patient's indigence must be determined by the provider, not by the patient; i.e., a patient's signed declaration of the patient's inability to pay the patient's medical bills cannot be considered proof of indigence;

(ii) The provider should take into account a patient's total resources, which include, but are not limited to, an analysis of assets, only those convertible to cash and unnecessary for the patient's daily living, liabilities, and income and expenses. Indigence income is determined by the provider's posted charity care policy as required by § 68-11-268. Medical indigence is a status reached when a person uses or commits all

available current and expected resources to pay for medical bills and is not limited to a defined percent of the federal poverty guidelines. In making this analysis, the provider should take into account any extenuating circumstances that would affect the determination of the patient's indigence;

(iii) The provider shall determine that no source other than the patient is legally responsible for the patient's medical bill; e.g., Title XIX, local welfare agency or guardian; and

(iv) The patient's file should contain documentation of the method by which indigence was determined, in addition to all backup information to substantiate the determination.

(B) If indigence is determined and the provider concludes that there had been no improvement in the beneficiary's financial condition, then the hospital may deem uncollectible the debt, or the portion of the debt, determined to be charity care without having to apply the bad debt collection criteria.

68-3-607. Duties of state team.

The state team shall:

(1) Review maternal deaths according to rules established under this part;

(2) Make determinations regarding the preventability of maternal deaths;

(3) Report at least annually to the governor and the general assembly concerning the state team's activities and its recommendations for changes to any law, rule, or policy that would promote the safety and well-being of women and prevention of maternal deaths; and

(4) Undertake annual statistical studies of the incidents and causes of maternal mortality in this state and disseminate findings and recommendations to policy makers, healthcare providers, healthcare facilities, and the general public.

68-11-255. Procedure for surrendering custody of unwanted infant without criminal liability.

(a) As used in this section and in § 36-1-142, unless the context otherwise requires:

(1) "Facility" means any hospital as defined by § 68-11-201, birthing center as defined by § 68-11-201, community health clinic, out-patient "walk-in" clinic, fire department that is staffed twenty-four (24) hours a day, law enforcement facility that is staffed twenty-four (24) hours a day or emergency medical services facility;

(2) "Member of the professional medical community" has the meaning provided in § 68-140-102; provided, that the member of the professional medical community is on the premises at the time of a voluntary delivery; and

(3) "Voluntary delivery" means the action of a mother in leaving an unharmed infant aged two (2) weeks or younger on the premises of a facility, with any facility employee or member of the professional medical community at the facility without expressing any intention to return for the infant, and failing to visit or seek contact with the infant for a period of thirty (30) days

thereafter.

(b) Any facility shall receive possession of any newborn infant left on facility premises with any facility employee or member of the professional medical community, if the infant:

(1) Was born within the preceding two-week period, as determined within a reasonable degree of medical certainty;

(2) Is left in an unharmed condition; and

(3) Is voluntarily left by a person who purports to be the child's mother and who does not express an intention of returning for the infant.

(c) The facility, any facility employee and any member of the professional medical community at such facility shall inquire, whenever possible, about the medical history of the mother or newborn, and whenever possible, shall seek the identity of the mother, infant or the father of the infant. The facility shall also inform the mother that she is not required to respond, but that the information will facilitate the adoption of the child. Any information obtained concerning the identity of the mother, infant or other parent shall be kept confidential and may only be disclosed to the department of children's services for use consistent with the purposes of this section, § 36-1-142, and § 36-2-318. The facility may provide the parent contact information regarding relevant social service agencies, shall provide the mother with the name, address and phone number of the department contact person, and shall encourage the mother to involve the department of children's services in the relinquishment of the infant. If practicable, the facility shall also provide the mother with both orally delivered and written information concerning the requirements of this section, § 36-1-142, and § 36-2-318 relating to recovery of the child and abandonment of the child.

(d) The facility, any facility employee and any member of the professional medical community at the facility shall perform any act necessary to protect the physical health and safety of the child.

(e) As soon as reasonably possible, and no later than twenty-four (24) hours after receiving a newborn infant, the facility shall contact the department of children's services, but shall not do so before the mother leaves the facility. Upon receipt of notification, the department shall immediately assume care, custody and control of the infant.

(f) Notwithstanding any law to the contrary, any facility, any facility employee and any member of the professional medical community shall be immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of this section and § 36-1-142, and no lawsuit shall be predicated thereon; provided, however, that nothing in this section and § 36-1-142 shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause of action based upon violation of such existing standard of care for medical treatment.

(g) No criminal prosecution shall be based upon a mother's act of voluntarily delivering her unharmed infant at a facility pursuant to this section if the mother acts in full compliance with this section.

68-104-112. Unlawful acts in the sale and handling of fireworks. [Effective until December 31, 2020. See the version effective on December 31, 2020.]

(a)(1) To purchase any Class C common fireworks, a person must be at least sixteen (16) years of age. Any person sixteen (16) or seventeen (17) years of

age who wishes to purchase Class C common fireworks must provide proof of age to the retailer or seasonal retailer by presenting a state-issued photo identification or be accompanied by an adult. It is unlawful to offer for retail sale or to sell any Class C common fireworks to any person under sixteen (16) years of age or to any intoxicated or irresponsible person.

(2) It is unlawful to explode or ignite fireworks within six hundred feet (600′) of any church, hospital, asylum, public school or within two hundred feet (200′) of where fireworks are stored, sold or offered for sale.

(3) No person shall ignite or discharge any permissible articles of fireworks within or throw any permissible articles of fireworks from a motor vehicle while within, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle, or at or near any person or group of people.

(4) It is unlawful for any individual, firm, partnership or corporation to sell at retail any Class C common fireworks within any county of this state having a population greater than three hundred thirty-five thousand (335,000), according to the 2010 federal census or any subsequent federal census, except in municipalities within such counties with a population of not less than six hundred (600) nor more than six hundred twenty (620), according to the 1980 federal census or any subsequent census, that permitted the sale of such fireworks before 1984; provided, that it is not unlawful for Class C common fireworks to continue to be sold by a person on a parcel of land that contains a fireworks stand, if:

(A) The parcel of property upon which such fireworks are sold is either partially located in a county having a population in excess of three hundred thirty-five thousand (335,000), according to the 2010 federal census or any subsequent federal census, or there is disagreement concerning whether such property is wholly contained within a county having a population in excess of three hundred thirty-five thousand (335,000), according to the 2010 federal census or any subsequent federal census; and

(B) Fireworks have been sold annually at such stand for a period of at least forty-five (45) years.

(b)(1) All items of fireworks that exceed the limits of D.O.T. Class C common fireworks as to explosive composition, such items being commonly referred to as "illegal ground salutes" designed to produce an audible effect, are expressly prohibited from shipment into, manufacture, possession, sale or use within this state for any purpose. This subdivision (b)(1) shall not affect display fireworks authorized by this chapter.

(2) A violation of subdivision (b)(1) for a second or subsequent offense is a Class E felony.

(c) Notwithstanding any other provision of law to the contrary:

(1) It shall be lawful for any individual, firm, partnership, or corporation to sell at retail any D.O.T. Class C common fireworks, as defined in § 68-104-101, within the city of East Ridge. This part shall apply to the sale of fireworks in such city; and

(2) It shall be lawful for any individual, firm, partnership, or corporation to sell at retail any D.O.T. Class C common fireworks, as defined in § 68-104-101, within a municipality with a population of not less than ten thousand one hundred seventy (10,170) nor more than ten thousand one hundred seventy-nine (10,179), according to the 2010 federal census or any

subsequent census. This part shall apply to the sale of fireworks in such municipality.

68-104-112. Unlawful acts in the sale and handling of fireworks. [Effective on December 31, 2020. See the version effective until December 31, 2020.]

(a)(1) To purchase any Class C common fireworks, a person must be at least sixteen (16) years of age. Any person sixteen (16) or seventeen (17) years of age who wishes to purchase Class C common fireworks must provide proof of age to the retailer or seasonal retailer by presenting a state-issued photo identification or be accompanied by an adult. It is unlawful to offer for retail sale or to sell any Class C common fireworks to any person under sixteen (16) years of age or to any intoxicated or irresponsible person.

(2) It is unlawful to explode or ignite fireworks within six hundred feet (600') of any church, hospital, asylum, public school or within two hundred feet (200') of where fireworks are stored, sold or offered for sale.

(3) No person shall ignite or discharge any permissible articles of fireworks within or throw any permissible articles of fireworks from a motor vehicle while within, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle, or at or near any person or group of people.

(4) It is unlawful for any individual, firm, partnership or corporation to sell at retail any Class C common fireworks within any county of this state having a population greater than three hundred fifty-five thousand (355,000), according to the 2010 federal census or any subsequent federal census, except in municipalities within such counties with a population of not less than six hundred (600) nor more than six hundred twenty (620), according to the 1980 federal census or any subsequent census, that permitted the sale of such fireworks before 1984; provided, that it is not unlawful for Class C common fireworks to continue to be sold by a person on a parcel of land that contains a fireworks stand, if:

(A) The parcel of property upon which such fireworks are sold is either partially located in a county having a population in excess of three hundred fifty-five thousand (355,000), according to the 2010 federal census or any subsequent federal census, or there is disagreement concerning whether such property is wholly contained within a county having a population in excess of three hundred fifty-five thousand (355,000), according to the 2010 federal census or any subsequent federal census; and

(B) Fireworks have been sold annually at such stand for a period of at least forty-five (45) years.

(b)(1) All items of fireworks that exceed the limits of D.O.T. Class C common fireworks as to explosive composition, such items being commonly referred to as "illegal ground salutes" designed to produce an audible effect, are expressly prohibited from shipment into, manufacture, possession, sale or use within this state for any purpose. This subdivision (b)(1) shall not affect display fireworks authorized by this chapter.

(2) A violation of subdivision (b)(1) for a second or subsequent offense is a Class E felony.

(c) Notwithstanding any other provision of law to the contrary:

(1) It shall be lawful for any individual, firm, partnership, or corporation to sell at retail any D.O.T. Class C common fireworks, as defined in § 68-104-101, within the city of East Ridge. This part shall apply to the sale of fireworks in such city; and

(2) It shall be lawful for any individual, firm, partnership, or corporation to sell at retail any D.O.T. Class C common fireworks, as defined in § 68-104-101, within a municipality with a population of not less than ten thousand one hundred seventy (10,170) nor more than ten thousand one hundred seventy-nine (10,179), according to the 2010 federal census or any subsequent census. This part shall apply to the sale of fireworks in such municipality.

68-211-103. Part definitions.

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

(1) "Baled waste" means all waste that has been mechanically compacted to achieve high density per unit volume and strapped to retain its form as a bale. Not included is compaction which has occurred only in collection vehicles as an incidental part of the wastes collected from individual generators and stationary or self-contained compactors which compact waste but do not produce a strapped bale unit;

(2) "Board" means, unless otherwise indicated, the underground storage tanks and solid waste disposal control board created in § 68-211-111;

(3) "Commissioner" means the commissioner of environment and conservation or the commissioner's authorized representative;

(4) "Department" means the department of environment and conservation;

(5) "Health officer" means the director of a city, county, or district health department having jurisdiction over the community health in a specific area, or the director's authorized representative;

(6) "Person" means any and all persons, natural or artificial, including any individual, firm or association, and municipal or private corporation organized or existing under the laws of this state or any other state, and any governmental agency or county of this state and any department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government;

(7) "Registration" means a process by which a solid waste disposal or processing operation is granted a permit to operate. In this part, the words "registration" and "permit" are synonymous and may be used interchangeably;

(8)(A) "Solid waste" means garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal;

(B) "Solid waste" does not include:

(i) Solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or industrial discharges that are point sources subject to permits under § 402 of the Federal Water

Pollution Control Act, codified in 33 U.S.C. § 1342;

(ii) Steel slag or mill scale that is an intended output or intended result of the use of an electric arc furnace to make steel; provided, that such steel slag or mill scale is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal; or

(iii) Except to the extent inconsistent with applicable federal law, soil is not discarded material constituting waste as long as the soil is intended for use or reuse as soil;

(9) "Solid waste disposal" means the process of permanently or indefinitely placing, confining, compacting, or covering solid waste; and

(10) "Solid waste processing" means any process that modifies the characteristics or properties of solid waste, including, but not limited to, treatment, incineration, composting, separation, grinding, shredding, and volume reduction; provided, that it does not include the grinding or shredding of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch or other useful products.

68-211-305. Tire environmental program — Program expenditures.

(a) The department of environment and conservation shall administer a tire environmental program with moneys available from the fund as appropriated by the general assembly.

(b) The program expenditures may include:

(1) Grants to develop and implement programs to provide direct incentives to local governments, for-profit entities, and nonprofit entities to enhance collection, transportation, and processing related to further encourage Tennessee end-markets for waste tires;

(2) Grants, subsidies, or loans to encourage research, technologies, or processes for waste tire management, the use of tires as alternative fuels, or the use of tires in innovative infrastructure developments;

(3) Creation of a database and operation of an interactive information clearinghouse;

(4) Expenses of administering the tire environmental program; and

(5) Market development services.

(c) Program expenditures shall be reported to the office of legislative budget analysis and the chair of the transportation and safety committee of the senate, chair of the transportation committee of the house of representatives, and the chairs of the finance, ways and means committees of the senate and house of representatives on an annual basis.

68-212-104. Part definitions.

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

(1) "Board" means the underground storage tanks and solid waste disposal control board as established by § 68-211-111, unless otherwise indicated;

(2) "Commercial facility" means any hazardous waste management facility that stores, treats or disposes of hazardous waste generated off-site. However, a facility shall not be deemed to be a commercial facility if the only

hazardous waste that it receives from off-site is either:

(A) Hazardous waste generated from material manufactured by a corporation, generated only at a site or sites owned or operated by the same manufacturing corporation, or subsidiaries of such corporation, or product distribution sites under contract to such corporation; provided, that the volume of hazardous waste received from such sites and placed in storage for more than thirty (30) days does not exceed ten percent (10%) of the permitted or interim status storage capacity at the facility; and provided further, that during no annual period may more than ten percent (10%) of the total hazardous waste treated or disposed at the facility be from such sites;

(B) Mixed hazardous waste (hazardous waste that is also regulated as a radioactive material) that is received for storage and treatment (but not disposal or incineration) pursuant to an order, compliance plan or similar plan or agreement in which such receipt for storage and treatment is specifically approved by the commissioner or board; provided, that any such order, compliance plan or similar plan or agreement also requires that the ultimate land disposal of such mixed hazardous waste or waste from its treatment be at a commercial facility permitted under this part or a properly authorized facility in another jurisdiction; or

(C) Hazardous wastes in the same waste codes and generated from the same industrial operations that a combustion facility was permitted to receive on July 1, 2001, notwithstanding any change of ownership of such operations since such date. The volume of such waste treated annually shall not exceed ten percent (10%) of the combustion facility's July 1, 2001, permitted treatment capacity;

(3) "Commissioner" means the commissioner of environment and conservation, the commissioner's authorized representatives, or, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(4) "Department" means the department of environment and conservation;

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land, water or air so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;

(6) "Facility" means all contiguous land, and structures, other appurtenances and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units;

(7) "Generation" means the act or process of producing hazardous wastes;

(8) "Hazardous secondary material" means a secondary material, such as spent material, by-product or sludge, that when discarded would be identified as hazardous waste under the rules promulgated pursuant to this part;

(9) "Hazardous waste" means waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible illness or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;

(10) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

(11) "Off-site" means any property that is not classified as on-site by subdivision (12);

(12) "On-site" means on the site of generation. "On-site" further means the same or geographically contiguous property which may be divided by public or private right(s)-of-way. Noncontiguous property owned by the hazardous waste generator that is connected by a right-of-way which such hazardous waste generator controls and to which the public does not have access is also considered on-site property;

(13) "Permit" means the whole or part of any written authorization of the commissioner pursuant to regulations to own or operate a facility for the treatment, storage, or disposal of or transportation of hazardous waste;

(14) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, and governmental agency of this state and any department, agency, or instrumentality of the executive, legislative and judicial branches of the federal government;

(15) "Portable commercial unit" means any commercial facility, as defined by subdivision (2), which is transportable from site to site for the purpose of storage, treatment or disposal of hazardous waste;

(16) "State" means the state of Tennessee;

(17) "Storage" means the containment of hazardous waste in such a manner as not to constitute disposal of such hazardous waste;

(18) "Transporter" means any person engaged in the transportation of hazardous waste;

(19) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(20) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, codified in 33 U.S.C. § 1342, as amended, 92 P.L. 500, or source, special nuclear, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, 83 P.L. 703, compiled in 42 U.S.C. § 2011 et seq. In addition,

except to the extent inconsistent with applicable federal law, soil is not discarded material constituting waste as long as the soil is intended for use or reuse as soil; and

(21) "Waste management" means the orderly control of storage, transportation, treatment, and disposal of hazardous waste.

68-212-118. Reports evaluating regulatory program.

Annually, no later than December 1, the board and the commissioner shall submit a written report to the speakers of both houses of the general assembly evaluating all aspects of the performance of the hazardous waste regulatory program during the prior calendar year. The annual report must include, but not necessarily be limited to, the following data:

(1) The number and type of hazardous waste handlers permitted and/or registered by the commissioner;

(2) A list of hazardous waste generators, transporters, and disposal facilities in Tennessee;

(3) Fees due, paid, and past due;

(4) The amount of hazardous wastewater and other hazardous waste generated or handled in Tennessee, including the amount shipped into Tennessee from other states and the amounts shipped from Tennessee to other states;

(5) The number of permit applications received, granted, requested, and pending, by type;

(6) The number and type of enforcement actions in process and initiated during the reporting period; and

(7) Any recommendations for legislative action to improve the hazardous waste regulatory program.

68-212-212. Annual reports — Public hearings — Toll-free number — Notice to register of deeds regarding sites, containment and cleanup.

(a) No later than January 1 of every year, the commissioner shall submit to the speakers of both houses of the general assembly and to the state library and archives a report documenting the expenditure of all funds expended from the hazardous waste remedial action fund during the previous fiscal year.

(b) The department shall conduct a public hearing in each grand division of the state annually to receive comments from the public regarding expenditures from the hazardous waste remedial action fund.

(c) The department shall maintain a toll-free number which may be utilized by citizens living anywhere in the state to report to the commissioner any problems caused by hazardous substances.

(d) The commissioner shall notify the register of deeds in each county in which property has been placed on the list of inactive hazardous substance sites. The register shall record a notice that the property has been so listed. If the commissioner later determines that no further investigation, containment or cleanup is indicated at a listed site, the commissioner shall file a statement of this determination in the office of the register of deeds of the county in which the property lies. Upon receipt of any such statement, the register shall record the same. If containment or cleanup of hazardous substances occurs on a listed site, the commissioner shall notify the register of deeds of such containment and cleanup and the register shall record the same.

68-221-403. Duties of commissioner and department — Permit approval — Subsurface sewage disposal requirements.

