

# TENNESSEE CONSUMER PROTECTION ACT AND RELATED LAWS

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**2010 EDITION**



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and 2010 Supplement



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STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE  
DIVISION OF CONSUMER AFFAIRS

**MISSION STATEMENT**

**WORKING TO PROTECT CONSUMERS AND  
BUSINESSES FROM UNFAIR BUSINESS PRACTICES**

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**TENNESSEE CONSUMER PROTECTION ACT  
AND RELATED LAWS**

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## **FACTS ABOUT THE LEMON LAW**

The Tennessee Division of Consumer Affairs receives hundreds of complaints each year about defects in new cars that the dealers cannot seem to repair. In 1986, the Legislature passed a Lemon Law that is stronger and more comprehensive than the original Lemon Law passed in 1984. This Law can be found in the Tennessee Code Annotated 55-24-201.

### ***WHAT IS A LEMON?***

A “Lemon” is a motor vehicle sold or leased after January 1, 1987, that has a defect or condition that substantially impairs the motor vehicle; *and* the manufacturer, its agent, or authorized dealer cannot repair the vehicle after three attempts or the vehicle is out of service for repairs for a cumulative total of 30 or more days during the term of protection. This Law is only applicable if the vehicle was bought new. Under the statute, the manufacturer must replace the motor vehicle or refund the purchase price (less a reasonable allowance for use).

“Substantially impair” means to render a motor vehicle unreliable or unsafe for normal operation, or to reduce its resale market value below the average resale value for comparable motor vehicles.

The term of protection is defined as one year from the date of original delivery or the term of the warranty, whichever *comes first* .

The Law is unclear about whether you have to have reported your problem during the “term of protection” in order to have a claim under the “Lemon Law.” The Division has adopted the view that the problem essentially has to be reported within the first year or within the term of the warranty, whichever comes first.

### ***WHAT SHOULD I DO IF I HAVE A LEMON?***

If you have a lemon, you must notify the manufacturer of the problem in writing by certified mail. The manufacturer has an additional opportunity to repair your car within 10 days. If the manufacturer cannot repair your car and the manufacturer has an informal dispute settlement procedure that complies with Federal Trade Commission regulations, the refund and replacement provisions of the Lemon Law won’t apply until you submit to the procedure. You are not bound by the decision and can still seek available legal remedies, including asking a court to award a replacement vehicle or reimbursement of the purchase price (less a reasonable allowance for use), plus attorney fees and court costs.

***WHEN CAN I TAKE ACTION?***

You can file a law suit at anytime within one year from the date of original delivery of your car or within six months from the expiration of your express warranty, *whichever is later*. Extended warranties are not considered. You should consult an attorney well before the expiration of your time limit to be sure of preserving your legal rights.

FOR MORE INFORMATION, PLEASE WRITE THE TENNESSEE  
DIVISION OF CONSUMER AFFAIRS, 500 JAMES ROBERTSON  
PARKWAY, NASHVILLE, TN 37243-0600.

## Sections Affected By 2008 Legislation

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**NOTE:** In addition to the sections listed below, users of this edition should be aware that additional section and case notes annotations have also been appropriately incorporated throughout this publication. The sections with new and/or revised annotations do *not* appear in this listing.

<b>T.C.A. Sec.</b>	<b>Action</b>	<b>Ch. No.</b>	<b>Bill No.</b>	<b>Sec. No.</b>	<b>Effective Date</b>
47-10-104	Repealed	814	HB 3950	1	7/1/2008
47-18-103	Amended	873	HB 3834	1	7/1/2008
47-18-104	Amended	873	HB 3834	2	7/1/2008
47-18-129	Added	798	HB 3107	1	7/1/2008
47-18-301	Amended	926	SB 3420	1	1/1/2009
47-18-305	Amended	771	SB 3752	1	4/21/2008
47-18-305	Amended	926	SB 3420	2	1/1/2009
47-18-306	Amended	926	SB 3420	3	1/1/2009
47-18-309	Amended	771	SB 3752	2	4/21/2008
47-18-321	Added	1107	SB 4174	3	6/5/2008
47-18-322	Added	1107	SB 4174	3	6/5/2008
47-18-2108	Amended	1120	SB 2639	8	6/13/2008
47-18-2901	Added	688	SB 3671	1	7/1/2008
66-28-102	Amended	1067	SB 2885	1	10/1/2008
66-28-102	Amended	1067	SB 2885	2	10/1/2008
66-28-301	Amended	1067	SB 2885	3	10/1/2008