(a) It is the duty of the commissioner to:

(1) Exercise general supervision over the planning, location, construction, operation and maintenance of subsurface sewage disposal systems;

(2) Adopt and promulgate rules and regulations as the commissioner deems necessary to accomplish the purposes of this part, including the adoption of a system of fees for services and permits;

(3) Establish standards for subsurface sewage disposal systems and proposed subdivisions where subsurface sewage disposal systems are to be used;

(4) Enforce this part and rules and regulations promulgated pursuant to this part and make such inspections and investigations as are necessary to determine compliance with the same;

(5) Review and approve the plans and plats of proposed subdivisions;

(6) Issue permits for the installation of subsurface sewage disposal systems. Such permits must be granted or denied within forty-five (45) calendar days of receiving all information necessary to make a determination or the department shall refund the permit processing fee to the permit applicant. The information necessary to make a determination must be communicated to the permit applicant in writing. If the commissioner denies an application, the denial must include a clear, written explanation for the denial with citations to any rules or statutes that were relied on in making the determination;

(7) Issue permits to persons engaging in the business of the construction, alteration, extension or repair of subsurface sewage disposal systems and to persons engaging in the business of removing accumulated waste from such systems;

(8) Suspend or revoke permits issued to persons engaging in the business of construction, alteration, extension or repair of subsurface sewage disposal systems and to persons engaging in the business of removing accumulated waste from such systems, when it is determined that the person has violated this part or applicable rules and regulations;

(9) Require the submission of information in addition to that otherwise required by rules or regulations deemed necessary by the commissioner to determine the suitability of individual lots for subsurface sewage disposal systems; and

(10) Enter into an agreement or contract with county health departments whereby the departments would implement this part or its equivalent in their respective area(s) or jurisdiction. The duty to enter into an agreement or contract shall be mandatory on the commissioner in counties of the first class and the second class which are administering a subsurface sewage disposal program on April 15, 1986, and in other counties the duty to enter into an agreement or contract shall be mandatory for the commissioner when a request is made to the commissioner by the county mayor of such county; provided, that the following conditions shall apply:

(A) State reporting requirements must be met by the county health departments;

(B) The county health department program standards must be at least as stringent as those of the state law and regulations;

(C) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health departments and to terminate the agreement or contract for cause immediately or otherwise, upon reasonable notice;

(D) The commissioner may set such other fiscal, administrative or program requirements as the commissioner deems necessary to maintain consistency and integrity of the statewide program; and

(E) Staffing and resources must be adequate to implement and enforce the program in the local jurisdictions.

(b) The commissioner may stipulate those parts of the rules, regulations and standards which may be waived for subdivisions containing fewer than five (5) lots.

(c) An applicant for a subsurface sewage disposal permit for a parcel of property may submit to the department the results of a high intensity soils evaluation by a soil scientist certified by the department or the results of percolation tests performed on the property. A permit must be issued to such an applicant for all lots within the parcel which comply with the regulations authorized under subdivision (a)(2) and meet the following requirements:

(1) The results of the percolation test or high intensity soils evaluation must clearly establish that the lot has a percolation rate of:

(A) Not more than one hundred five (105) minutes per inch. The percolation holes used to determine this rate must be located at the intersection of lines in a grid pattern with maximum perpendicular distances of fifty feet (50′) between the lines of the grid. Each hole shall be considered reasonably representative of a square area of two thousand five hundred square feet (2,500 sq. ft.) which includes that hole in the approximate center of the square; or

(B) Not less than one hundred six (106) minutes per inch and not more than one hundred twenty (120) minutes per inch; provided, that an alternative method of subsurface sewage disposal is used. The percolation holes used to determine this rate must be located at the intersection of lines in a grid pattern with maximum perpendicular distances of twenty-five feet (25′) between the lines of the grid. Each hole shall be considered reasonably representative of a square area of six hundred twenty-five square feet (625 sq. ft.) which includes that hole in the appropriate center of the square;

(2) All percolation tests shall be performed by a soil scientist, engineer, registered professional environmentalist, professional geologist, registered environmental health specialist/registered sanitarian with more than five (5) years experience in a subsurface sewage regulatory program and who has received credentials from the National Environmental Health Association, or surveyor licensed in this state and must be carried out in accordance with the regulations of the department;

(3) The grid pattern referred to in subdivision (c)(1) shall be located within the area to be utilized for the disposal field and reserve area in such a manner as to provide reliable information regarding the percolation rate of the entire area to be utilized for the disposal field and reserve area;

(4) If a percolation test hole within the test grid is unacceptable because the depth to rock is too little, that fact shall not necessarily mean that the remainder of the area within the test grid is unacceptable, only that the area represented by that particular hole is unacceptable;

(5) The department shall report the actual average percolation rate, as determined by the percolation test, on the subsurface sewage disposal system permit. The actual average percolation rate shall be determined by averaging only the test results from the area actually to be covered by the permit;

(6) The disposal field shall contain a minimum of three hundred seventy square feet (370 sq. ft.) of trench bottom area per bedroom; and

(7) When a permit applicant intends to rely upon the results of percolation tests, the applicant shall not be required to perform a high intensity soils evaluation of the area proposed for the subsurface sewage disposal system. However, for proposed subdivisions, the applicant shall submit a plat showing the results of a soils evaluation performed by a soil scientist certified by the department, the sole purpose of which is to determine which portions, if any, of the area proposed for the disposal field and reserve area are unsuitable for percolation tests because of depth to rock, slope or water problems. For individual lots which are not part of a subdivision, the general soils evaluation described in the preceding sentence is not required, but an evaluation of the lot may be performed by an employee of the department without preparing a plat. The percolation tests used to determine the actual average percolation rate of the area to be used for the disposal field and reserve area shall be run after the submission of the general soils evaluation, and the department shall be notified at least three (3) days prior to the day that these tests will be run. If the general soils evaluation concludes that a particular area is unsuitable for percolation tests, the applicant may then perform a high-intensity soils evaluation of that area to gather additional information which may show that the area is suitable for percolation tests. When a proposed area is determined to be unsuitable for percolation tests, that area may be further evaluated to determine its suitability for an alternative subsurface sewage disposal system, and where found appropriate, shall be approved by the department for an alternative system.

(d) Permits for the construction of subsurface sewage disposal systems shall be issued for single family residence lots in subdivisions which were approved by the local health authority prior to April 15, 1986, in accordance with the following requirements:

(1) Permits for lots within subdivisions approved prior to July 10, 1974, shall be based upon soils or percolation data, where such data are available for the recorded plat of the subdivision, and systems shall be constructed in accordance with the requirements authorized by subdivisions (a)(2) and (3), except for those provisions dealing with duplicate area and slope;

(2) Permits for lots with subdivisions approved July 10, 1974, or after, shall be based upon soils or percolation data, where such data are available for the recorded plat of the subdivision, and systems shall be constructed in accordance with the requirements authorized by subdivisions (a)(2) and (3);

(3) In the absence of any data on file or on the recorded plat, permits shall be issued and systems constructed in accordance with the requirements authorized by subdivisions (a)(2) and (3), except those provisions dealing with duplicate area and slope. The disposal field for these systems shall contain at least three hundred seventy square feet (370 sq. ft.) of trench bottom area per bedroom; or, if the lot does not have sufficient area to install this amount, the maximum square footage that can be installed; provided,

that an absolute minimum of two hundred square feet (200 sq. ft.) per bedroom must be installed. The permit shall note that the system is for an approved subdivision without adequate available soils or percolation data; and

(4) The eighteen inch (18″) requirement of subsection (f) does not apply to systems approved under this subsection (d), or to subdivisions approved by the commissioner prior to July 1, 1990.

(e)(1) In the adoption and promulgation of rules and regulations under this section, the standards for subsurface sewerage disposal systems shall, in counties with a population of not less than twelve thousand three hundred fifty (12,350) nor more than twelve thousand four hundred (12,400), according to the 1970 federal census or any subsequent federal census, provide that the media for the disposal fields shall consist of crushed rock or gravel varying in size from three-fourths inch (¾″) to two and one-half inches (2½″); or of creek gravel; or of other material authorized for substitution by the county sanitation officer.

(2) In the adoption and promulgation of rules and regulations under this section, the standards for subsurface sewage disposal systems shall, in counties with a population of not less than six thousand (6,000) nor more than six thousand one hundred twenty-five (6,125), and in counties with a population of not less than nine thousand six hundred fifty (9,650) nor more than nine thousand seven hundred fifty (9,750), if approved by a two-thirds (⅔) vote of the legislative body of such county before September 6, 1983, all according to the 1980 federal census or any subsequent federal census, provide that the media for the disposal fields shall consist of crushed rock or gravel varying in size from three-fourths inch (¾″) to two and one-half inches (2½″); or of creek gravel; or of other material authorized for substitution by the county sanitation officer.

(f) It is permissible to use blasting to remove unwanted rock in order to install a septic tank or a solid line leading to the tank or from the tank to the disposal field. Where blasting is used in the construction of the disposal field, no section of pipe designed to let, or capable of letting, water escape through perforations, joints, or any other opening shall be located within ten feet (10′) horizontally of rock which has been blasted, and an anti-seep collar shall be installed at the junction of the perforated pipe and a solid pipe passing through the zone of blasted rock in such a manner as to prevent sewage discharged from perforations in the perforated pipe from moving laterally from the perforated pipe toward the blasted rock. In addition to the other requirements contained in the regulations, in no case shall any section of pipe designed to let, or capable of letting, water escape through perforations, joints, or any other opening be located within eighteen inches (18″) (at least twelve inches (12″) shall be undisturbed soil) vertically of rock in the area of karst geology (however the department may specify a lesser distance in a non-karst area) or within three feet (3′) horizontally of rock which has not been blasted. This subsection (f) is applicable to all subsurface sewage disposal system permits issued by the commissioner.

(g)(1) Where the undisturbed soil layer above rock is between eighteen inches (18″) and twenty-four inches (24″) deep, a low pressure pipe system may be installed; provided, that no portion of any seepage trench (i.e., aggregate-encased-perforated pipe) is within three feet (3′) horizontally of rock which has not been blasted and ten feet (10′) horizontally of rock which

has been blasted. The elevation of each perforated distribution pipe in the low pressure pipe system shall be the same as the elevation of the natural soil in the vicinity of each pipe. Each perforated pipe shall be installed on a bed of aggregate located in a trench excavated six inches (6″) wide and six inches (6″) deep into undisturbed natural soil. Each perforated pipe shall be covered by two inches (2″) of aggregate. Each seepage trench shall be separated five feet (5′) horizontally and covered with at least twelve inches (12″) of compatible soil; provided, that all vegetation is removed from the original soil surface and it is plowed to a depth of three inches (3″) with a chisel plow prior to the placement of the added soil. The covering soil shall extend, at a minimum depth of twelve inches (12″), for a distance of five feet (5′) beyond the perimeter of the area containing the seepage trenches and then taper to natural soil level with a maximum side slope for the covering soil of three (3) to one (1) (i.e., three feet (3′) horizontal to one foot (1′) vertical). At least five (5) observation tubes shall be provided by installing fourteen inch (14″) long sections of one and one half inch (1.5″) diameter pipe that will extend from the natural soil surface to above the surface of the covering soil. The location of the observation tubes will be specified for each system by a soil scientist certified by the department.

(2) Before any system may be approved under this subsection (g), a soils evaluation must be made by a soil scientist certified by the department, and the department must find that the soil is sufficiently permeable to allow proper absorption of the sewage into the soil. To the extent they are not inconsistent with this subsection (g), the general regulations governing low pressure pipe systems are applicable to systems installed pursuant to this subsection (g).

(3) Any system approved under this subsection (g) shall be identified on a restrictive covenant filed with the local register of deeds for the property served by the system.

(h) Recognizing the acute need for environmentally safe and economically feasible on-site wastewater disposal systems for sites with marginal soil resources, and further recognizing the potential for development of numerous satisfactory designs, the department is charged to continually strive to identify and/or develop design and operating criteria for systems that have potential for functioning properly on sites with limited soil depth above a limiting horizon (e.g., fragipan, perched water table, rock).

(i) When the undisturbed soil layer above rock is between twenty-four inches (24″) and thirty-six inches (36″) deep, a conventional disposal system may be installed, if the following requirements are met:

(1) The depth of gravel in the trench shall be either eight inches (8″), ten inches (10″) or twelve inches (12″) with a minimum depth underneath the pipe of three inches (3″) and with a minimum depth above the pipe of one inch (1″). As the depth of gravel is reduced to ten inches (10″) or eight inches (8″), the length of the trenches will increase proportionately such that the total cubic footage and the infiltrative surface on the side wall of the trenches will remain constant;

(2) The original soil surface shall be at least seven inches (7″) above the top of the gravel in the trench;

(3) There shall be at least nine inches (9″) of undisturbed soil between the trench bottom and rock;

(4) The disposal field area shall have at least ten inches (10″) of backfill above the elevation of the gravel in the trench. A maximum of three inches

(3″) of the backfill may be compatible soil fill; provided, that all vegetation is removed from the original soil surface and it is plowed to a depth of three inches (3″) with a plow prior to the placement of the added soil. The covering soil shall extend, at the required depth, for a distance of five feet (5′) beyond the perimeter of the area containing the seepage trenches and then taper to natural soil level with a slope for the covering soil of three feet (3′) horizontal to one foot (1′) vertical or flatter; and

(5) The eighteen inch (18″) requirement of subsection (f) does not apply to systems approved under this subsection (i). To the extent they are not inconsistent with this subsection (i), the general regulations governing conventional disposal systems are applicable to systems installed pursuant to this subsection (i).

(j) In addition to the department's authorization for systems which have gained the approval of the National Sanitation Foundation, the department shall also authorize the use of not more than fifty (50) units of any system which meets the National Sanitation Foundation Standard 40 conducted by a research I institution that has an accredited civil and environmental engineering program; provided, that the applicant for any such unit shall, in addition to all other fees prescribed, pay to the department a special inspection fee of one hundred dollars ($100).

(k) Permits shall be issued for the repair of any system in existence prior to July 1, 1990, pursuant to statutes, rules and regulations in effect on June 30, 1990.

(*l*) The commissioner shall use a portion of the fees imposed and collected pursuant to state law to fund a position in the division of ground water protection. The person filling this position shall perform the following tasks:

(1) Determine the number of lots approved by the local health authority and/or the commissioner prior to July 1, 1990, in at least ten (10) counties in this state, which counties shall be selected by the department as representative of counties which have the greatest need for alternative subsurface sewage disposal systems;

(2) Gather and compile all readily available information, from other states and from throughout this state, concerning all alternative subsurface sewage disposal systems which might feasibly be used in this state, and make this information available to members of the public; and

(3) Communicate on a regular basis with members of the public concerning the availability, cost, environmental advantages, and other factors relevant to alternative subsurface sewage disposal systems.

68-221-604. Creation of authority — Resolution — Petition — Order of approval or disapproval — Hearing — Resolution or ordinance — Agreement for transfer.

(a) A city, metropolitan, or county government may create a water or wastewater treatment authority in the manner provided in this part.

(b)(1) The governing body of the creating governmental entity shall adopt, and its executive officer shall approve, a resolution to submit a petition to the water and wastewater financing board for review and approval. The petition must include:

(A) A statement of the service the proposed authority will provide and the necessity of that service;

(B) The proposed corporate name and boundaries of the authority's service area;

(C) A statement explaining why an existing utility district, treatment authority, or municipal or county service cannot adequately provide the needed service because of cost, time, or other service delivery factors; and

(D) An estimate of:

(i) The cost of the acquisition or construction of the facility;

(ii) The cost of operating the proposed facility;

(iii) Anticipated personnel needs; and

(iv) The rates and charges for the proposed utility service.

(2) An estimate under subdivision (b)(1)(D)(i) is not a limitation on the financing of improvements or extensions of a facility.

(3) A majority of the governing body of the creating governmental entity and its executive officer must sign the petition.

(4) The petition must include the notarized signatures and residential addresses of both a majority of the governing body and its executive officer.

(c)(1) The water and wastewater financing board shall issue an order approving or disapproving the petition for the incorporation of the authority within ninety (90) calendar days of receipt of the petition by the board, its agent, or its representative.

(2) If the water and wastewater financing board approves the petition, then the water and wastewater financing board shall forward its order of approval and the original petition to the governing body of the creating governmental entity and its executive officer.

(3) If the water and wastewater financing board fails to act on the petition within ninety (90) calendar days of receipt of the petition, then the water and wastewater financing board, its agent, or its representative shall return the original petition to the governing body of the creating governmental entity and its executive officer.

(4) If the water and wastewater financing board disapproves the petition, then the water and wastewater financing board shall forward its order of disapproval to the governing body of the creating governmental entity and its executive officer. Petitioners may appeal the order disapproving the petition to the circuit court of the county in the manner provided by law for appeals from the court of general sessions.

(d)(1) If the water and wastewater financing board approves a petition under subdivision (c)(1), or fails to act on a petition under subdivision (c)(3), then the governing body of the creating governmental entity shall adopt, and its executive officer shall approve, a resolution calling a public hearing on the question of creating an authority.

(2) The creating governmental entity shall publish notice of the date, time, place, and purpose of the hearing at least once each week for two (2) consecutive weeks in a newspaper of general circulation, the last publication occurring at least one (1) week prior to the date of the hearing.

(e) The hearing will be before the governing body and all interested persons shall have an opportunity to be heard.

(f)(1) If the governing body determines, after a hearing, that the public convenience and necessity require the creation of an authority, then the governing body shall adopt, and its executive officer shall approve, a resolution or an ordinance so declaring and creating an authority.

(2) A resolution or ordinance under subdivision (f)(1) must designate the

name and principal office address of the authority.

(3) A governing body shall file a certified copy of the resolution or ordinance with the secretary of state, along with the resolution approving the appointment of the board of commissioners as provided for in § 68-221-605. The authority constitutes a body politic and corporate upon adoption and filing.

(g) A creating governmental entity and a participating governmental entity shall enter into an agreement with the authority for the orderly transfer to the authority of the treatment works' properties, functions, service area, and outstanding obligations. The agreement may include provisions for the reimbursement of any such governmental entity for its obligations issued for treatment works.

68-221-605. Appointment of commissioners — Members — Election of officers — Jurisdiction.

(a)(1) The governing body of the authority shall be a board of commissioners of five (5) persons appointed by the executive officer of the creating governmental entity and approved by its governing body.

(2) The board of commissioners shall include a person of good standing and reputation in each of the following fields: engineering, law, industry or commerce, and finance.

(3) Notwithstanding subdivision (a)(2), the board of commissioners for a water and wastewater treatment authority that does not provide water service shall include a person of good standing and reputation in each of the following fields: engineering, industry, commerce, and finance.

(b)(1) If there are one (1) or more participating governmental entities, one (1) additional member of the board shall be appointed by the executive officer of each participating governmental entity and approved by its governing body.

(2) The vote of each member of the board shall reflect the population of the area of the governmental entity which the member represents, with the five (5) members representing the creating governmental entity, each having a vote reflecting one-fifth (⅕) of the population of the area of the entity.

(c) Commissioners first appointed to the board shall be appointed for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively, but thereafter each commissioner shall be appointed for a term of five (5) years.

(d)(1) Any vacancy by reason of nonresidence, incapacity, resignation or death shall be filled in like manner for the unexpired term.

(2) A commissioner's term shall continue until the appointment and qualification of such commissioner's successor.

(3) A commissioner may be removed from office by a two-thirds (⅔) vote of the governing body of the governmental entity which approved the commissioner's appointment, but only after notice of the cause of the removal shall have been served upon the commissioner, and only after the commissioner shall have been granted an opportunity for a public hearing on such cause.

(e)(1) The board shall elect from among its members a chair and vice chair, each of whom shall continue to be voting members, and shall adopt its own bylaws and rules of procedure.

(2) The presence of commissioners having a majority of the voting strength of the commissioners shall constitute a quorum for the transaction

of business.

(3) Except as herein expressly otherwise specified, all powers herein granted to an authority shall be exercised by the board.

(4) Commissioners shall receive no salary but shall be reimbursed for necessary expenses incurred in the performance of their official duties.

(5) Neither the Tennessee public utility commission nor any other board or commission of like character hereafter created shall have jurisdiction over the authority in the management and control of any treatment works, including the regulation of its rates, fees or charges.

(f)(1) All members of the board shall, within one (1) year of initial appointment or election to the board of commissioners or within one (1) year of reappointment or reelection to the board of commissioners, attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (f)(3).