## Sections Affected By 2009 Legislation

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**NOTE:** In addition to the sections listed below, users of this edition should be aware that additional section and case notes annotations have also been appropriately incorporated throughout this publication. The sections with new and/or revised annotations do *not* appear in this listing.

T.C.A. Sec.	Action	Ch. No.	Bill No.	Sec. No.	Effective Date
23-3-102	Amended	7	HB 416	2	7/1/2009
47-18-104	Amended	198	HB 2218	2	5/13/2009
47-18-104	Amended	469	SB 812	2	7/1/2010
47-18-127	Amended	277	SB 1623	1	5/21/2009
47-18-127	Amended	277	SB 1623	2	5/21/2009
47-18-127	Amended	277	SB 1623	3	5/21/2009
47-18-130	Added*	591	HB 386	2	1/1/2010
47-18-321	Amended	229	HB 155	1	5/20/2009
47-18-2110	Amended	269	SB 582	1	5/21/2009
47-18-2110	Amended	269	SB 582	2	5/21/2009
47-18-5401	Added	198	HB 2218	1	5/13/2009
47-18-5402	Added	198	HB 2218	1	5/13/2009
47-18-5501	Added*	469	SB 812	1	7/1/2010
47-18-5502	Added*	469	SB 812	1	7/1/2010
47-18-5503	Added*	469	SB 812	1	7/1/2010
47-18-5504	Added*	469	SB 812	1	7/1/2010
47-18-5505	Added*	469	SB 812	1	7/1/2010
47-18-5506	Added*	469	SB 812	1	7/1/2010
47-18-5507	Added*	469	SB 812	1	7/1/2010
47-18-5508	Added*	469	SB 812	1	7/1/2010
47-18-5509	Added*	469	SB 812	1	7/1/2010
47-18-5510	Added*	469	SB 812	1	7/1/2010
47-18-5511	Added*	469	SB 812	1	7/1/2010
47-18-5512	Added*	469	SB 812	1	7/1/2010
47-18-5513	Added*	469	SB 812	1	7/1/2010
47-18-5514	Added*	469	SB 812	1	7/1/2010
47-18-5515	Added*	469	SB 812	1	7/1/2010
47-18-5516	Added*	469	SB 812	1	7/1/2010
47-18-5517	Added*	469	SB 812	1	7/1/2010

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<b>T.C.A. Sec.</b>	<b>Action</b>	<b>Ch. No.</b>	<b>Bill No.</b>	<b>Sec. No.</b>	<b>Effective Date</b>
47-18-5518	Added*	469	SB 812	1	7/1/2010
47-18-5519	Added*	469	SB 812	1	7/1/2010
47-18-5520	Added*	469	SB 812	1	7/1/2010
47-18-5521	Added*	469	SB 812	1	7/1/2010
47-18-5522	Added*	469	SB 812	1	7/1/2010
47-18-5523	Added*	469	SB 812	1	7/1/2010
47-18-5524	Added*	469	SB 812	1	7/1/2010
47-18-5525	Added*	469	SB 812	1	7/1/2010
47-18-5526	Added*	469	SB 812	1	7/1/2010
47-18-5527	Added*	469	SB 812	1	7/1/2010
47-18-5528	Added*	469	SB 812	1	7/1/2010
47-18-5529	Added*	469	SB 812	1	7/1/2010
47-18-5530	Added*	469	SB 812	1	7/1/2010
47-18-5531	Added*	469	SB 812	1	7/1/2010
47-18-5532	Added*	469	SB 812	1	7/1/2010
47-18-5533	Added*	469	SB 812	1	7/1/2010
47-18-5534	Added*	469	SB 812	1	7/1/2010
47-18-5535	Added*	469	SB 812	1	7/1/2010
47-18-5536	Added*	469	SB 812	1	7/1/2010
47-18-5537	Added*	469	SB 812	1	7/1/2010
47-18-5538	Added*	469	SB 812	1	7/1/2010
47-18-5539	Added*	469	SB 812	1	7/1/2010
47-18-5540	Added*	469	SB 812	1	7/1/2010
47-18-5541	Added*	469	SB 812	1	7/1/2010
55-24-103	Amended	322	HB 1751	1	5/28/2009

\*Section number(s) not assigned by General Assembly.

## Sections Affected By 2010 Legislation

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**NOTE:** In addition to the sections listed below, users of this edition should be aware that additional section and case notes annotations have also been appropriately incorporated throughout this publication. The sections with new and/or revised annotations do *not* appear in this listing.

<b>T.C.A. Sec.</b>	<b>Action</b>	<b>Ch. No.</b>	<b>Bill No.</b>	<b>Sec. No.</b>	<b>Effective Date</b>
16-1-201	Added	908	HB 185	1	5/12/2010
16-1-202	Added	908	HB 185	1	5/12/2010
16-1-203	Added	908	HB 185	1	5/12/2010
16-1-204	Added	908	HB 185	1	5/12/2010
16-1-205	Added	908	HB 185	1	5/12/2010
16-1-206	Added	908	HB 185	1	5/12/2010
35-5-117	Added	834	HB 3588	1	7/1/2010
47-18-103	Amended	779	SB 3407	1	4/16/2010
47-18-103	Amended	1055	HB 2625	2	7/1/2010
47-18-104	Amended	779	SB 3407	2	4/16/2010
47-18-104	Amended	918	SB 2712	1	7/1/2010
47-18-104	Amended	1055	HB 2625	3	7/1/2010
47-18-1511	Added*	684	SB 2501	1	1/1/2011
55-24-101	Amended	635	SB 2649	1	7/1/2010
62-5-414	Amended	933	SB 3410	1	7/1/2010

\*Section number(s) not assigned by General Assembly.



# Tennessee Consumer Protection Act and Related Laws

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## TITLE 8

### PUBLIC OFFICERS AND EMPLOYEES

#### CHAPTER 16

#### NOTARIES PUBLIC

##### PART 4—Consumer Protection

##### SECTION.

##### SECTION.

8-16-401. Notice that notary public is not an attorney.

8-16-402. Prohibited representations or advertising.

8-16-403. Compliance.

8-16-404. Exceptions.

#### PART 4—CONSUMER PROTECTION

**8-16-401. Notice that notary public is not an attorney.** — (a) A notary public who is not an attorney licensed to practice law in this state who advertises in any language the person’s services as a notary public by radio, television, signs, pamphlets, newspapers, telephone directory or other written or oral communication, or in any other matter, shall include with such advertisement the notice set forth in this section in English and in the language used in the advertisement. The notice shall be of conspicuous size and shall state:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF TENNESSEE, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

An advertisement on radio or television must include substantially the same message.

(b) A notary public who is not an attorney licensed to practice law in this state is prohibited from advising or assisting in selecting or completing forms affecting or relating to a person’s immigration status, unless that conduct is specifically authorized by federal law. [Acts 2002, ch. 665, § 1; 2006, ch. 945, § 6.]