(2) In each continuing education period after the initial training and continuing education required by subdivision (f)(1), a board member shall attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (f)(3). For the purposes of this subsection (f), "continuing education period" means a period of three (3) years beginning January 1 after the calendar year in which a board member completes the training and continuing education requirements set forth in subdivision (f)(1) and each succeeding three-year period thereafter.

(3) The subjects for the training and continuing education required by this subsection (f) shall include, but not be limited to, board governance, financial oversight, policy-making responsibilities, and other topics reasonably related to the duties of the members of the board of commissioners of an authority.

(4) Any association or organization with appropriate knowledge and experience may prepare a training and continuing education curriculum for board members covering the subjects set forth in subdivision (f)(3) to be submitted to the comptroller of the treasury for review and approval prior to use. The comptroller shall file a copy of approved training and continuing education curriculum with the water and wastewater financing board. Changes and updates to the curriculum shall be submitted to the comptroller for approval prior to use. Any training and continuing education curriculum approved by the comptroller shall be updated every three (3) years and resubmitted to the comptroller for review and approval.

(5) For purposes of this subsection (f), a board member may request a training and continuing education extension of up to six (6) months from the comptroller of the treasury or the comptroller's designee. The request shall only be granted upon a reasonable showing of substantial compliance with this subsection (f). If the extension is granted, the board member must complete any additional required training hours necessary to achieve full compliance for only the relevant continuing education period within the extension period. The board member shall file copies of any extension request letters and corresponding comptroller of the treasury determination letters with the water and wastewater financing board.

(g) If any member of the board fails to meet the training and continuing education requirements set forth in subsection (f) before the end of the continuing education period or before the end of any extension approved by the comptroller of the treasury or the comptroller's designee, then such member shall not be eligible for reappointment or reelection to another term of office.

68-221-1009. Wastewater financing board — Powers and duties.

(a) Duties and authority of the board include, to:

(1) Adopt, modify, repeal, and promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and, after due notice, to enforce rules and regulations which the board deems necessary for proper administration of §§ 68-221-1007 — 68-221-1012;

(2) Investigate and determine the financial condition of water systems and wastewater facilities under its jurisdiction;

(3) Effect the adoption of user rates necessary for the self-sufficient operation of certain water systems and wastewater facilities and to negotiate the consolidation of certain water systems and wastewater facilities pursuant to §§ 68-221-1007 — 68-221-1012;

(4) Ameliorate the burden of rate increases effected under this part borne by low-income customers of water systems and wastewater facilities through the establishment and administration of a rate subsidy program to the extent state appropriations are available;

(5) 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. In case of the refusal of any person or entity to obey a notice of hearing or 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;

(6) Investigate systems under its jurisdiction pursuant to § 68-221-1008(j), and may include the assistance of the department of environment and conservation and the comptroller of the treasury; determine the financial, technical, and managerial capacity of the systems to comply with the requirements of any applicable federal and state acts; and 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;

(7) Establish, adopt and promulgate, in accordance with the Uniform Administrative Procedures Act, rules to define excessive water losses for public water systems; and

(8) In the case of public water systems, to investigate public water systems whose water loss as reported in the public water system's audit is excessive as established by rules promulgated by the board and to require those public water systems to take appropriate actions to reduce water loss to an acceptable level as determined by the board.

(b) The board shall be authorized to act only as to those water systems and wastewater facilities brought before it upon recommendation of the comptroller of the treasury.

68-221-1016. Annual report.

Each water system and wastewater facility as defined in § 68-221-1008(i) shall submit to the water and wastewater financing board by the first day of the system or facility's fiscal year an annual report on a form approved by the board. If a system or facility fails to submit the annual report in accordance

with this section, then the water and wastewater financing board may order reasonable sanctions against the system or facility.

68-221-1017. Review and approval of new water or wastewater system — Petition.

(a) Notwithstanding any law to the contrary, any city or county attempting to purchase, develop, acquire, or build a new water or wastewater system shall seek the approval of the water and wastewater financing board in the manner provided for in this section before finalizing plans for purchase, development, acquisition, or construction.

(b) The governing body of a city or county shall adopt, and its executive officer shall approve, a resolution to submit a petition to the water and wastewater financing board for review and approval of a new water or wastewater system. The petition must include:

(1) A statement of the service the proposed water or wastewater system will provide and the necessity for that service;

(2) The boundaries of the proposed system's service area;

(3) The statutory authority for the purchase, development, acquisition, or building of the water or wastewater system;

(4) A statement describing the managerial structure of the new water or wastewater system, including the type of governing body;

(5) A statement explaining why an existing utility district, treatment authority, or municipal or county service cannot adequately provide the needed service because of cost, time, or other service delivery factors; and

(6) An estimate of:

(A) The cost of the acquisition or construction of the system;

(B) The cost of operating the proposed facility;

(C) Anticipated personnel needs; and

(D) The rates and charges for utility service.

(c) An estimate pursuant to subdivision (b)(6)(A) is not a limitation on the financing of improvements or extensions of a facility.

(d) A majority of the governing body of the creating governmental entity and its executive officer must sign the petition.

(e) The petition must include the notarized signatures and residential addresses of both a majority of the governing body and its executive officer.

(f)(1) The water and wastewater financing board shall issue an order approving or disapproving the petition for the incorporation of the authority within ninety (90) calendar days of receipt of the petition by the board, its agent, or its representative.

(2) If the water and wastewater financing board approves the petition, then the water and wastewater financing board shall forward its order of approval and the original petition to the governing body of the city or county and its executive officer.

(3) If the water and wastewater financing board fails to act on the petition within ninety (90) calendar days of receipt of the petition, then the water and wastewater financing board, its agent, or its representative shall return the original petition to the governing body and its executive officer.

(4) If the water and wastewater financing board disapproves the petition, then the water and wastewater financing board shall forward its order of disapproval to the governing body of the creating governmental entity and

its executive officer. The petitioners may appeal the order disapproving the petition to the circuit court of the county in the manner provided by law for appeals from the court of general sessions.

68-221-1206. Prerequisites for and terms of loans.

(a) Loans shall be made only to water systems that:

(1) Are on the department's water system priority ranking list established pursuant to § 68-221-1205;

(2) Use the funds only for expenditures that will facilitate compliance with the federal act and the state act or otherwise significantly further the public health protection objectives of those acts;

(3) In the opinion of the authority, demonstrate technical, managerial, and financial capability to ensure compliance with the requirements of the federal act and the state act; provided, that systems without such current capability may receive loans if the owner or operator of the system agrees to undertake feasible and appropriate changes in operations as approved by the water and wastewater financing board (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of the state and federal acts over the long term;

(4) Are not in significant noncompliance with the federal act or the state act unless the use of the assistance will ensure compliance;

(5)(A) In the opinion of the authority, demonstrate sufficient revenues to operate and maintain the water system for its useful life and to repay the loan;

(B) Pledge security as required by the authority for the repayment of the loan;

(C) Agree to adjust periodically fees and charges for services of the water system in order that loan payments and costs of the water system are timely paid; provided, however, upon determination that fees and charges are reasonable, the authority may in its discretion make a loan to a local government which is relying upon and using ad valorem taxes or other lawful sources of revenue, in addition to fees and charges, to pay timely the loan payments and costs of the water system;

(6) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the system's financial records in accordance with generally accepted governmental auditing standards and with minimum standards prescribed by the comptroller of the treasury, and to file such audit with the comptroller. In the event of the failure or refusal of the system to have the audit prepared, then the comptroller of the treasury may appoint an accountant or direct the department of audit to prepare the audit at the expense of the system; and

(7) Provide such assurances as are reasonably requested by the authority and the department.

(8) [Deleted by 2020 amendment.]

(b) Loan funds may not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this section and the purchase is from a willing seller.

(c) Of the amount credited to the fund in any fiscal year, fifteen percent

(15%) shall be available solely for providing loan assistance to water systems which regularly serve fewer than ten thousand (10,000) persons to the extent such funds can be obligated for eligible projects of water systems.

(d) The interest rate for each loan shall be less than or equal to the market interest rate, or the loan may be interest free.

(e) Principal and interest payments on each loan will commence not later than one (1) year after completion of the project for which the loan was made, and each loan will be fully amortized not later than twenty (20) years after the completion of the project, except that in the case of a disadvantaged community, as defined in subdivision (i)(2), the authority may provide an extended term for a loan, if the extended term:

(1) Terminates not later than thirty (30) years after the date of project completion; and

(2) Does not exceed the expected design life of the project.

(f) The drinking water revolving loan fund may also be used:

(1) To buy or refinance the debt obligation of a municipality or an inter-municipal or interstate agency at an interest rate that is less than or equal to the market interest rate if the debt obligation was incurred after July 1, 1993;

(2) To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(3) As a source of revenue or security for the payment of principal and interest on debt of the authority, if the proceeds of the sale of the bonds will be deposited into the fund;

(4) To earn interest on the amounts deposited into the fund;

(5) For loans to any systems to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations;

(6) For loans to any water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 1453 of the federal act, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 of the federal act or otherwise significantly further the health protection objectives of this title. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms;

(7) For loans to any water system to provide funding in accordance with section 1454(a)(1)(B)(i) of the federal act;

(8) To provide assistance, including technical and financial assistance, to any water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c) of the federal act;

(9) To make expenditures from the capitalization grant for fiscal years 1996 and 1997 to delineate and assess source water protection areas for water systems in accordance with section 1453 of the federal act, except that funds set aside for such expenditure shall be obligated within four (4) fiscal years;

(10) To make expenditures from the fund for the establishment and implementation of wellhead protection programs for water systems under section 1428 of the federal act; and

(11) For loans to privately owned for-profit community public water systems as provided in federal law pursuant to 40 CFR Part 35; provided, that:

(A) No privately owned for-profit community public water systems shall be considered for loans with principal forgiveness under this program;

(B) Privately owned for-profit community public water systems shall be categorized as one hundred percent (100%) ability to pay on the index established pursuant to § 68-221-1205;

(C) A privately owned for-profit community public water system borrower shall have at least a debt/service coverage ratio of 1.25;

(D) Privately owned for-profit community public water systems shall provide security determined by the Tennessee local development authority to be acceptable to secure a loan under this part; and

(E) The Tennessee local development authority has the authority to direct a privately owned for-profit community public water system to the water and wastewater financing board for compliance as set forth in §§ 68-221-1009 and 68-221-1010, and by the comptroller of the treasury.

(g) Loan funds may only be used for expenditures approved by the department.

(h) The requirements of this section applicable to water systems applying for loans are deemed satisfied if any one of the entities jointly participating in the project being funded pursuant to the loan agreement satisfies the requirements.

(i) **Loan Subsidy.** Notwithstanding any other provision of this part, in any case in which the state makes a loan pursuant to this part to a water system serving a disadvantaged community or a community that the state expects to become a disadvantaged community as the result of a proposed project, the state may provide additional subsidization (including forgiveness of principal).

(1) **Total Amount of Subsidies.** For each fiscal year, the total amount of loan subsidies may not exceed thirty percent (30%) of the amount of the capitalization grant received by the state for the year.

(2) **Definition of Disadvantaged Community.** In this subsection (i), the term "disadvantaged community" means the service area of a water system that meets affordability criteria established pursuant to this part.

68-221-1304. Creation of authority — Resolution — Petition — Order of approval or disapproval — Hearing — Resolution or ordinance — Agreement for transfer.

(a) Any contiguous city, metropolitan, or county government or utility district may create a water or wastewater treatment authority in the manner provided for in this part.

(b)(1) The governing body of the creating governmental entity shall adopt, and its executive officer shall approve, a resolution to submit a petition to the water and wastewater financing board for review and approval. The petition must include:

(A) A statement of the service the proposed authority will provide and the necessity of that service;

(B) The proposed corporate name and boundaries of the authority's service area;

(C) A statement explaining why existing utility districts, treatment authorities, or municipal or county services cannot adequately provide the

needed service because of cost, time, or other service delivery factors; and

(D) An estimate of:

(i) The costs of the acquisition or construction of the facility;

(ii) The cost of operating the proposed facility;

(iii) Anticipated personnel needs; and

(iv) The rates and charges for the proposed service.

(2) An estimate pursuant to subdivision (b)(1)(D)(i) is not a limitation on the financing of improvements or extensions of a facility.

(3) A majority of the governing body of the creating governmental entity and its executive officer must sign the petition.

(4) The petition must include the notarized signatures and residential addresses of both a majority of the governing body and its executive officer.

(c)(1) The water and wastewater financing board shall issue an order approving or disapproving the petition for the incorporation of the authority within ninety (90) calendar days of receipt of the petition by the board, its agent, or its representative.

(2) If the water and wastewater financing board approves the petition, then the water and wastewater financing board shall forward its order of approval and the original petition to the governing body of the creating governmental entity and its executive officer.

(3) If the water and wastewater financing board fails to act on the petition within ninety (90) calendar days of receipt of the petition, then the water and wastewater financing board, its agent, or its representative shall return the original petition to the governing body of the creating governmental entity and its executive officer.

(4) If the water and wastewater financing board disapproves the petition, then the water and wastewater financing board shall forward its order of disapproval to the governing body of the creating governmental entity and its executive officer. Petitioners may appeal the order disapproving the petition to the circuit court of the county in the manner provided by law for appeals from the court of general sessions.

(d)(1) If the water and wastewater financing board approves a petition under subdivision (c)(1), or fails to act on a petition under subdivision (c)(3), then the governing body of the creating governmental entity shall adopt, and its executive officer shall approve, a resolution calling a public hearing on the question of creating an authority.

(2) The creating governmental entity shall publish notice of the date, time, place, and purpose of the hearing at least once each week for two (2) consecutive weeks in a newspaper of general circulation, the last publication occurring at least one (1) week prior to the date of the hearing.

(e) The hearing will be before the governing body and all interested persons shall have an opportunity to be heard.

(f)(1) If the governing body determines, after a hearing, that the public convenience and necessity require the creation of an authority, then the governing body shall adopt, and its executive officer shall approve, a resolution or an ordinance so declaring and creating an authority.

(2) A resolution or ordinance under subdivision (f)(1) must designate the name and principal office address of the authority.

(3) A governing body shall file a certified copy of the resolution or ordinance with the secretary of state, along with the resolution approving the appointment of the board of commissioners as provided for in § 68-221-1305. The authority constitutes a body politic and corporate upon adoption

and filing.

(g)(1) A creating governmental entity and a participating governmental entity shall enter into an agreement with the authority for the orderly transfer to the authority of the treatment works' properties, functions, service area, and outstanding obligations.

(2) The agreement may include provisions for the reimbursement of any governmental entity for its obligations issued for treatment works.

68-221-1305. Appointment of commissioners — Members — Election of officers — Jurisdiction.

(a)(1) The governing body of the authority shall be a board of commissioners appointed by the executive officer of the creating governmental entity and approved by its governing body.

(2) The board of commissioners shall include a person of good standing and reputation.

(b) If there are one (1) or more participating governmental entities, one (1) member of the board shall be appointed by the executive officer of each participating governmental entity and approved by its governing body, giving the board a total membership equal to the number of participating governmental entities.

(c) Commissioners first appointed to the board shall be appointed for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively, but thereafter each commissioner shall be appointed for a term of five (5) years. If a board has more than five (5) members, each additional member shall be appointed for a term of five (5) years. A commissioner may be reappointed at the end of that commissioner's term.

(d)(1) Any vacancy by reason of nonresidence, incapacity, resignation or death shall be filled in like manner for the unexpired term.

(2) A commissioner's term shall continue until the appointment and qualification of that commissioner's successor.

(3) A commissioner may be removed from office by a two-thirds (⅔) vote of the governing body of the governmental entity that approved the commissioner's appointment, but only after notice of the cause of the removal is served on the commissioner, and only after the commissioner is granted an opportunity for a public hearing on the cause.

(e)(1) The board shall elect from among its members a chair and vice chair, each of whom shall continue to be voting members, and shall adopt its own bylaws and rules of procedure.

(2) The presence of commissioners having a majority of the voting strength of the commissioners shall constitute a quorum for the transaction of business.

(3) Except as expressly otherwise specified in this part, all powers granted in this part to an authority shall be exercised by the board.

(4) Commissioners may receive compensation and shall be reimbursed for necessary expenses incurred in the performance of their official duties.

(5) An authority shall be subject to the jurisdiction of the water and wastewater financing board in accordance with this chapter; provided, however, that the environmental statutes in titles 68 and 69 currently administered by the department of environment and conservation shall apply to the activities of the authority in the same manner as those statutes

would apply to the activities of any local government.

(f)(1) All members of the board shall, within one (1) year of initial appointment or election to the board of commissioners or within one (1) year of reappointment or reelection to the board of commissioners, attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (f)(3).

(2) In each continuing education period after the initial training and continuing education required by subdivision (f)(1), a board member shall attend a minimum of twelve (12) hours of training and continuing education in one (1) or more of the subjects listed in subdivision (f)(3). For the purposes of this subsection (f), "continuing education period" means a period of three (3) years beginning January 1 after the calendar year in which a board member completes the training and continuing education requirements set forth in subdivision (f)(1) and each succeeding three-year period thereafter.

(3) The subjects for the training and continuing education required by this subsection (f) shall include, but not be limited to, board governance, financial oversight, policy-making responsibilities, and other topics reasonably related to the duties of the members of the board of commissioners of an authority.

(4) Any association or organization with appropriate knowledge and experience may prepare a training and continuing education curriculum for board members covering the subjects set forth in subdivision (f)(3) to be submitted to the comptroller of the treasury for review and approval prior to use. The comptroller shall file a copy of approved training and continuing education curriculum with the water and wastewater financing board. Changes and updates to the curriculum shall be submitted to the comptroller for approval prior to use. Any training and continuing education curriculum approved by the comptroller shall be updated every three (3) years and resubmitted to the comptroller for review and approval.

(5) For purposes of this subsection (f), a board member may request a training and continuing education extension of up to six (6) months from the comptroller of the treasury or the comptroller's designee. The request shall only be granted upon a reasonable showing of substantial compliance with this subsection (f). If the extension is granted, the board member must complete any additional required training hours necessary to achieve full compliance for only the relevant continuing education period within the extension period. The board member shall file copies of any extension request letters and corresponding comptroller of the treasury determination letters with the water and wastewater financing board.

(g) If any member of the board fails to meet the training and continuing education requirements set forth in subsection (f) before the end of the continuing education period or before the end of any extension approved by the comptroller of the treasury or the comptroller's designee, then such member shall not be eligible for reappointment or reelection to another term of office.

69-3-108. Permits.

(a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (*l*), shall file an application for a permit with the commissioner or,

when necessary, for modification of such person's existing permit.

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

(2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

(3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

(7)(A) The construction, installation, or operation of a liquid waste management system supporting an animal feeding operation that stables or confines as many as, or more than, the numbers of animals specified by federal law defining a large concentrated animal feeding operation;

(B) A state operating permit issued pursuant to this subdivision (b)(7) shall be enforceable only in regards to submission and maintenance of a current approved nutrient management plan;

(C) Animal feeding operations that are not required under this subdivision (b)(7) to have a permit may apply for and be issued a state operating permit. An animal feeding operation issued a state operating permit pursuant to this subdivision (b)(7) is required to conduct such operations in accordance with the permit;

(8) The discharge of sewage, industrial wastes, or other wastes into a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids and other substances that do or may affect the waters of the state;

(9) The diversion of water through a flume for the purpose of generation of electric power by a utility; or

(10)(A) Animal feeding operations that are required under the federal Clean Water Act (33 U.S.C. § 1251 et seq.), to have a permit for concentrated animal feeding operations. Such operations must be conducted in accordance with the conditions of a valid national pollutant discharge elimination system (NPDES) permit;

(B) Animal feeding operations that are not required under the federal Clean Water Act to have a permit for concentrated animal feeding operations may apply for and, if eligible under federal law, be issued a NPDES permit. An animal feeding operation issued a NPDES permit pursuant to this subdivision (b)(10)(B) is required to conduct such opera-

tions in accordance with the permit.

(c) Any person operating or planning to operate a sewerage system shall file an application with the commissioner for a permit or, when necessary, for modification of such person's existing permit. Unless a person holds a valid permit, it is unlawful to operate a sewerage system.

(d) Nothing in this section shall be construed to require any person discharging into a septic tank connected only to a subsurface drainfield, or any person constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, except in a county having a population of not less than sixty thousand two hundred fifty (60,250) nor more than sixty thousand three hundred fifty (60,350), according to the 1970 federal census or any subsequent federal census, as defined and regulated by §§ 68-211-101 — 68-211-115, to secure a permit; provided, that the exemption provided in this subsection (d) shall not exempt such person from any other provision of this part; and provided further, that any such person who is exempt from obtaining a permit for constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, shall not thereafter be required to obtain such permit.

(e) Applicants for permits that would authorize a new or expanded wastewater discharge into surface waters shall include in the application consideration of alternatives, including, but not limited to, land application and beneficial reuse of the wastewater.

(f) With regard to permits for activities related to the surface mining of coal:

(1) No permit shall be issued that would allow removal of coal from the earth from its original location by surface mining methods or surface access points to underground mining within one hundred feet (100′) of the ordinary high water mark of any stream or allow overburden or waste materials from removal of coal from the earth by surface mining of coal to be disposed of within one hundred feet (100′) of the ordinary high water mark of a stream; provided, however, that a permit may be issued or renewed for stream crossings, including, but not limited to, rail crossings, utilities crossings, pipeline crossings, minor road crossings, for operations to improve the quality of stream segments previously disturbed by mining and for activities related to and incidental to the removal of coal from its original location, such as transportation, storage, coal preparation and processing, loading and shipping operations within one hundred feet (100′) of the ordinary high water mark of a stream if necessary due to site specific conditions that do not cause the loss of stream function and do not cause a discharge of pollutants in violation of water quality criteria. Nothing in this subdivision (f)(1) shall apply to placement of material from coal preparation and processing plants;

(2) Without limiting the applicability of this section, if the commissioner determines that surface coal mining at a particular site will violate water quality standards because acid mine drainage from the site will not be amenable to treatment with proven technology both during the permit period or subsequent to completion of mining activities, the permit shall be denied.

(g)(1) The commissioner may grant permits authorizing the discharges or activities described in subsection (b), including, but not limited to, land application of wastewater, but in granting such permits shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board.

(2) Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others.

(3) If a permit is required under this part for a public transportation project commissioned by a federal, state, or local government, the alternatives analysis required by Tenn. Comp. R & Regs. 0400-40-07-.04(5) does not need to include alternative road locations but must include other measures to avoid and minimize impacts to resource values.

(4) In addition, the permits shall include:

(A) The most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards, necessary to comply with an area-wide waste treatment plan, or necessary to comply with other state or federal laws or regulations;

(B) A definite term, not to exceed five (5) years, for which the permit is valid. This term is subject to provisions for modification, revocation, or suspension of the permit;

(C) Monitoring, recording, reporting, and inspection requirements; and

(D) In the case of permits authorizing discharges from publicly owned treatment works, terms and conditions requiring the permittee to enforce user and cost recovery charges, pretreatment standards, and toxic effluent limitations applicable to industrial users discharging into the treatment works.

(h) The commissioner may revoke, suspend, or modify any permit for cause, including:

(1) Violation of any terms or conditions of the permit or of any provision of this part;

(2) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts; or

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(i) No permit under subsection (g) or (h) for the construction of any new outlet or for construction activities involved in the development of natural resources, for the construction of a new waste treatment system or for the modification or extension of an existing waste treatment system shall be issued by the commissioner until the plans have first been submitted to and approved by the commissioner. No such approval shall be construed as creating a presumption of correct operation nor as warranting by the commissioner that the approved facilities will reach the designated goals. If an environmental impact statement is required for any permit, the commissioner may require the applicant to pay for its preparation. Any such impact statement must also include and address economic and social impact.

(j) Any permit procedure or other action required by or undertaken in accordance with this section or part shall be conducted in accordance with title 13, chapter 18, when the permit or action involves a major energy project, as defined in § 13-18-102.

(k) Nothing in this section shall be construed to limit or circumscribe the authority of the commissioner to issue emergency orders as specified in § 69-3-109.

(*l*) Where the commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, the commissioner

may issue such a permit. Any person conducting activities in the category covered by a general permit shall not be required to file individual applications for permits except as provided in specific requirements of the general permit. Any person conducting activities covered under a general permit may be required by the commissioner to file an application for any individual permit. Upon the issuance of an individual permit to a person with a general permit, the applicability of the general permit to that permitted activity or discharge shall be terminated. Any person who holds an individual permit for an activity or discharge covered under a general permit may request that the individual permit be revoked. Upon such revocation, the activity or discharge shall become subject to the general permit.

(m) Notwithstanding subsection (g), upon application by a person who discharges into groundwaters of the state and who is subject to a permit issued pursuant to the Hazardous Waste Management Act, compiled in title 68, chapter 212, the commissioner may issue variances from the applicable water quality standards, criteria, or classification for groundwater; provided, that:

(1) The waters to which the variance applies are not used as a current source of drinking water and such use is not reasonably anticipated for the term of the variance and a reasonable time thereafter;

(2) The applicant demonstrates that such discharges will not pose a substantial present or potential hazard to human health or the environment as defined in Tenn. Comp. R. & Reg. 1200-01-11-.06(6)(e)(2) (reserved) in effect on April 1, 1988, and will not impair any actual, current uses other than those affected by the variance;

(3) Variances will be effective for a specific term, not to exceed the effective term of the permit;

(4) The variance is consistent with the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and the federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.); and

(5) The variance provided for under this subsection (m) shall be applied for and issued in accordance with procedures regarding the issuance of permits as required by regulations issued under this chapter.

(n)(1) A chief administrative officer of a county highway department does not violate this chapter by repairing or causing the repair of up to four hundred feet (400′) of highway or road in an emergency situation, if immediate repairs are necessary to protect human safety and welfare, and if such repairs comply with rules and regulations promulgated by the board that regulate the manner in which the repairs are made. Such officer need not obtain a permit prior to making such repairs under such circumstances.

(2) As soon as practicable, the chief administrative officer of a county highway department shall notify the commissioner by telephone that an emergency has arisen and that such chief administrative officer intends to make repairs in response to such emergency. The giving of such notice shall not be construed to authorize the commissioner to terminate such repairs.

(3) Within ten (10) days of the completion of any highway or road repair made pursuant to this subsection (n), the chief administrative officer of the county highway department ordering such repair shall notify the commissioner, in writing, of the action taken and the nature of the emergency necessitating such immediate repair.

(o) The following activities do not require a permit under this section:

(1) The removal of downed trees by dragging or winching and without

grading or reshaping of the stream channel;

(2) The placement of downed trees on stream banks for erosion protection; and

(3) The planting of vegetation on stream banks.

(p) Unless the applicant agrees otherwise, when an individual landowner applies for a permit for debris removal or stream bank stabilization activities, the commissioner shall either issue or deny the permit or take action scheduling a public hearing on the application within sixty (60) days of receipt of a complete application; provided further, however, that the staff of the division will communicate orally or in writing to the applicant within fifteen (15) days of receipt of any such application.

(q)(1) The alteration of a wet weather conveyance, as defined in § 69-3-103, by any activity is permitted by this subsection (q) and shall require no notice or approval; provided, that it is done in accordance with all of the following conditions:

(A) The activity may not result in the discharge of waste or other substances that may be harmful to humans or wildlife;

(B) Material may not be placed in a location or manner so as to impair surface water flow into or out of any wetland area;

(C)(i) Sediment shall be prevented from entering other waters of the state;

(ii) Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices;

(iii) Erosion and sediment control measures shall be in place and functional before earth moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the work day;

(iv) Checkdams shall be utilized where runoff is concentrated. Clean rock, log, sandbag or straw bale checkdams shall be properly constructed to detain runoff and trap sediment. Checkdams or other erosion control devices are not to be constructed in stream. Clean rock can be of various type and size, depending on the application. Clean rock shall not contain fines, soils or other wastes or contaminants; and

(D) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills shall be reported to the appropriate emergency management agency and to the division. In the event of a spill, measures shall be taken immediately to prevent pollution of waters of the state, including groundwater.

(2) There shall be no additional conditions upon a person's activity within a wet weather conveyance. This subdivision (q)(2) does not apply to national pollutant discharge elimination system (NPDES) permits.

(r) A person desiring to alter a specific water of the state may request a determination from the commissioner that it is a wet weather conveyance and submit a report from a qualified hydrologic professional in support of the request. If the report contains all information that is required in rules promulgated by the board, and in accordance with department procedures and

guidance, and is certified by a qualified hydrologic professional to be true, accurate and complete and, if submitted after promulgation of the rules required by § 69-3-105(m), contains all information that is required in those rules, then the determination made in the report shall be presumed to be correct, unless the commissioner notifies the person, in writing, within thirty (30) days of submittal of the report, that the commissioner has affirmatively determined that there is a significant question about whether the water of the state in question is a stream or a wet weather conveyance and states the reasons for that determination. In that event, the commissioner must, within thirty (30) days following the initial notification, determine whether the water of the state in question is a stream or a wet weather conveyance and notify the person in writing of that decision and the reasons for that determination. A person may appeal a determination by the commissioner that the specific water is a stream by filing a petition for appeal with the board within thirty (30) days of receiving the commissioner's decision. For purposes of this subsection (r), a qualified hydrologic professional is a person holding a bachelor's degree in biology, geology, ecology, engineering or related sciences, having at least five (5) years of relevant experience in making hydrologic determinations and who has been certified as a hydrologic professional pursuant to rules promulgated by the board.

(s) Any NPDES permit issued pursuant to this section to a local governmental entity administering a municipal separate storm sewer system shall not impose post-construction storm water requirements, except to the extent necessary to comply with the minimum requirements of federal law. Any such NPDES permit that includes numeric or narrative effluent limitations to manage post-construction storm water shall allow the local governmental entity administering a municipal separate storm sewer system discretion in selecting measures to meet any such effluent limitations. These numeric or narrative effluent limitations to manage post-construction stormwater shall be adopted by the board as rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(t) This state shall not require any local governmental entity that administers a municipal separate storm sewer system under a NPDES permit issued pursuant to this section to impose control measures for post-construction storm water that exceed the minimum requirements of federal law. Any local governmental entity that adopts control measures that exceed the minimum requirements of federal law must do so by ordinance or resolution, as appropriate, by the local legislative body upon a majority vote. This subsection (t) shall not apply to any ordinance or resolution in effect on April 23, 2016, but shall not preclude a local governmental entity that administers a municipal separate storm sewer system from making changes consistent with subsection (s) and this subsection (t). When a local governmental entity seeks coverage under any future version of the NPDES permit after April 23, 2016, such ordinance or resolution shall comply with subsection (s) and this subsection (t). The local government entity shall provide in writing the control measures that exceed federal minimum requirements to the local legislative body at least thirty (30) days in advance of a vote in order to provide for a public comment period.

(u)(1) Notwithstanding any other law, a person who has contracted for the right to store water in a reservoir owned by the U.S. Army Corps of Engineers shall have exclusive rights to any return flows generated directly

or indirectly to that reservoir by the person. The rights conferred by this subsection (u) shall be subject to any regulatory requirements imposed by the commissioner and to the availability to the person of unused storage capacity within the reservoir to store such return flows.

(2) As used in this subsection (u), "return flow" means water that is discharged directly or indirectly to a reservoir from a water reclamation facility.

(v)(1) Compliance with a NPDES permit issued under this section shall be deemed compliance for purposes of §§ 69-3-109; 69-3-114(a); 69-3-114(b) with respect to this part or any rule, regulation, or standard of water quality promulgated by the board; 69-3-115; 69-3-116; 69-3-117; and 69-3-118(a), except for any standard imposed under Section 307 of the Federal Water Pollution Control Act for a toxic pollutant injurious to human health.

(2) Compliance includes the discharge of pollutants for which no standard or limit is set forth in the permit if:

(A) The permit holder complies with applicable reporting and disclosure requirements under this part; and

(B) The discharge of pollutants is disclosed to the department in such a manner that the discharge is within the reasonable contemplation of the department at the time of issuance of the final permit.

(w) Watershed activities conducted in accordance with a site-specific design developed through full application of the Natural Resource Conservation Service (NRCS) Conservation Practice Standard 580 (Tennessee) and NRCS Engineering Field Handbook, Chapter 16 Streambank and Shoreline Protection, and subject to NRCS oversight as a federal action, do not result in pollution and do not require compensatory mitigation. Such watershed activities shall be regulated under a general permit for aquatic alterations pursuant to subsection (*l*). The commissioner shall draft an initial general permit authorizing such watershed activities, conduct public notice in accordance with the board's rules, and issue the initial general permit no later than December 31, 2020. Thereafter, the commissioner shall ensure timely renewal of the general permit.

70-2-104. Persons entitled to license without fee or at reduced fee — Designation of assistant — Penalty for false information — Imposition of fee.

(a) The wildlife resources director and the director's agents, through the county clerks or other legally designated license sales agents, have the power to issue a:

(1) Sport fishing license without the payment of a license fee to those residents of Tennessee who are certified to be blind, having a visual acuity, with maximum correction, not exceeding 20/200 in the better eye or having a visual acuity exceeding 20/200 but accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees (20°). The director shall accept as evidence, for the purposes of this title, a certificate from the department of human services or from a physician licensed to practice medicine in this state and who is actively engaged in the treatment of diseases of the human eye, or a licensed, registered optometrist, certifying that such person meets the requirements of this section with reference to the degree of blindness as

defined in this subdivision (a)(1);

(2) Sport fishing and hunting license without the payment of a fee to residents of Tennessee who by reason of service in any war are thirty percent (30%) or more disabled. The director shall accept as evidence of service-connected disability for the purposes of this section a certification from the veterans' administration;

(3)(A) Hunting license to persons with intellectual disabilities who reside in this state and who are over ten (10) years of age. The director shall accept as evidence for the purposes of this subdivision (a)(3) a certificate from a physician licensed to practice medicine in this state certifying that the applicant meets the requirements of this section with reference to such disability. The person must be accompanied by an adult at least twenty-five (25) years of age or older, who is hunter-education-certified and licensed to hunt. The person shall be required to complete the hunter education course as provided in § 70-2-108 in the presence of a licensed adult, but shall not be required to attain a particular score on the course examination or take the course more than once;

(B) As used in this subdivision (a)(3), unless the context otherwise requires:

(i) "Accompanied" means the licensed adult shall supervise no more than one (1) person with intellectual disabilities at any one (1) time and shall be able to take immediate control of the hunting device;

(ii) "Persons with intellectual disabilities" means persons who possess an intellectual disability, as defined by § 33-1-101;

(C) The commission shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of subdivision (a)(3)(A), including, but not limited to, rules and regulations to specifically denote on the license that the person issued the license is a person with intellectual disabilities, and to create a one-time-only fee in an amount sufficient to cover the costs of implementing subdivision (a)(3)(A); and

(4)(A) Permanent sport combination hunting and fishing license upon payment of a one-time ten-dollar ($10.00) fee to those residents of Tennessee who are permanently restricted to wheelchairs. The director shall accept as evidence for the purposes of this section a certificate from a physician licensed to practice medicine in this state certifying that the applicant meets the requirements of this section with reference to permanent restriction to a wheelchair; or

(B) Permanent sport combination hunting and fishing license upon payment of a one-time ten-dollar ($10.00) fee to those residents of Tennessee who are one hundred percent (100%) permanently and totally service connected disabled veterans who apply for such discounts and exemptions prior to or after May 24, 2000. The agency shall accept as evidence of service-connected disability for the purposes of this subdivision (a)(4)(B) a certification from the veterans' administration.

(b)(1) The fish and wildlife commission shall by proclamation designate one (1) week of each year when any person who receives social security benefits due to intellectual disability may engage in all forms of sport fishing, and all sport fishing license requirements shall be suspended during such week for such persons. The agency may accept as evidence for purposes of this section a certificate from the social security administration or any other evidence

acceptable to the executive director.

(2) A resident of Tennessee who receives social security benefits due to intellectual disability is entitled to the privilege of sport fishing upon presentation of evidence of such disability satisfactory to the agency. Such resident shall be issued a permanent license for sport fishing.

(c) The giving of false information as to name, age, degree of blindness, percentage of disability, permanent restriction to a wheelchair, address, residence or nonresidence by any applicant for any license provided for in this chapter, or altering any license or permit or any application for any license or permit, is a Class C misdemeanor.

(d)(1) The license fee discounts and exemptions provided in subsections (a) and (b) shall apply to qualified residents of Tennessee who apply for such discounts or exemptions prior to May 24, 2000.

(2) For qualified residents of Tennessee who have not applied for such discounts or exemptions prior to May 24, 2000, there shall be imposed a one-time ten-dollar ($10.00) fee for such license; provided, that such fee shall not apply to the exemption granted in subdivision (b)(1).

(3) Any qualified resident of Tennessee who has applied for such discount or exemption prior to May 24, 2000, may nevertheless make a voluntary payment of the one-time ten-dollar ($10.00) fee and upon making such payment shall be issued a license in accordance with this section.

(e)(1) This subsection (e) shall be known and may be cited as the "Hunter Wright Hunting and Fishing Act."

(2) Notwithstanding this section to the contrary, the wildlife resources director and the director's agents, through the county clerks or other legally designated license sales agents, have the power to issue an annual sport combination hunting and fishing license upon payment of a five-dollar fee to residents who are under eighteen (18) years of age and who are disabled.

(3) As used in this subsection (e), "disabled" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that is certified by a licensed physician. This means that the condition must be both totally and permanently disabling. The director shall accept as evidence for the purposes of this subsection (e) a certificate from a physician licensed to practice medicine in this state certifying that the applicant meets the requirements of this subsection (e) with reference to being disabled.

(4) The commission shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, to specifically denote on the license that the person is disabled.

(f)(1)(A) The agency shall be reimbursed for lost revenue resulting from the issuance of free or partially discounted combination hunting and fishing licenses created by statute on or after January 1, 2017, in an amount equal to the discounts received.

(B) Subdivision (f)(1)(A) shall also apply to lost revenue resulting from exemptions to licensure requirements created by statute on or after January 1, 2017, in an amount equal to the amount of lost revenue from such exemptions.

(2)(A) The agency shall maintain an accounting of lost revenue, as described in subdivision (f)(1), and shall submit the accounting to the department of finance and administration for the payment of moneys in an amount equal to such lost revenue out of the general fund on or before

June 30 of each fiscal year.

(B) Within thirty (30) days of the receipt of the accounting from the agency, the department of finance and administration must pay the actual amount of lost revenue for the fiscal year into the wildlife resources fund established in § 70-1-401.

(C) The accounting maintained pursuant to subdivision (f)(2)(A) and any other records relating to the accounting shall be subject to audit by the comptroller of the treasury.

(3) Any reimbursement to the agency for lost revenue pursuant to subdivision (f)(1)(A) shall be made from the general fund, subject to an appropriation by the general assembly in the annual general appropriations act.

(g) A person may assist a resident of this state who obtains a license under subdivision (a)(1), (a)(2), (a)(4), or (b)(2), or subsection (e), or who is exempt from licensure under subdivision (b)(1), without the necessity of procuring a license, if:

(1) The person who qualifies for a license under subdivision (a)(1), (a)(2), (a)(4), or (b)(2), or subsection (e), or who is exempt from licensure under subdivision (b)(1), completes and retains a form that designates one (1) person as an assistant and identifies the assistant by driver license number or by some other unique identifying number that appears on a form of identification issued to the assistant by a governmental entity. A person may only designate one (1) person as an assistant for hunting or fishing purposes each calendar year, except in the case of the death of the designated assistant. The agency shall develop a form that may be used to satisfy the requirements of this subdivision (g)(1), and make the form available to the public on the agency's website;

(2) The person providing assistance is not hunting or fishing on the person's own behalf. No extra bag limit or creel limit is permitted for an assistant who is not licensed to hunt or fish in this state, as applicable; and

(3) The assistant does not possess:

(A) A fishing pole, unless the assistant has a valid license to fish in this state;

(B) A firearm, unless the assistant has a valid license to hunt in this state, a concealed handgun carry permit, or an enhanced handgun carry permit; or

(C) Any weapon other than a firearm that the agency has authorized by proclamation to be used for the taking of game, unless the assistant has a valid license to hunt in this state.

70-2-201. Resident license fees and requirements.

(a) Every resident, except as otherwise provided, shall pay in accordance with the following fee schedule for the privilege of hunting, sport fishing, or trapping; provided, that no license shall be required for trapping beaver:

(1) Basic licenses:

(A) Combination hunting and fishing	$20.00
(B) Junior hunting, fishing and trapping	7.00
(C) Trapping	17.00
(D) One (1) day fishing	2.00
(E) County of residence fishing	5.00

(F) Sportsman	100.00
(2) Supplemental licenses:	
(A) Big game — gun	$17.00
(B) Big game — archery	17.00
(C) Big game — muzzleloader	17.00
(D) Waterfowl	17.00
(E) Trout	11.00
(3) Duplicate license	4.00

(b) Every resident shall provide the correct information specified on all licenses and permits. All licenses and permits must be filled out in ink, indelible pencil, typewriter, or punched or stamped, or otherwise marked to prevent erasures, false entries or alterations and must be signed in ink or indelible pencil by the licensee.

(c)(1) Residents of Tennessee who are sixty-five (65) years of age or older prior to March 1, 1991, are entitled to the privileges of sport fishing, hunting and trapping without possessing any license.

(2) Residents of Tennessee who are sixty-five (65) years of age or older after March 1, 1991, are entitled to the privileges of sport fishing, hunting and trapping upon payment of a one-time ten-dollar ($10.00) fee. Upon payment of such fee and presentation of proof of age and residency, satisfactory to the agency, such resident shall be issued a permanent license for sport fishing, hunting and trapping.

(d) Any resident of Tennessee between thirteen (13) and fifteen (15) years of age, inclusive, may purchase the junior hunting, fishing and trapping license. Such license shall entitle the individual to the privileges of sport fishing, trapping and hunting without the requirement of possessing any other license or supplemental license as provided in subsection (a). Any resident under thirteen (13) years of age shall be exempt from the licensing requirements of subsection (a). Residents between thirteen (13) and fifteen (15) years of age, inclusive, are entitled to fish without a license during one (1) week of the year, commencing with free sport fishing day as proclaimed by the fish and wildlife commission.

(e) A sportsman license is valid for hunting, trapping and sport fishing without the necessity of any supplemental license. Additionally, a holder of a valid sportsman license is not required to possess the following agency permits: agency lake permits; Tellico-Citico trout permits; Lake Graham annual permits; small game permits; combination waterfowl and small game permits; nonquota big game, including Cherokee, permits; Reelfoot preservation permits; and premiere tourist resort city trout fishing permits. The holder may also participate in all quota hunt drawings without payment of the drawing fee, and if drawn, will be issued a quota hunt permit at no charge. Furthermore, for as long as *Tennessee Wildlife* is published, the executive director shall have the discretion to provide a subscription to a sportsman license holder at no cost.

(f) A combination hunting and fishing license is valid for the taking of all species of game and fish; provided, that those persons sixteen (16) years of age and over desiring to hunt big game, waterfowl, or to take trout, must, in addition to the appropriate hunting or fishing licenses, or both, possess the appropriate supplemental license as provided in subsection (a).

(g)(1) There is hereby created a lifetime sportsman license, which shall entitle a resident of Tennessee, as defined in subdivision (g)(2), to the same

privileges and benefits as provided to an annual sportsman license holder. A lifetime sportsman license remains valid throughout the life of the license holder even though the person may become a nonresident.

(2) In order to qualify for a lifetime sportsman license, a person must have been a resident of the state for twelve (12) consecutive months immediately preceding purchase of the license. A child under the age of one (1) year qualifies, no matter where the child is born, if one (1) or more of the child's parents or the child's legally designated guardian has been a resident of the state for twelve (12) consecutive months immediately preceding purchase of the license.

(3)(A) The following fee schedule applies to the lifetime sportsman license:

(i) Less than three (3) years of age	$200.00
(ii) Three (3) years of age through six (6) years of age	$400.00
(iii) Seven (7) years of age through twelve (12) years of age	$600.00
(iv) Thirteen (13) years of age through fifty (50) years of age	$1,200.00
(v) Fifty-one (51) years of age through sixty-four (64) years of age	$700.00
(vi) Sixty-five (65) years of age and older	$200.00

(B) The fees are automatically adjusted to reflect the same percentage increase as the annual sportsman license. No fees may be decreased as part of the automatic adjustment.

(h) [Deleted by 2020 amendment.]

70-2-204. Hunting and fishing on farmland — License exemption to owners, tenants, and specified spouses and relatives — Proof of compliance.

(a)(1)(A) The owners and tenants of farmlands, and their spouses and children, have the right to engage in the sport of hunting and fishing, subject to all laws or regulations concerning wildlife, upon such lands and waters on the land of which they or their spouses or parents are the bona fide owners or tenants, with the permission of the landowner, during the season when it is lawful to do so, without procuring a hunting and sport fishing license.

(B) The grandchildren and great-grandchildren under sixteen (16) years of age of the owners of farmlands have the right to engage in the sport of hunting and fishing, subject to all laws or regulations concerning wildlife, upon such lands and waters on the land of which their grandparent or great-grandparent or grandparents or great-grandparents are the bona fide owners, with the permission of the landowner, during the season when it is lawful to do so, without procuring a hunting and sport fishing license.

(C) The spouses of the children of the owners of farmlands have the right to engage in the sport of hunting and fishing, subject to all laws or regulations concerning wildlife, upon such lands and waters on the land of which their mother-in-law or father-in-law is the bona fide owner, with the permission of the landowner, during the season when it is lawful to do so, without procuring a hunting and sport fishing license.

(D) Tenants and their spouses and their dependent children must be bona fide residents of this state and must actually reside on the land.

(E) Owners and their spouses, children, spouses of children, qualified grandchildren, and qualified great-grandchildren must be bona fide residents of this state.

(F) Land may qualify as farmland only if it is owned by no more than one (1) individual or a family; provided, that, if land is owned jointly or in common by persons who are first cousins related by blood, then such cousins and their children may hunt small game and fish on such land under this subsection (a).

(2) "Family" means any combination of kinship within the third degree, including any spouse who has an interest in the property.

(3) "Tenant" means an individual who receives compensation, such as free rent or money, for acting either in the place of or at the direction of the landowner in tending to the requirements needed to care for the farmland. The primary purpose of the tenancy shall be agricultural in nature.

(b) Each person claiming a license exemption under subsection (a) shall provide identification and shall submit a signed statement attesting to the exempt status described in the statement and a description of the land and the name of the land owner when requested by an officer of the wildlife agency or upon presenting any game to a check station. Such statement shall contain information sufficient to demonstrate that such person has complied with the requirements of subsection (a). The commission shall prepare a preprinted form for the submission of such statements for convenience of use. Submission of false information in a signed statement is a Class C misdemeanor.

(c) A violation of this section is a Class C misdemeanor.

70-6-101. Enforcement authority — Inspection of game — Penalty for refusing to allow inspection — Regulations.

(a) The executive director or the officers of the wildlife resources agency, or officers of any other state or of the federal government who are full-time wildlife enforcement personnel designated by the executive director, shall enforce all laws now enacted or that may hereafter be enacted for the propagation and preservation of all wildlife in this state, and shall prosecute all persons, firms and corporations who violate any of such laws. The executive director or officers of the agency shall seize any and all wild animals, wild fowl, wild birds, fishes, frogs and other aquatic animal life, or parts of such wildlife, that have been killed, caught, or taken at a time, in a manner or for a purpose, or that are in possession, or that have been shipped, transported, carried or taken in this state or brought into this state from another state, contrary to the laws of this state.

(b)(1) It is the duty of every person participating in the privileges of taking or possessing such wildlife as permitted by this title to permit the executive director or officers of the agency to ascertain whether the requirements of this title are being faithfully complied with, including the possession of a proper license.

(2) Any person who refuses such inspection and count by any authorized officer of the state, or who interferes with such officer or obstructs such inspection or count commits a Class C misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25.00) nor

more than fifty dollars ($50.00).

(c) This section does not permit search or inspection of a person's dwelling, place of business, or interior of an automobile without a search warrant.

(d) The commission is authorized to provide by duly promulgated regulations a system for issuing warning citations under such conditions as may be deemed proper.

70-7-205. Written waivers, exculpatory agreements and releases.

Nothing in this part modifies, constricts, or prohibits the use of written waivers, exculpatory agreements, or releases, including such waivers, agreements, or releases kept or displayed in electronic format. This part is intended to provide additional limitations of liability for whitewater professionals, whether or not such agreements are used.

71-2-116. State palliative care and quality of life council.

(a) As used in this section:

(1) "Commission" means the Tennessee commission on aging and disability;

(2) "Council" means the state palliative care and quality of life council;

(3) "Executive director" shall mean the executive director of the Tennessee commission on aging and disability; and

(4) "Palliative care" means an approach that improves the quality of life of patients and their families facing the problems associated with chronic life-threatening illness, through the prevention and relief of suffering by means of early identification and assessment and treatment of pain and other problems, physical, psychosocial, and spiritual. Palliative care includes, but is not limited to:

(A) Discussions involving a patient's goals for treatment;

(B) Discussions involving treatment options that are appropriate to the patient, including, where appropriate, hospice care; and

(C) Comprehensive pain and symptom management.

(b) The state palliative care and quality of life council is established.

(c) The purpose of the council is to continually assess the current status of palliative care in the state and to review the barriers that exist that prevent such care from being obtained and utilized by the people who could benefit from such care. The council shall provide recommendations to the governor and to the general assembly on issues related to its work.

(d) The council membership shall be appointed by the executive director, after consulting with Tennessee Hospice Association, Tennessee Hospital Association, Tennessee Medical Association, Tennessee Nursing Association, Tennessee Health Care Association, Tennessee Association of Home Care, and the Tennessee Chapter of American Cancer Society, and shall include interdisciplinary palliative care medical, nursing, social work, pharmacy, and spiritual professional expertise; patient and family caregiver advocate representation; and any other relevant appointees the executive director determines appropriate. The council shall consist of no more than eleven (11) members. The executive director shall consider the racial, geographic, urban/rural, and economic diversity of the state when appointing members. Membership shall specifically include health professionals having palliative care work experience or expertise in palliative care delivery models in a variety of inpatient,

outpatient, and community settings such as acute care, long-term care, and hospice, and with a variety of populations, including pediatric, youth, and adult. At least one (1) council member shall be a board-certified hospice and palliative medicine physician, at least one (1) council member shall be a licensed certified registered nurse practitioner with expertise in palliative care, and one (1) council member shall be from the department of health. Council members shall be appointed for a term of three (3) years. The members shall elect a chair and vice chair, whose duties shall be established by the council. The council shall fix a time and place for regular meetings and shall meet no less than twice yearly.

(e) Council members shall receive no compensation for their services or travel reimbursement for attending meetings.

(f) The council shall consult with and advise the executive director on matters related to the establishment, maintenance, and operation of palliative care initiatives in this state.

(g) The commission shall provide administrative support to the council.

(h) By January 15 of 2020, and by January 15 of each subsequent year, the council shall submit a report to the general assembly that addresses barriers to palliative care access, analyzes service utilization data, and provides recommendations and best practices to address gaps in service.

71-2-117. Alzheimer's disease and related dementia advisory council.

(a) As used in this section:

(1) "Alzheimer's disease" means a progressive degenerative disease of the brain that leads to dementia, and is characterized by the finding of unusual helical protein filaments in nerve cells of the brain; and

(2) "Executive director" means the executive director of the Tennessee commission on aging and disability.

(b) There is created the state Alzheimer's disease and related dementia advisory council, referred to in this section as the "council."

(c)(1) The council shall be composed of no less than eleven (11) and no more than sixteen (16) members, which include:

(A) One (1) member of the health and welfare committee of the senate, to be appointed by the speaker of the senate;

(B) One (1) member of the health committee of the house of representatives, to be appointed by the speaker of the house of representatives;

(C) The commissioner of health, or the commissioner's designee, who serves as an ex officio voting member;

(D) One (1) person to be appointed by the governor;

(E) One (1) licensed medical professional with experience in Alzheimer's disease and related dementia care, to be appointed by the executive director;

(F) One (1) person diagnosed with Alzheimer's disease or related dementia, to be appointed by the executive director;

(G) A representative of Alzheimer's Tennessee, Inc., to be appointed by the executive director;

(H) A representative of the Alzheimer's Association, to be appointed by the executive director;

(I) A representative of the bureau of TennCare, to be appointed by the executive director;

(J) A representative of the Tennessee Health Care Association, to be appointed by the executive director;

(K) A representative of LeadingAge Tennessee, to be appointed by the executive director;

(L) A representative of the Tennessee Nurses Association, to be appointed by the executive director;

(M) A representative of the department of mental health and substance abuse services, to be appointed by the executive director;

(N) The executive director of the Tennessee commission on aging and disability; and

(O) Any other person possessing relevant experience with Alzheimer's disease and related dementia care, to be appointed by the executive director.

(2)(A) The members listed in subdivisions (c)(1)(E)-(M) may be appointed by the executive director from lists of qualified nominees submitted by groups involved in the study of Alzheimer's disease and related dementia, including, but not limited to, the Alzheimer's Association, Alzheimer's Tennessee, the department of health, the department of mental health and substance abuse services, the bureau of TennCare, the Tennessee Health Care Association, the Tennessee Association for Home Care, and the Tennessee Nurses Association.

(B) The executive director shall consult with the interested groups listed in subdivision (c)(2)(A) to determine qualified persons to fill the positions as provided in this subsection (c).

(d)(1) The persons appointed under subdivisions (c)(1)(A) and (B) are nonvoting members of the council. They serve only so long as they remain members of the general assembly. Any legislative vacancy on the council shall be filled by the respective speaker, for the purpose of serving out the remainder of the unexpired term.

(2) The members appointed under subdivisions (c)(1)(D)-(N) are voting members and are eligible for reappointment to the council. Any vacancy among the private citizen members shall be filled by the respective appointing authority to serve for the remainder of the unexpired term.

(e) Except as provided in subsection (f) for initial appointments, the terms of the members of the council are for three (3) years.

(f)(1) In order to stagger the terms of the newly appointed council members, initial appointments shall be made as follows:

(A) The persons appointed under subdivisions (c)(1)(D)-(F) serve an initial term of one (1) year, which expires on June 30, 2020;

(B) The persons appointed under subdivisions (c)(1)(G)-(I) serve an initial term of two (2) years, which expires on June 30, 2021; and

(C) The persons appointed under subdivisions (c)(1)(J) and (K) serve an initial term of three (3) years, which expires on June 30, 2022.

(2) Following the expiration of members' initial terms as prescribed in subdivision (f)(1), all three-year terms begin on July 1 and terminate on June 30, three (3) years later.

(g) The members shall elect a chair and a vice chair, whose duties are established by the council.

(h) In making the appointments under subsection (c), the executive director shall strive to ensure that the council is composed of persons who are diverse in professional or educational background, ethnicity, race, sex, geographic

residency, heritage, perspective, and experience.

(i) The council shall fix a time and place for regular meetings and shall meet no less than twice yearly to review the state plan and all related metrics and outcomes. The executive director shall call the first meeting of the council. All other meetings of the council shall be at the call of the chair.

(j) A majority of the voting members of the council constitutes a quorum, and all official action of the council requires a quorum.

(k) The respective appointing authority may remove a private citizen member of the council for misconduct, incapacity, or neglect of duty.

(*l*)(1) The legislative members of the council shall be reimbursed as members of the general assembly are paid for attending legislative meetings as provided in § 3-1-106.

(2) The private citizen members of the council do not receive travel expenses or compensation for their service.

(m) The purpose of the council is to:

(1) Continually assess the current status of Alzheimer's disease and related dementia in this state and to assess the current and future impact of Alzheimer's disease and dementia on Tennessee residents;

(2) Examine the existing industries, services, and resources addressing the needs of persons, families, and caregivers affected by Alzheimer's disease and related dementia;

(3) Develop a strategy to mobilize a state response to matters regarding Alzheimer's disease and related dementia; and

(4) Provide recommendations to the governor and to the general assembly on issues related to its work.

(n) The council is administratively attached to the commission on aging and disability. The council shall consult and advise the executive director on matters related to the establishment, maintenance, and operation of state initiatives related to Alzheimer's disease and related dementia.

(o) The commission and council shall make best efforts to engage the community at large in making its assessments and recommendations regarding Alzheimer's disease and related dementia.

(p) No later than January 15, 2020, the council shall develop and submit an Alzheimer's disease state plan to the chair of the government operations committee of the senate, the chair of the government operations committee of the house of representatives, the chair of the health and welfare committee of the senate, and the chair of the health committee of the house of representatives that identifies barriers to Alzheimer's disease care, analyzes service utilization data, and includes recommendations, metrics, and best practices to address gaps in service. The council shall update the plan and report to the chairs of such legislative committees on its progress no later than January 15 of each year.

71-3-1101. Short title. [Effective until June 30, 2025.]

This part shall be known and may be cited as the "CoverKids Act of 2006."

71-3-1102. Part definitions. [Effective until June 30, 2025.]

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

(1) "Department" means the department of finance and administration;

(2) "Enrollee" means an individual who is eligible and enrolled in the

program;

(3) "Program" means any program established to provide health coverage to children pursuant to this part;

(4) "Tennessee medicaid program" means the federal- and state-financed, state-run program of medical assistance established pursuant to Title XIX (42 U.S.C. § 1396 et seq.), including any waivers thereof;

(5) "Title XIX" means Title XIX of the Social Security Act, Subchapter XIX, Chapter 7 of Title 42, United States Code (42 U.S.C. § 1396 et seq.), providing grants to states for medical assistance programs; and

(6) "Title XXI" means Title XXI of the Social Security Act, Subchapter XXI, Chapter 7 of Title 42, United States Code (42 U.S.C. §§ 1397aa, et seq.), establishing the State Children's Health Insurance Program.

71-3-1103. Purpose. [Effective until June 30, 2025.]

The purpose of this part is to create a program to provide health care coverage for uninsured children who are not eligible for health care services under any part of Tennessee's medicaid program, either pursuant to the medicaid state plan or pursuant to any medicaid waivers secured by the bureau of TennCare. It is the intent of the legislature to create and fund a program separate from the Tennessee medicaid program and Title XIX (42 U.S.C. § 1396 et seq.), and not subject to any consent decrees or judicial orders applicable to the Tennessee medicaid program.

71-3-1104. Department authority — Not an entitlement program — Benefits subject to appropriations. [Effective until June 30, 2025.]

The department is authorized to establish, administer, and monitor a program to provide health care coverage to uninsured children pursuant to Title XXI (42 U.S.C. § 1397aa et seq.). The department may not use money appropriated for this program to expand eligibility criteria for the Tennessee medicaid program or any other program operated under this title. The program shall not constitute an entitlement to coverage for eligible individuals, and the availability of program benefits is subject to appropriations.

71-3-1105. Federal approval. [Effective until June 30, 2025.]

The department is authorized to seek federal approval for the program, pursuant to Title XXI (42 U.S.C. § 1397aa et seq.), through a state plan, state plan amendment or request for federal waivers.

71-3-1106. Rules and regulations regarding eligibility — Cap on enrollment — Development of an option for those who are ineligible. [Effective until June 30, 2025.]

(a) The department shall adopt rules and regulations to establish eligibility criteria for the program, which shall limit eligibility to an individual who:

(1) Is eighteen (18) years of age or younger;

(2) Has a combined family income at a level to be determined by the department;

(3) Is not already covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. § 300gg-3(c);

(4) Is not eligible for coverage under the Tennessee medicaid program;

(5) Is a United States citizen or qualified alien, as defined in 8 U.S.C. § 1641(b); and

(6) Is a Tennessee resident.

(b) The department may establish additional eligibility criteria as appropriate.

(c) The department may establish a cap on the number of individuals who may be enrolled in the program.

(d) The department may establish an option for individuals who do not meet eligibility criteria necessary to obtain Title XXI (42 U.S.C. § 1397aa et seq.), funding to purchase coverage through the program.

71-3-1107. Coverage for pregnant women regardless of age. [Effective until June 30, 2025.]

The department is authorized to provide health care coverage for pregnant women and may provide the coverage consistent with this part, except that no age-related eligibility restrictions shall apply to pregnant women.

71-3-1108. Program administration — Reporting and audit requirements. [Effective until June 30, 2025.]

(a) The department may administer the program directly or contract with insurance companies, managed care plans or other entities to provide services to enrollees. Payments for services to contracted entities may require the contractor to assume full or partial risk for the cost of services provided under the contract.

(b) The department may contract directly with health care providers to provide services to enrollees and establish appropriate rates of payments for services.

(c) The department may enter into contracts or interagency agreements with an outside entity or other state agency to assist in the administration of the program, including performing eligibility determinations and appeals.

(d) The department shall establish periodic reporting requirements and audit requirements for contractors. Contractors and subcontractors shall maintain complete and detailed records as specified by the department regarding the operation of the plan, and shall provide the department and the comptroller of the treasury's office with access to records under the terms defined by the department.

71-3-1109. Duty and authority to review and audit expenditures. [Effective until June 30, 2025.]

The commissioner of finance and administration and the comptroller of the treasury have the duty and authority to review and audit such expenditure of funds as may be made under this part. Nothing in this section shall limit the authority of the commissioner of finance and administration to ensure that program expenditures are maintained within legislative appropriations.

71-3-1110. Additional rules and regulations. [Effective until June 30, 2025.]

(a) The department may adopt additional rules and regulations governing the program, including, but not limited to, any rules or regulations necessary

to comply with or to implement any federal requirement, federal waiver or state plan governing the program. The department is authorized to promulgate emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. All rules and regulations governing the program shall be promulgated in accordance with the Uniform Administrative Procedures Act.

(b) The rules may include, as necessary, but need not be limited to:

(1) The application, enrollment and disenrollment processes for the program;

(2) The benefit package to be provided through the program;

(3) Provisions for participant cost sharing, if any, including, at the department's discretion:

(A) The establishment of enrollment fees, premiums, deductibles and copayments; and

(B) The process for setting the amounts of enrollment fees, premiums, deductibles, and copayments, taking into account a participant's family income;

(4) The type of professionals or other provider entities who may deliver services or direct the delivery of services and the qualifications required of those professionals or entities; and

(5) Provisions regarding the sharing of health information under this part.

(c) In adopting rules, the department shall consider the federal requirements on which the receipt of Title XXI (42 U.S.C. § 1397aa et seq.), funding is contingent and shall not establish any program criteria or requirements that will disqualify the program from that funding. Rules adopted by the department must, when appropriate, take into account the availability of appropriated funds.

71-3-1111. Annual report. [Effective until June 30, 2025.]

This part shall be reviewed annually by the commerce and labor committee of the senate, the insurance 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, and these committees shall recommend necessary changes to the governor and the general assembly.

71-3-1113. Repealer. [Effective until June 30, 2025.]

This part shall be repealed on June 30, 2025.

71-3-1114. Email notice that enrollee must redetermine eligibility. [Effective until June 30, 2025.]

As a part of the process for redetermining an enrollee's eligibility for the program, the department shall establish a procedure that sends an email notice to the enrollee, or the parent or guardian of the enrollee, that the enrollee must redetermine eligibility for the program. The email notice is required only when the department has an email address for the enrollee or the parent or guardian of the enrollee.

71-4-701. Purpose — Applicability.

(a) The purpose of this part is to further the policy of the state to encourage and assist individuals with severe disabilities to achieve maximum personal independence through useful, productive, and gainful employment by assuring expanded competitive integrated employment opportunities, thereby enhancing their dignity and capacity for self-support and realizing independence and self-sufficiency.

(b) This part applies to all governmental entities that are supported in whole or in part by the general assembly.

71-4-702. Part definitions.

As used in this part:

(1) "Central nonprofit agency" means the agency designated by the committee to facilitate, by subcontract or other means, the fulfillment of orders from governmental entities for commodities and services and to assist the committee in administering the program described under this part;

(2) "Certified commodities or services" means:

(A) Commodities and services that have been recommended by the central nonprofit agency as suitable for procurement by any state governmental entity or as suitable for statewide contracts and that are certified pursuant to procedures approved by the state procurement commission as to quality, availability, and fair market price; and

(B) Commodities and services that have been recommended by the central nonprofit agency as suitable for procurement by political subdivisions and that are certified by the chief financial officer of the political subdivisions as to quality, availability, and fair market price;

(3) "Committee" means the advisory committee for providing competitive integrated employment for individuals with severe disabilities, created by § 71-4-703;

(4) "Competitive integrated employment" means employment available to individuals with severe disabilities or a customized employment available to individuals with severe disabilities, at a setting typically found in the community, at minimum wage or greater with the same benefits as nondisabled employees receive, in which eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons;

(5) "Governmental entity" means a state governmental entity or a political subdivision;

(6) "Individuals with severe disabilities" means individuals who have a physical or mental impairment that substantially limits major life activities;

(7) "Political subdivision" means any local governmental entity, including, but not limited to, any city, town, municipality, metropolitan government, county, utility district, school district, public building authority, housing authority, emergency communications district, 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 local governmental entities;

(8) "Production of commodities" means packaging, assembly, distribution, or other manufacturing processes; and

(9) "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.

71-4-703. Advisory committee — Responsibilities — Purchasing requirements for governmental entities — Applicability of part.

(a)(1) There is created the committee for providing competitive integrated employment for individuals with severe disabilities, and composed of the following:

(A) The commissioner of general services or the commissioner's designee;

(B) The commissioner of finance and administration or the commissioner's designee;

(C) The commissioner of human services or the commissioner's designee;

(D) The commissioner of mental health and substance abuse services or the commissioner's designee;

(E) The commissioner of intellectual and developmental disabilities or the commissioner's designee;

(F) The commissioner of transportation or the commissioner's designee;

(G) One (1) member who is a private citizen and parent of a child with disabilities, or an individual with disabilities;

(H) One (1) member who is a private citizen and represents agencies serving people who are blind;

(I) One (1) member who is a private citizen and represents entities serving people with disabilities; and

(J) One (1) member who is a private citizen and represents the business community.

(2) The governor shall appoint the private citizen members described in subdivisions (a)(1)(G)-(J) to three-year terms.

(3) The members of the committee shall organize and appoint a chair and determine their operating procedures. A majority of the members of the committee constitutes a quorum, and all official action of the committee requires a quorum.

(4) Members serve without compensation and do not receive travel expenses.

(b) The committee shall provide oversight to the central nonprofit agency in developing and implementing a state and political subdivision procurement program of commodities and services and in employing individuals with severe disabilities.

(c) The committee shall:

(1) Meet quarterly;

(2) Designate a central nonprofit agency for fulfillment of government orders for commodities or services;

(3) Require the central nonprofit agency to develop measures for evaluating its effectiveness; and

(4) Evaluate the activities of the central nonprofit agency to assure

effective and efficient administration of this part.

(d) Every governmental entity that is supported in whole or in part by the general assembly may purchase all services or commodities required by the governmental entity from the central nonprofit agency as long as commodities or services purchased by state governmental entities are certified pursuant to procedures approved by the procurement commission and are available, and commodities or services purchased by political subdivisions are certified by the chief financial officer of the political subdivision.

(e) This part has precedence over any law requiring governmental entity procurement of commodities or services, except laws that require purchases from nonprofit organizations operating under §§ 71-4-204 and 71-4-205; laws establishing preference for blind vendors operating under chapter 4, part 5 of this title; and laws requiring purchases under §§ 41-22-118 — 41-22-124.

(f) This part does not apply in any case:

(1) In which commodities or services are available from any state governmental entity;

(2) Where the procurement commission determines that the commodities or services do not meet the reasonable requirements of a state governmental entity; or

(3) Where the chief financial officer determines that the commodities or services do not meet the reasonable requirements of the political subdivision.

71-4-704. Central nonprofit agency — Designation — Functions and operations — Fee.

(a) The functions and operations of the designated central nonprofit agency include, but are not limited to, the following:

(1) Ensure that the priorities for orders from governmental entities are maintained under this part and that opportunities are provided to individuals with severe disabilities to pursue competitive integrated employment;

(2) Evaluate the qualifications and capabilities of entities for production of commodities or performing services. The central nonprofit agency must assure that individuals with severe disabilities are receiving competitive integrated employment in the production of commodities or performance of services. At a minimum, fifty percent (50%) of the hours worked on the production of commodities or performing services in the program are required to be provided by individuals with severe disabilities. Hours worked by supervisors with severe disabilities are to be included in the determination;

(3) Recommend with appropriate justification, including recommended prices, suitable commodities or services for procurement and, as market conditions change, recommend price changes or revisions;

(4) Fulfill or distribute and allocate, by subcontract or any other means, orders from governmental entities; and

(5) Maintain the necessary records and monitor data on the entities to ensure compliance in the production of commodities and performance of services.

(b) The central nonprofit agency shall charge a fee for fulfilling the orders. This fee must not exceed rates approved by the committee. The fee must be factored as an administrative expense into the overall cost.

71-4-705. Cooperation between committee and governmental entities — Annual report of committee.

(a) In furtherance of the purposes of this part and in order to contribute to the economy of state government, it is the intent of the general assembly that there be close cooperation between the committee and any state governmental entity from which procurement of commodities or services is required under the law currently in effect. The central nonprofit agency may enter into cooperative agreements, contracts, or other arrangements as may be determined to be necessary for the effective coordination and efficient realization of the objectives of this part.

(b) The committee shall annually report, on or before December 31, to the governor and to each member of the general assembly concerning the number of governmental entities participating in the program, the total dollar amount of purchases, and any other information the committee deems appropriate.

71-5-118. Contracts with vendors — Sanctions against vendors — Grounds for actions against providers — Administrative remedy to recover benefits from applicant — Collection activity report — Applicant warning — Prompt process of hospital presumptive eligibility applications.

(a) The commissioner of finance and administration has the authority to enter into contracts with qualified vendors to provide to eligible recipients medical assistance allowed under § 71-5-107. The commissioner has the authority to terminate or suspend existing contracts with providers, to refuse to enter into contracts with providers, and to recover any payments incorrectly paid if the commissioner finds that such actions will further the purpose of this section. Any action against such provider shall be treated as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If a hearing is requested by the provider, it shall be held prior to the imposition of any of the sanctions of this subsection (a), except that upon a finding by the commissioner that the public health, safety, or welfare imperatively requires emergency action, these sanctions may be imposed pending an opportunity for the provider to request a prompt hearing. Furthermore, the commissioner has the right to set off any money incorrectly paid against any claim for money submitted by the provider pending an opportunity for a hearing. Grounds for action against providers under this subsection (a) include, but are not limited to, the following:

(1) Violation of the terms of the contract;

(2) Violation of any provision of this part or the rules promulgated pursuant to this part;

(3) Billing for medical assistance that was not delivered;

(4) Provision of medical assistance that is not medically necessary or justified;

(5) Provision of medical assistance of a quality that is below professionally recognized standards;

(6) Revocation or suspension of a provider's professional license or other disciplinary action by the agency regulating the profession of the provider; and

(7) Failure to produce records, upon request, by authorized representatives of the commissioner as necessary to substantiate the medical assis-

tance for which claims have been submitted.

(b) Without regard to any other civil or criminal liability that might attach, by operation of this section or any other law, to an enrollee or applicant's action in obtaining medical assistance or any assistance under this part, to which such person is not entitled, the bureau of TennCare shall have an administrative remedy for the recovery of the amount of any medical assistance benefits or payments improperly paid as a result of any misrepresentation made by such person, to the extent that such amount has not otherwise been recovered by the bureau. The bureau shall also have a right to recover in such administrative proceedings its reasonable costs and attorneys' fees, as well as interest on the amount owed by the person, calculated from the date that medical assistance was improperly paid. Any action against such person shall be treated as a contested case in accordance with the Uniform Administrative Procedures Act. In an administrative action under this subsection (b), the bureau shall show that the amount sought to be recovered was paid in the form of medical assistance as a result of material misrepresentation by the person against whom recovery is sought, but the bureau need not show that such misrepresentation was intentional or fraudulent.

(c) The bureau of TennCare shall report annually in writing to the judiciary committee of the senate, the judiciary committee of the house of representatives, and the committee of the house of representatives having oversight over TennCare regarding its collection activities of the estate recovery provisions of this chapter.

(d) All applicants for medical assistance under this part, and all applicants for reverification of eligibility to receive such assistance, shall receive a warning, in easily readable language, regarding the state recovery provisions, as well as the administrative, civil and criminal liability provisions of this chapter.

(e) The participating provider shall strive to process hospital presumptive eligibility applications within the first twenty-four (24) hours of the date of admission, when practicable. To the extent a participating provider fails to adhere to this standard, the bureau of TennCare may take remedial steps as allowed by federal law.

71-5-165. Reimbursement of ambulance service provider that provides covered service to TennCare recipient.

(a) The bureau of TennCare shall reimburse an ambulance service provider that provides a covered service to a TennCare recipient at a rate not less than sixty-seven and one-half percent (67.5%) of the federal medicare program's allowable charge for participating providers. For purposes of this section, "ambulance service provider" means a public or private ground-based ambulance service that bills for transports and has a base of operations in this state.

(b) This section does not affect the Ground Ambulance Service Provider Assessment Act, compiled under part 15 of this chapter. Funds described under this section and part 15 of this chapter may not be used to fund the other.

(c) The bureau of TennCare shall seek an intergovernmental transfer of funds, in consultation with, and subject to approval of, the commissioner of finance and administration for the sole purpose of increasing the rate of reimbursement to ambulance service providers that provide covered services to TennCare recipients at a rate greater than the rate described under subsection (a).

71-5-166 — 71-5-180. [Reserved.]

71-5-192. Information management system.

On or before January 1, 2004, a comprehensive, integrated information management system will be operational for the bureau of TennCare. Not less frequently than quarterly, the division of strategic technology solutions in the department of finance and administration shall provide progress assessments concerning such system to the information systems council (ISC) and the fiscal review committee.

71-5-1002. Legislative intent — Creation of nursing home assessment trust fund.

(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of providing nursing home care. The assessment fee imposed by this part shall be in addition to all other privilege taxes.

(b) The nursing home assessment trust fund is created. The general assembly intends that the proceeds of the annual assessment not be used as a justification to reduce or eliminate the state funding to the TennCare program. The fund shall not be used to replace any moneys otherwise appropriated to the TennCare program by the general assembly.

(c) The trust fund shall consist of:

(1) Amounts collected or received by the bureau from nursing home assessments under this part;

(2) Investment earnings credited to the assets of the nursing home assessment trust fund. The state treasurer shall invest amounts deposited within the account in accordance with law, and all investment earnings shall be credited back to the fund; and

(3) Any penalties levied in conjunction with the administration of this part.

(d) The trust fund is created for the purpose of receiving funds as specified in this section. Collected assessment funds shall be used to secure federal matching funds available through the state medicaid plan.

(e) All revenue collected pursuant to this part shall be deposited in the nursing home assessment trust fund.

(f) All nursing home annual assessment fee payments made by nursing homes under this section and received by this state; all investment earnings credited to the nursing home annual assessment fee payments; any interest and penalties paid under this section by any nursing home; and all funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be available to and used by the bureau of TennCare for the sole purpose of providing payment to nursing homes.

(g) No part of the nursing home annual assessment fee payments made by nursing homes under this section and received by this state; the investment earnings credited to the nursing home annual assessment fee payments; the interest and penalties paid under this section by any nursing home; or the funds generated by federal matching payments made relative to the nursing home annual assessment fee shall be used for any purpose other than providing payment to nursing homes.

(h) The fund shall be used exclusively for the following purposes:

(1) To make expenditures for nursing facility services under the TennCare program for FY 2020-2021 at the full rates for the specified fiscal year as provided for under bureau of TennCare rules relative to the acuity- and quality-based reimbursement system and in accordance with § 71-5-105(a)(3)(B);

(2) To provide funding for the implementation of an acuity-based reimbursement system that shall include at a minimum a quality performance component for nursing facility services and a nursing rate component. The nursing rate component shall be adjusted by the average medicaid case-mix of the facility utilizing the Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Resource Utilization Group-Version 4 (RUG-IV), 48-Grouper model; and

(3) To pay nursing home covered services covered for medicaid beneficiaries within medicare upper payment limits, as negotiated with the bureau of TennCare. The upper payment limit of all nursing homes shall be calculated by the bureau of TennCare using the higher of the cost-based or prospective payment system approach in accordance with 42 C.F.R. 447.272.

(4) [Deleted by 2019 amendment.]

(i) Any funds remaining in the nursing home assessment trust fund after payments are made as provided for in subsection (h) shall remain in the trust fund as a reserve for future uses consistent with subsection (h). If the funds in the nursing home assessment trust fund are insufficient to meet all the purposes established in § 71-5-1004(b), the bureau of TennCare shall not be required to procure additional funding from other sources to make the payments noted in § 71-5-1004(b), but instead shall be permitted to reduce all payments on a pro rata basis so as not to exceed the amounts held at any time in the nursing home assessment trust fund.

71-5-1003. Payment of assessments — Determination of rate — Time for payment.

(a) Each nursing home shall pay the nursing home assessment in quarterly installments to the account in accordance with this part. In the event of a change of ownership or management of a nursing facility, the successor entity shall be liable for all unpaid nursing home assessment fees, penalties, and interest, and full payment of those fees, penalties, and interest shall be a precondition to the successor entity obtaining a TennCare identification number.

(b) The aggregated amount of assessments for all nursing facilities during a fiscal year shall not be less than the amount necessary to fund this part or exceed the maximum amount that may be assessed pursuant to the indirect guarantee threshold as established pursuant to 42 C.F.R. 433.68(f)(3)(i). The bureau shall determine the assessment rate prospectively for the applicable fiscal year on a per-resident-day basis, exclusive of medicare resident days. The per-resident day assessment rate shall be established pursuant to subsection (c). The bureau shall promulgate rules for facility reporting of non-medicare resident days and for payment of the assessment.

(c) The total aggregated amount of assessments for all nursing facilities from July 1, 2020, through June 30, 2021, shall equal four and three-quarters percent (4.75%) of the net patient service revenue. The total aggregated amount of assessment for all nursing facilities, and the annual assessment

determined for each nursing facility, shall be established on July 1 of each year. Once established, neither amount shall vary during each fiscal year. Each nursing facility shall have an annual assessment amount that shall be determined as follows:

(1) Any licensed nursing home that is licensed on July 1, 2020, for fifty (50) beds or fewer shall pay an assessment rate equal to three percent (3%) of net patient service revenue, divided by all non-medicare days. The facility shall pay the per diem rate for each of its non-medicare days;

(2) Any licensed nursing home that on July 1, 2020, operates as part of a continuing care retirement community shall pay an assessment rate equal to three percent (3%) of net patient service revenue, divided by all non-medicare days. The facility shall pay the per diem rate for each of its non-medicare days;

(3) Any licensed nursing home that is licensed on July 1, 2020, and provided forty thousand (40,000) or greater medicaid patient days for the twelve (12) months ending December 31 of the prior year shall pay an assessment rate equal to two and one half percent (2.50%) of net patient service revenue divided by all non-medicare patient days. The facility shall pay the per diem rate for each of its non-medicare days;

(4) Any new nursing home facility that is initially licensed and commences operations after July 1, 2020, shall pay in FY 2020-2021 a prorated assessment equal to two thousand two hundred twenty-five dollars ($2,225) per licensed bed per year, prorated to accrue from the date the nursing facility became certified to participate in TennCare. The change in ownership of an existing licensed facility shall not meet the requirements of this subdivision (c)(4);

(5) Any licensed nursing home not meeting the criteria of subdivisions (c)(1)-(4) shall pay an equal per facility annual assessment amount at such amount as is necessary to ensure that the total aggregated amount of assessment for all nursing facilities from July 1, 2020, through June 30, 2021, shall equal four and three-quarters percent (4.75%) of the net patient service revenue, when such total aggregated assessment amount is established on July 1 of each year;

(6) Any excess collections of per facility annual assessments above the targeted four and three-quarters percent (4.75%) of the net patient service revenue shall be retained in the nursing home assessment trust fund account created under this part. Should actual collections of per facility annual assessments not equal the targeted four and three-quarters percent (4.75%) of the net patient service revenue, any shortfall may be made up from funds in the nursing home assessment trust fund account created under this part, or from other appropriations to the TennCare program; and

(7) Any facility that ceases to be licensed by the department of health shall not be required to pay assessment fees accruing after the date of its licensure termination.

(d) Each nursing home shall pay its nursing home annual assessment fee as set forth in subsection (c) in equal quarterly installments, with the first quarterly installment due on the fifteenth day of the first month of the first quarter of the state fiscal year after the bureau of TennCare has satisfied the requirements of subsection (f) [deleted]. Subsequent installments shall be due on the fifteenth day of the first month of the three (3) successive calendar

quarters following the calendar quarter in which the first installment is due.

(e) Nursing homes shall not create a separate line-item charge on the bill reflecting the assessment.

71-5-1010. Termination of fee — Suspension of assessment.

(a) The nursing home annual assessment fee established by this part shall terminate on June 30, 2021.

(b) The assessment imposed by this part shall be suspended if the bureau attempts to utilize the money in the account for any use other than permitted by this part.

(c) Any assessment fee obligation imposed by § 71-5-1003 shall be suspended to the extent that, and for the period that receipt of the assessment fee by the state results in, a corresponding reduction in federal financial participation under Title XIX of the federal Social Security Act (42 U.S.C. § 1396 et seq.).

71-5-1424. Hearing on appeal of TennCare's initial determination of ineligibility for nursing facility services — Motion to intervene by facility.

If an individual appeals TennCare's initial determination that they are not eligible for TennCare nursing facility services:

(1) The hearing on any appeal of an initial determination that the individual is not financially eligible shall be conducted and a final order rendered within ninety (90) days from the date of the individual's appeal; provided, however, that if the individual files a petition for reconsideration of an initial order or appeals an order, other than a final order, pertaining to an initial determination made by TennCare under this section prior to the expiration of the ninety-day period, the running of the ninety-day period shall be tolled pending the outcome of such petition for reconsideration or appeal; and

(2) The facility may be entitled to participate in any proceeding and hearing that appeals an initial determination that the individual is not financially or medically eligible through the filing of a motion to intervene in that proceeding under § 4-5-310. The administrative judge or hearing officer shall grant a facility's motion to intervene in the appeal of a resident or former resident's eligibility, absent a showing by one (1) or more parties to the appeal that the facility's participation would cause that party to incur an undue burden or unnecessary expense.

71-5-1503. Annual coverage assessment on covered hospitals.

(a) An ambulance provider shall pay an assessment to the bureau:

(1) In accordance with this part;

(2) In the amount designated in § 71-5-1504;

(3) Quarterly, on a day determined by the bureau; and

(4) No more than thirty (30) business days after the day on which the bureau issues the ambulance provider notice of the assessment.

(b) The bureau shall:

(1) Determine the standards and procedures used to implement and enforce this part;

(2) Collect the assessment described in subsection (a); and

(3) Transfer assessment proceeds to the state treasurer for deposit into the ambulance service assessment revenue fund created in § 71-5-1508.

(c) An ambulance provider shall not increase charges or add a surcharge to ground transports based on, or as a result of, the assessment described in subsection (a).

71-5-1504. Calculation of uniform assessment per ground transport — Quarterly transport data.

(a) The bureau shall calculate a uniform assessment per ground transport for each ambulance provider pursuant to subsection (b).

(b) Except as otherwise provided in subsection (c), each quarter of the state fiscal year, the assessment due from each ambulance provider will equal the rate set in subsection (e) multiplied by each provider's total transports reported from the most recent available completed quarter of transport data recorded by the office of emergency medical services. Ambulance providers will be required to submit a quarterly reporting of all transports to the office of emergency medical services in a manner determined by the office of emergency medical services and the bureau.

(c) If the quarterly transport data is not adequate or available for the calculation of assessments, then the bureau shall use total transports submitted to the office of emergency medical services for calendar year 2019. If neither the quarterly transport data nor total transports submitted to the office of emergency medical services are adequate or available, then the bureau shall use the annual cost and utilization report submitted pursuant to § 71-5-1507. The adequacy and availability of the data must be determined solely by the bureau.

(d) The bureau shall apply any annual changes to the assessment rate, calculated as described in subsection (b), uniformly to all assessed ambulance providers.

(e) The assessment shall generate the lesser of:

(1) Nine dollars and nine cents ($9.09) per transport that is part of a provider's total transports as that term is defined in § 71-5-1502; or

(2) In the event that nine dollars and nine cents ($9.09) per transport causes the statewide assessment to exceed six percent (6%) of statewide net operating revenues, the per transport assessment will equal an amount that shall generate six percent (6%) of statewide net operating revenues.

(f) [Deleted by 2020 amendment.]

(g) [Deleted by 2020 amendment.]

71-5-1507. Annual cost and utilization report.

(a) For the purposes of this part, all ambulance providers shall file an annual cost and utilization report reflecting the most recently completed calendar year.

(b) The submitted cost and utilization report must include:

(1) Specified data on any vehicle owned or operated by the ambulance provider that is used for the purposes of patient transport;

(2) Total number of manual ambulance stretchers;

(3) Total number of hydraulic ambulance stretchers;

(4) Information regarding twelve-lead cardiac capabilities;

(5) Revenue data by payer type;

(6) Total transport data by payer type; and

(7) Any additional information that is required by the bureau.

(c) The cost and utilization report must be filed with the bureau no later than May 31 of each calendar year and must contain data from the previous calendar year. The bureau shall assess a penalty of one hundred dollars ($100) for each day that an ambulance provider does not submit a cost and utilization report in compliance with this section. However, the bureau may waive, in whole or in part, any penalty upon a determination that there is good cause for the waiver. The penalty imposed by this section supersedes any penalty imposed under § 12-4-304.

(d) The comptroller of the treasury is granted audit authority to test the accuracy of any and all cost and utilization reports submitted to the bureau for the purposes of this assessment.

71-5-1508. Audit.

(a) There is created a special agency account in the state general fund to be known as the "ambulance service assessment revenue fund," referred to in this part as the "fund." The fund shall continue without interruptions and shall be operated in accordance with this section.

(b) Unless otherwise specified in this part, revenue generated from the following sources must be deposited in the fund:

(1) Assessments collected by the bureau under this part;

(2) Penalties collected by the bureau under this part;

(3) Donations to the fund from private sources; and

(4) Investment earnings credited to the fund.

(c) Any fund balance remaining unexpended at the end of a fiscal year carries forward into the subsequent fiscal year and shall not be diverted to the general fund or any other public fund.

(d) Interest accruing on investments and deposits of the fund carries forward into the subsequent fiscal year and shall not be diverted to the general fund or any other public fund.

(e) The state treasurer shall invest the moneys in the fund in accordance with § 9-4-603. The bureau shall administer the funds.

(f) Moneys in the fund must not be diverted to the general fund or any other public fund or any other third party, and moneys in the fund may only be used to:

(1) Create supplemental or directed payments for ground ambulance providers; and

(2) Reimburse the amounts designated in § 71-5-1505 for the purpose of administrative expenses.

(g) In the event that this part is rendered invalid and void:

(1) To the extent federal matching is not reduced due to the impermissibility of the assessments, the bureau shall disburse pursuant to subsection (f) the moneys remaining in the fund that were derived from assessments imposed by this part and deposited before the occurrence of the invalidating event; and

(2) Following disbursement of moneys in the fund pursuant to subdivision (g)(1), the bureau shall refund any remaining moneys to each ambulance provider in proportion to the amount paid by the respective provider during the most recently completed quarterly payment period.

71-5-1509. Implementation of part — Termination of ground ambulance provider assessment.

(a) The assessment in this part shall not be implemented until after the bureau receives notice from the centers for medicare and medicaid services that approval for the assessment is granted.

(b) The bureau shall implement this part to the extent that it is not inconsistent with the TennCare II federal waiver or any successor federal waiver.

(c) Within ninety (90) days after the date this part becomes law, the bureau shall determine whether an amendment to the TennCare II waiver or any successor federal waiver is required to implement this part. If the bureau determines that an amendment to the TennCare II federal waiver or any successor federal waiver is necessary, the bureau is authorized to seek any necessary waiver amendment and the assessment in this part must not take effect until the waiver amendment is approved.

(d) The ground ambulance provider assessment established by this part terminates on June 30, 2021.

71-5-1510. Promulgation of rules.

The bureau is authorized to promulgate rules to effectuate the purposes of this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

71-5-2001. Short title. [Effective until July 1, 2021.]

This part shall be known and may be cited as the "Annual Coverage Assessment Act of 2020."

71-5-2002. Part definitions. [Effective until July 1, 2021.]

As used in this part:

(1) "Annual coverage assessment" means the annual assessment imposed on covered hospitals as set forth in this part;

(2) "Annual coverage assessment base" means a covered hospital's net patient revenue as shown in its medicare cost report for its fiscal year that ended during calendar year 2016, on file with CMS as of September 30, 2018, subject to the following qualifications:

(A) If a covered hospital does not have a full twelve-month medicare cost report for 2016 on file with CMS but has a full twelve-month cost report for a subsequent year, then the first full twelve-month medicare cost report for a year following 2016 on file with CMS is the annual coverage assessment base;

(B) If a covered hospital does not have a full twelve-month medicare cost report for 2016 on file with CMS and does not have a full twelve-month cost report for a subsequent year but has a cost report for 2016 that covers at least nine (9) months of 2016, then the assessment base is calculated by annualizing the 2016 cost report data;

(C) If a covered hospital was first licensed in 2016 or later and did not replace an existing hospital, and if the hospital has a medicare cost report on file with CMS, then the hospital's initial cost report on file with CMS is the base for the hospital assessment. If the hospital does not have an

initial cost report on file with CMS but does have a complete twelve-month joint annual report filed with the department of health, then the net patient revenue from the first twelve-month joint annual report is the annual coverage assessment base. If the hospital does not have a medicare cost report or a full twelve-month joint annual report filed with the department of health, then the annual coverage assessment base is the covered hospital's projected net patient revenue for its first full year of operation as shown in its certificate of need application filed with the health services and development agency;

(D) If a covered hospital was first licensed in 2016 or later and replaced an existing hospital, then the annual coverage assessment base is the replacement hospital's initial medicare cost report on file with CMS. If the hospital does not have a medicare cost report on file with CMS, then the hospital's annual coverage assessment base is either the predecessor hospital's net patient revenue as shown in its medicare cost report for its fiscal year that ended during calendar year 2016, or, if the predecessor hospital does not have a 2016 medicare cost report, then the cost report for the first fiscal year following 2016 on file with CMS;

(E) If a covered hospital is not required to file an annual medicare cost report with CMS, then the hospital's annual coverage assessment base is its net patient revenue for the fiscal year ending during calendar year 2016 or the first fiscal year that the hospital was in operation after 2016 as shown in the covered hospital's joint annual report filed with the department of health; and

(F) If a covered hospital's fiscal year 2016 medicare cost report is not contained in any of the CMS healthcare cost report information system files and if the hospital does not meet any of the other qualifications listed in subdivisions (2)(A)-(E), then the hospital must submit a copy of the hospital's 2016 medicare cost report to the bureau in order to allow for the determination of the hospital's net patient revenue for the state fiscal year 2020-2021 annual coverage assessment;

(3) "Bureau" means the bureau of TennCare;

(4) "CMS" means the federal centers for medicare and medicaid services;

(5) "Controlling person" means a person who, by ownership, contract, or otherwise, has the authority to control the business operations of a covered hospital. As used in this subdivision (5), "control" means indirect or direct ownership of ten percent (10%) or more of a covered hospital;

(6) "Covered hospital" means a hospital licensed under title 33 or title 68, as of July 1, 2020, but does not include an excluded hospital;

(7) "Excluded hospital" means:

(A) A hospital that has been designated by CMS as a critical access hospital as of July 1, 2020;

(B) A mental health hospital owned by this state;

(C) A hospital providing primarily rehabilitative or long-term acute care services;

(D) A children's research hospital that does not charge patients for services beyond that reimbursed by third-party payers; and

(E) A hospital that is determined by the bureau as eligible to certify public expenditures for the purpose of securing federal medical assistance percentage payments;

(8) "Medicare cost report" means CMS-2552-10 or a subsequent form adopted by CMS for medicare cost reporting, the cost report for electronic

filing of hospitals, for the period applicable as set forth in this section; and

(9) "Net patient revenue" from the medicare cost report means the amount calculated in accordance with generally accepted accounting principles for hospitals that is reported on Worksheet G-3, Column 1, Line 3, of the 2016 medicare cost report excluding long-term care inpatient ancillary and other non-hospital revenues, or, in the case of a hospital that did not file a 2016 medicare cost report, comparable data from the first complete cost report filed after 2016 by the hospital.

71-5-2003. Annual coverage assessment on covered hospitals. [Effective until July 1, 2021.]

(a) There is imposed on each covered hospital licensed as of July 1, 2020, an annual coverage assessment for fiscal year (FY) 2020-2021 as set forth in this part.

(b) The annual coverage assessment imposed by this part is not effective and validly imposed until the bureau has provided the Tennessee Hospital Association with written notice that includes:

(1) A determination from CMS that the annual coverage assessment is a permissible source of revenue that must not adversely affect the amount of federal financial participation in the TennCare program;

(2) Either:

(A) Approval from CMS for the distribution of the full amount of directed payments to hospitals to offset unreimbursed TennCare costs as described in § 71-5-2005(d)(2) as long as no assessment installment is collected prior to the distribution of the installment of the directed payments; or

(B) The rules promulgated by the bureau pursuant to § 71-5-2004(j)(2); and

(3) Confirmation that all contracts between hospitals and managed care organizations comply with the hospital rate variation corridors set forth in § 71-5-161.

(c) The general assembly intends that the proceeds of the annual coverage assessment not be used as a justification to reduce or eliminate state funding to the TennCare program. The annual coverage assessment is not effective and validly imposed if the coverage or the amount of revenue available for expenditure by the TennCare program in FY 2020-2021 is less than:

(1) The governor's FY 2020-2021 recommended budget level; plus

(2) Additional appropriations made by the general assembly to the TennCare program for FY 2020-2021, except to the extent new federal funding is available to replace funds that are appropriated as described in subdivision (c)(1) and that are above the amount that the state receives from CMS under the regular federal matching assistance percentage.

(d)(1)(A) The general assembly intends that the proceeds of the annual coverage assessment not be used as justification for any TennCare managed care organization to implement across-the-board rate reductions to negotiated rates with covered or excluded hospitals or physicians in existence on July 1, 2020. For those rates in effect on July 1, 2020, the bureau shall include provisions in the managed care organizations' contractor risk agreements that prohibit the managed care organizations from implementing across-the-board rate reductions to covered or ex-

cluded network hospitals or physicians by specific service, category, or type of provider. The requirements of the preceding sentence also apply to services or settings of care that are ancillary to the primary license of a covered or excluded hospital or physician, but do not apply to reductions in benefits or reimbursement for the ancillary services if the reductions:

(i) Are different from those items being funded in § 71-5-2005(d); and

(ii) Have been communicated in advance of implementation to the general assembly and the Tennessee Hospital Association.

(B)(i) For purposes of this subsection (d), "services or settings of care that are ancillary to the primary license of a covered or excluded hospital or physician" includes all services where the physician or covered or excluded hospital, including a wholly owned subsidiary or controlled affiliate of a covered or excluded hospital or hospital system, holds more than a fifty percent (50%) controlling interest in the ancillary services or settings of care, but does not include any other ancillary services or settings of care. For across-the-board rate reductions to ancillary services or settings of care, the bureau shall include appropriate requirements for notice to providers in the managed care organizations' contractor risk agreements.

(ii) For purposes of this subsection (d), "services or settings of care that are ancillary" means, but is not limited to, ambulatory surgical facilities, free standing emergency departments, outpatient treatment clinics or imaging centers, dialysis centers, home health and related services, home infusion therapy services, outpatient rehabilitation, or skilled nursing services.

(iii) For purposes of this subsection (d), "physician" includes a physician licensed under title 63, chapter 6 or chapter 9, and a group practice of physicians that hold a contract with a managed care organization.

(2) This subsection (d) does not preclude good faith negotiations between managed care organizations and covered or excluded hospitals, hospital systems, and physicians on an individualized, case-by-case basis, nor is this subsection (d) intended by the general assembly to serve as justification for managed care organizations in this state, covered or excluded hospitals, hospital systems, or physicians to unreasonably deny any party the ability to enter into the individualized, case-by-case good faith negotiations. Good faith negotiation necessarily implies mutual cooperation between the negotiating parties and may include, but is not limited to, the right to terminate contractual agreements, the ability to modify negotiated rates, pricing, or units of service, the ability to alter payment methodologies, and the ability to enforce existing managed care techniques or to implement new managed care techniques.

(3) This subsection (d) does not preclude the full implementation of the requirements set forth in § 71-5-161.

(4) Notwithstanding this subsection (d), if CMS mandates a TennCare program change or a change is required by state or federal law that impacts rates, and that change is required to be implemented by the managed care organizations in accordance with their contracts, or if the annual coverage assessment becomes invalid, then nothing in this part prohibits the managed care organizations from implementing any rate changes as may be mandated by the bureau or by state or federal law.

71-5-2004. Amount of annual coverage assessment — Payment — Penalty — Suspension of payments — Civil action. [Effective until July 1, 2021.]

(a) The annual coverage assessment established for this part is four and eighty-seven hundredths percent (4.87%) of a covered hospital's annual coverage assessment base.

(b) The annual coverage assessment must be paid in installments pursuant to this subsection (b) if the requirements of § 71-5-2003(b) have been satisfied. The bureau shall establish a schedule of four (4) equal installment payments spread as evenly as possible throughout FY 2020-2021 with each installment payment due fifteen (15) days after the FY 2020-2021 directed payments approved by CMS to offset unreimbursed TennCare costs have been made to hospitals.

(c) To facilitate collection of the annual coverage assessment, the bureau shall send each covered hospital, at least thirty (30) days in advance of each installment payment due date, a notice of payment along with a return form developed by the bureau. Failure of a covered hospital to receive a notice and return form, however, does not relieve a covered hospital from the obligation of timely payment. The bureau shall also post the return form on its website.

(d) Failure of a covered hospital to pay an installment of the annual coverage assessment, when due, results in an imposition of a penalty of five hundred dollars ($500) per day until the installment is paid in full. The bureau at its discretion may waive the penalty if the hospital establishes that it attempted to mail or electronically transfer payment to the state on or before the date the payment was due.

(e) If a covered hospital ceases to operate or changes status to be an excluded hospital after July 1, 2020, and before July 1, 2021, the hospital's total annual coverage assessment is equal to its annual coverage assessment base multiplied by a fraction, the denominator of which is the number of calendar days from July 1, 2020, until July 1, 2021, and the numerator of which is the number of days from July 1, 2020, until the date the board for licensing healthcare facilities has recorded as the date that the hospital changed status or ceased operation.

(f) If a covered hospital ceases operation prior to payment of its full annual coverage assessment, then the person controlling the hospital as of the date the hospital ceased operation is jointly and severally responsible for any remaining annual coverage assessment installments and unpaid penalties associated with previous late payments.

(g) If a covered hospital is sold after July 1, 2020, and before July 1, 2021, the seller is responsible for any annual coverage assessment payments due for the period up to and including the date the sale is final. If the hospital continues to operate in this state and continues to meet the definition of a covered hospital, then the new owner is responsible for paying all coverage assessment amounts due for the period beginning on the day after the date of the sale until July 1, 2021.

(h) If a covered hospital fails to pay an installment of the annual coverage assessment within thirty (30) days of its due date, then the bureau must suspend the payments to the hospital as required by § 71-5-2005(d)(2) or (d)(3) until the installment is paid and report the failure to the department that licenses the covered hospital. Notwithstanding any other law, failure of a

covered hospital to pay an installment of the annual coverage assessment or any refund required by this part is considered a license deficiency and grounds for disciplinary action as set forth in the statutes and rules under which the covered hospital is licensed.

(i) In addition to the action required by subsection (h), the bureau is authorized to file a civil action against a covered hospital and its controlling person or persons to collect delinquent annual coverage assessment installments, late penalties, and refund obligations established by this part. Exclusive jurisdiction and venue for a civil action authorized by this subsection (i) is in the chancery court for Davidson County.

(j)(1) If any federal agency with jurisdiction over this annual coverage assessment determines that the annual coverage assessment is not a valid source of revenue or if there is a reduction of the coverage and funding of the TennCare program contrary to § 71-5-2003(c), or if the requirements of §§ 71-5-161 and 71-5-2003(b) are not fully satisfied, or if one (1) or more managed care organizations impose rate reductions contrary to § 71-5-2003(d), then:

(A) No subsequent installments of the annual coverage assessment are due and payable; and

(B) No further payments must be paid to hospitals pursuant to § 71-5-2005(d)(2) or (d)(3) after the date of the event.

(2)(A) Notwithstanding this part, if CMS discontinues approval of or otherwise fails to approve the full amount of directed payments to hospitals to offset losses incurred from providing services to TennCare enrollees as authorized under § 71-5-2005(d), then the bureau must suspend any payments from or to covered hospitals otherwise required by this part and must promulgate rules that:

(i) Establish the methodology for determining the amounts, categories, and times of payments to hospitals, if any, instead of the payments that otherwise would have been paid under § 71-5-2005(d)(3) if approved by CMS;

(ii) Prioritize payments to hospitals as set forth in § 71-5-2005(d)(3);

(iii) Identify the benefits and services for which funds will be available in order to mitigate reductions or eliminations that otherwise would be imposed in the absence of the coverage assessment;

(iv) Determine the amount and timing of payments for benefits and services identified under subdivisions (j)(2)(A)(ii) and (iii) as appropriate;

(v) Reinstitute payments from or to covered hospitals as appropriate; and

(vi) Otherwise achieve the goals of this subdivision (j)(2).

(B) The rules adopted under this subdivision (j)(2) must, to the extent possible, achieve the goals of:

(i) Maximizing the amount of federal matching funds available for the TennCare program; and

(ii) Minimizing the variation between payments hospitals will receive under the rules as compared to payments hospitals would have received if CMS had approved the total payments described in § 71-5-2005(d).

(C) Notwithstanding any other law, the bureau is authorized to exercise emergency rulemaking authority to the extent necessary to meet the objectives of this subdivision (j)(2).

(3) Upon occurrence of any of the events set forth in subdivision (j)(1) or (j)(2), the bureau shall then have authority to make necessary changes to the TennCare budget to account for the loss of annual coverage assessment revenue.

(k) A covered hospital or an association representing covered hospitals, the membership of which includes thirty (30) or more covered hospitals, has the right to file a petition for a declaratory order pursuant to § 4-5-223 to determine if there has been a failure to meet any of the requirements of this part. A covered hospital may not increase charges or add a surcharge based on, or as a result of, the annual coverage assessment.

71-5-2005. Deposits in Maintenance of Coverage Trust Fund — Expenditures — Quarterly Reports. [Effective until July 1, 2021.]

(a) The funds generated as a result of this part must be deposited in the maintenance of coverage trust fund created by § 71-5-160, the existence of which is continued as provided in subsection (b). The fund must not be used to replace any monies otherwise appropriated to the TennCare program by the general assembly or to replace any monies appropriated outside of the TennCare program.

(b) The maintenance of coverage trust fund must continue without interruption and must be operated in accordance with § 71-5-160 and this section.

(c) The maintenance of coverage trust fund consists of:

(1) The balance of the trust fund remaining as of June 30, 2020;

(2) All annual coverage assessments received by the bureau;

(3) Investment earnings credited to the assets of the maintenance of coverage trust fund; and

(4) Penalties paid by covered hospitals for late payment of assessment installments imposed by this part or any prior statute authorizing an annual coverage assessment.

(d) Monies credited or deposited to the maintenance of coverage trust fund, together with all federal matching funds, must be available to and used by the bureau only for expenditures in the TennCare program and include the following purposes:

(1) Expenditure for benefits and services under the TennCare program, including those that would have been subject to reduction or elimination from TennCare funding for FY 2020-2021, except for the availability of one-time funding for that year only, as follows:

(A) Replacement of across-the-board reductions in covered and excluded hospital and professional reimbursement rates described in the governor's recommended budgets since FY 2011 except for any reductions that were included on a list for a given year but then funded in a subsequent year with recurring state dollars;

(B) Maintenance of virtual DSH fund payments and uncompensated care fund for charity care payments in accordance with, and as those payments are defined in, the TennCare 1115 demonstration waiver from CMS, to the maximum amount of the virtual DSH fund and uncompensated care fund for charity care allowed by CMS under the TennCare waiver;

(C) Maintenance of payments for graduate medical education of at least fifty million dollars ($50,000,000);

(D) Maintenance of reimbursement for medicare part A crossover claims at the lesser of one hundred percent (100%) of medicare allowable or the billed amount;

(E) Avoidance of any coverage limitations relative to the number of hospital inpatient days per year or the annual cost of hospital services for a TennCare enrollee;

(F) Avoidance of any coverage limitations relative to the number of nonemergency outpatient visits per year for a TennCare enrollee;

(G) Avoidance of any coverage limitations relative to the number of physician office visits per year for a TennCare enrollee;

(H) Avoidance of coverage limitations relative to the number of laboratory and diagnostic imaging encounters per year for a TennCare enrollee;

(I) Maintenance of coverage for occupational therapy, physical therapy, and speech therapy services;

(J) In the total amount of five hundred seventy-two thousand eight hundred forty dollars ($572,840) to maintain reimbursement at the same emergency care rate as in FY 2019-2020 for nonemergent care to children twelve (12) to twenty-four (24) months of age;

(K) In the total amount of two million forty-seven thousand three hundred twenty dollars ($2,047,320) to the bureau to offset the elimination of the provision in the TennCare managed care contractor risk agreements for hospitals as follows:

CRA 2.12.9.60-Specify in applicable provider agreements that all providers who participate in the federal 340B program give TennCare MCOs the benefit of 340B pricing;

(L) In the total amount of two hundred seventy-five thousand dollars ($275,000) to offset a portion of the hospital cost of providing admissions, discharge, and transfer (ADT) messages to the TennCare bureau to support the TennCare Patient Centered Medical Home initiative;

(M) In the total amount of seven hundred fifty thousand dollars ($750,000) to provide funding for stipends for physicians and other healthcare providers who commit to work in designated medically underserved areas in this state; and

(N) In the amount of three million dollars ($3,000,000) to offset the unreimbursed cost of charity care for critical access hospitals to be funded from funds remaining in the trust fund as of June 30, 2020;

(2) Directed payments to hospitals to reduce unreimbursed costs incurred by covered hospitals in providing services to TennCare patients, as approved by CMS and as directed in subdivision (d)(3)(B);

(3)(A) If CMS does not approve directed payments to hospitals to offset unreimbursed costs incurred in serving TennCare patients, but instead approves hospital supplemental pools in the TennCare waiver for that purpose, then payments required by this subdivision (d)(3) must be made from the allocated pools to covered hospitals to offset losses incurred in providing services to TennCare enrollees as set forth in this subdivision (d)(3) as first priority before any other supplemental payments authorized in the TennCare waiver are distributed;

(B) Directed payments to hospitals must be based on the amounts paid to covered hospitals during each quarter of FY 2020-2021. Each covered hospital is entitled to payments for FY 2020-2021 of a portion of its unreimbursed TennCare costs of providing services to TennCare enrollees.

As used in this subdivision (d)(3)(B), "unreimbursed TennCare costs" means the excess of TennCare costs over TennCare net revenue. TennCare charges and net revenue are calculated using data from Schedule E, items (A)(1)(e) and (A)(1)(f) from the hospital's 2018 joint annual report (JAR) filed with the department of health. As used in this subdivision (d)(3)(B), "TennCare costs" means the quotient of a facility's cost-to-charge ratio, calculated as B(3) (total expenses) divided by A(3)(e) (total gross patient charges) from Schedule E of the 2018 JAR, times TennCare charges. The amount of the payment to covered hospitals must be no less than forty-three and eight-tenths percent (43.8%) of unreimbursed TennCare costs for all hospitals licensed by the state that reported TennCare charges and revenue and total expenses on the 2018 joint annual report (JAR), excluding state-owned hospitals;

(C) The payments required by this subdivision (d)(3) must be made in four (4) equal installments. The bureau shall provide to the Tennessee Hospital Association a schedule showing the payments to each hospital at least seven (7) days in advance of the payments; and

(D) The payments required by this subdivision (d)(3) may be made by the bureau directly or by the TennCare managed care organizations with the direction to make payments to hospitals as required by this subsection (d). The payments to a hospital pursuant to this subdivision (d)(3) are not part of the reimbursement to which a hospital is entitled under its contract with a TennCare managed care organization;

(4) Refunds to covered hospitals based on the payment of annual coverage assessments or penalties to the bureau through error, mistake, or a determination that the annual coverage assessment was invalidly imposed; and

(5) Payments authorized under rules promulgated by the bureau pursuant to § 71-5-2004(j)(2).

(e) The bureau shall modify the contracts with TennCare managed care organizations and otherwise take action necessary to assure the use and application of the assets of the maintenance of coverage trust fund, as described in subsection (d).

(f) The bureau shall submit requests to CMS to modify the medicaid state plan, the contractor risk agreements, or the TennCare II Section 1115 demonstration project, as necessary, to implement the requirements of this part.

(g) At quarterly intervals beginning September 1, 2020, the bureau shall submit a report to the finance, ways and means committees of the senate and the house of representatives, to the health and welfare committee of the senate, and to the health committee of the house of representatives, which report must include:

(1) The status, if applicable, of the determination and approval by CMS set forth in § 71-5-2003(b) of the annual coverage assessment;

(2) The balance of funds in the maintenance of coverage trust fund; and

(3) The extent to which the maintenance of coverage trust fund has been used to carry out this part.

(h) No part of the maintenance of coverage trust fund must be diverted to the general fund or used for any purpose other than as set forth in this part.

71-5-2006. Expiration of part — Survival of certain rights and obligations. [Effective until July 1, 2021.]

This part expires on July 1, 2021. However, the following rights and

obligations survive the expiration:

(1) The authority of the bureau to impose late payment penalties and to collect unpaid annual coverage assessments and required refunds;

(2) The rights of a covered hospital or an association of covered hospitals to file a petition for declaratory order to determine compliance with this part;

(3) The existence of the maintenance of coverage trust fund and the obligation of the bureau to use and apply the assets of the maintenance of coverage trust fund; and

(4) The obligation of the bureau to implement and maintain the requirements of § 71-5-161.

71-5-2007. Audit of expenditure of funds from maintenance of coverage trust fund. [Effective until July 1, 2021.]

The comptroller of the treasury may audit the expenditure of funds pursuant to this part from the maintenance of coverage trust fund. At the discretion of the comptroller of the treasury, the audit may be prepared by a certified public accountant, a public accountant, or the department of audit. Notwithstanding § 71-5-2005, the bureau of TennCare and the maintenance of coverage trust fund must bear the full costs of the audit.

71-5-2517. Authority to require periodic provision of specific data — Compliance — Format of data — Charge for supplying data — Sufficient dedicated storage space and access to software — Construction.

(a) The office of inspector general is authorized to require periodic provision of specific categories, types, or collations of data without the necessity of issuing a new request at the commencement of each period.

(b) Compliance with a request by the office of inspector general is not dependent on approval by the bureau of TennCare, and it shall not be a defense to an action for enforcement or sanctions under this part that the bureau of TennCare does not require copies of or access to the requested data.

(c) Data kept in the regular course of business in electronic format shall on request be provided to the office of inspector general in the same electronic format. The data shall be provided in a manner that permits meaningful analysis with the aid of commonly available computer software and hardware. To this end, access to data shall be accompanied by access to any existing record layout, field definitions, or other guides or directions associated with the data.

(d) Notwithstanding any law to the contrary, access to data required pursuant to §§ 71-5-2513 — 71-5-2521 shall be provided to the office of inspector general without charge.

(e) The division of strategic technology solutions shall assist the office of inspector general by providing sufficient dedicated storage space and access to software on the state's computer network to permit the office of inspector general to accomplish the data mining contemplated by §§ 71-5-2513 — 71-5-2521.

(f) Nothing in this part shall be construed to prevent the bureau of TennCare or any other subdivision of the single state agency from conducting data mining, identifying suspected fraud cases, and referring suspected provider fraud to the medicaid fraud control unit pursuant to 42 CFR, Part

455. Nothing in this part shall be construed to affect the obligation of the single state medicaid agency or any of its subdivisions to refer to the medicaid fraud control unit, pursuant to 42 CFR 455, all cases in which the agency has reason to believe, after a preliminary investigation, that an incident of provider fraud or abuse has occurred in the TennCare program.

71-7-101. Tennessee rare disease advisory council.

There is established the Tennessee rare disease advisory council, referred to in this chapter as the "advisory council", to advise the TennCare prescription drug utilization review committee referred to in this chapter as the "DUR", the TennCare pharmacy advisory committee referred to in this chapter as the "PAC", and other public and private agencies in this state in providing services for persons diagnosed with rare diseases.

71-7-102. Members of rare disease advisory council — Meetings — Administrative attachment.

(a) The advisory council is administratively attached to the bureau of TennCare, and is composed of eleven (11) members as follows:

(1) The governor shall appoint:

(A) One (1) representative from the bureau of TennCare;

(B) Two (2) representatives from academic research institutions in this state that receive grant funding for rare disease research;

(C) Two (2) physicians licensed and practicing in this state with experience in researching, diagnosing, or treating rare diseases;

(D) One (1) geneticist licensed and practicing in this state;

(E) One (1) registered nurse or advanced practice registered nurse with experience treating rare diseases who is licensed and practicing in this state;

(F) One (1) resident of this state who is eighteen (18) years of age or older and who:

(i) Has been diagnosed with a rare disease; or

(ii) Is a caregiver for a person who has been diagnosed with a rare disease; and

(G) One (1) representative of a rare disease patient organization operating in this state; and

(2) The speaker of the senate and the speaker of the house of representatives shall each appoint one (1) member to the advisory council.

(b) In order to stagger the terms of the newly appointed advisory council members:

(1) The persons appointed under subdivisions (a)(1)(A) and (B) serve initial terms of one (1) year, which expire on June 30, 2021;

(2) The persons appointed under subdivisions (a)(1)(C)-(E) serve initial terms of two (2) years, which expire on June 30, 2022; and

(3) The persons appointed under subdivisions (a)(1)(F), (a)(1)(G), and (a)(2) serve initial terms of three (3) years, which expire on June 30, 2023.

(c)(1) Following the expiration of their initial terms, all appointed members of the advisory council serve terms of three (3) years.

(2) Members of the advisory council shall serve until their successors have been appointed, with vacancies to be filled in the same manner as provided in the original appointments.

(d) In making appointments to the advisory council, the appointing authori-

ties shall strive to ensure that the advisory council is composed of persons who are diverse in professional or educational background, ethnicity, race, age, sex, geographic residency, heritage, perspective, and experience.

(e) The advisory council members receive no compensation for their services on the advisory council.

(f)(1) The advisory council shall meet quarterly, and may meet more often as determined by a majority vote of the advisory council. A member may participate in an advisory council meeting by teleconference up to two (2) times each calendar year.

(2) The governor shall call the initial meeting of the advisory council no later than October 1, 2020.

(3) Members shall elect a chair, vice chair, and secretary whose duties are established by the council.

(4) All meetings of the council are at the call of the chair.

(5) The council is administratively attached to TennCare for the purpose of submitting meeting minutes compiled by the council secretary to the DUR and PAC.

71-7-103. Rare disease advisory council recommendations — Use of information — Input of advisory council.

(a)(1) The Tennessee rare disease advisory council shall advise the DUR, the PAC, and other state entities in their review of products or medications for the treatment of rare and orphan diseases, and drugs or biological products within the emerging fields of personalized medicine and non-inheritable gene editing therapeutics.

(2)(A) All advisory council recommendations must be presented in writing to members of the PAC and DUR and explained to members of the PAC and DUR by representatives of the advisory council during their public meetings.

(B) The advisory council has no authority on any matter relating to TennCare, nor may it require the DUR or PAC to follow its recommendations.

(b) The DUR and PAC shall consider information submitted to them by the advisory council on rare diseases and personalized medicine when making recommendations or determinations regarding:

(1) Beneficiary access to drugs and biological products for rare diseases, as defined in the federal Orphan Drug Act of 1983 (21 U.S.C. §§ 360aa — 360ff-1);

(2) Drugs and biological products that are approved by the United States food and drug administration; and

(3) The emerging fields of personalized medicine and non-inheritable gene-editing therapeutics.

(c) The DUR and PAC shall seek the input of the advisory council on rare diseases and personalized medicine to address topics for consultation under this chapter, including, but not limited to:

(1) Rare diseases;

(2) The severity of rare diseases;

(3) The unmet medical needs associated with rare diseases;

(4) The impact of particular coverage, cost-sharing, tiering, utilization management, prior authorization, medication therapy management, or

other medicaid policies on access to rare disease therapies;

(5) An assessment of the benefits and risks of therapies to treat rare diseases;

(6) The impact of coverage, cost-sharing, tiering, utilization management, prior authorization, medication therapy management, or other medicaid policies on patients' adherence to the treatment regimen prescribed or otherwise recommended by their physicians;

(7) Whether beneficiaries who need treatment from or a consultation with a rare disease specialist have adequate access and, if not, what factors are causing the limited access; and

(8) The demographics and the clinical description of patient populations.

(d) Nothing in this chapter requires the advisory council, the DUR, or the PAC to consult with a person on any matter or requires those entities to meet with any specific expert or stakeholder.