**8-16-402. Prohibited representations or advertising.** — A notary public who is not an attorney licensed to practice law is prohibited from representing or advertising that the notary public is an immigration consultant, immigration paralegal or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the board of immigration appeals pursuant to 8 CFR § 292.2(a-e) or any subsequent federal law. [Acts 2002, ch. 665, § 1.]

**8-16-403. Compliance.** — Any failure to comply with the foregoing provisions constitutes an unfair or deceptive act as provided for in § 47-18-104. [Acts 2002, ch. 665, § 1.]

**8-16-404. Exceptions.** — The provisions of this part shall not apply to:

(1) Notary services offered by a state or national bank, trust company, savings and loan association, savings bank or by any affiliate or subsidiary of such state or national bank, trust company, savings and loan association or savings bank or any agent or employee thereof; or

(2) Any offering of notary services or listing of fees for notary services as a part of the closing of any loan transaction, extension of credit, security instrument or transfer of title. [Acts 2002, ch. 665, § 1.]

# TITLE 16

## COURTS

### CHAPTER 1

#### GENERAL PROVISIONS

##### PART 2—Defense of Unclean Hands

###### SECTION.

16-1-201. Statutory codification of defense of unclean hands.

16-1-202. Part definitions.

###### SECTION.

16-1-203. Enforceability of claims.

16-1-204. Defenses based on unclean hands.

16-1-205. Injunctive relief or restraining orders.

16-1-206. Pleading a defense of unclean hands.

##### PART 2—DEFENSE OF UNCLEAN HANDS

#### **16-1-201. Statutory codification of defense of unclean hands.**

— Fraud, deceit, intentional misrepresentation and other unconscionable or inequitable conduct, as well as the schemes and illicit activities promoted thereby, are contrary to the public policy of this state and have long been condemned by the equitable and common law defense of unclean hands. This part codifies and gives statutory effect to Tennessee’s equitable and common law defense of unclean hands with respect to commercial transactions. This part is to be in aid of the development of the equitable and common law defense of unclean hands in Tennessee and not in abrogation or derogation of such equitable and common law defense which shall remain in full force and effect and shall develop concurrent with this part. It is also the intent and purpose of this part to ensure that Tennessee’s equitable and common law defense of unclean hands can be given uniform effect regardless of the state in which a legal proceeding may be initiated or pending so as to protect victims of fraud, deceit, intentional misrepresentation and other unconscionable or inequitable schemes and conduct. Because the primary purpose of this part is to enable state and federal courts sitting in other states to apply Tennessee’s defense of unclean hands in cases arising out of commercial transactions, no negative inference shall be drawn from the failure of this part to codify Tennessee’s other equitable and common law principles or to codify the unclean hands defense with respect to cases that do not arise out of commercial transactions. This part shall be construed to give effect to its intent and purpose, and in a manner consistent with the equitable and common law principles embodied in Tennessee’s defense of unclean hands statutorily codified hereby. [Acts 2010, ch. 908, § 1.]

**16-1-202. Part definitions** — As used in this part, unless the context otherwise requires:

(1) “Claim” means any:

(A) Indebtedness, account, promissory note, instrument, moneys, sums or damages which is or may be claimed or asserted as payable to any person in connection with any commercial transaction or series of related commercial transactions;

(B) Property or other right which is or may be claimed or asserted by any person based on any contract or agreement, written or oral, in connection with any commercial transaction or series of related commercial transactions; any lien, encumbrance or security interest of any type or nature which is or may be asserted against the property of another person to enforce a claim for the payment of any money or indebtedness in connection with any commercial transaction or series of related commercial transactions; or

(C) Claim, action, suit or other proceeding at law or in equity which at any time is or may be pending or thereafter asserted in any court in connection with any commercial transaction or series of related commercial transactions for damages or to enforce any legal, equitable or contractual right or remedy which, in the case of any of the foregoing, is or may thereafter be asserted against another person, or by recourse against such other person's property, in connection with any commercial transaction or series of related commercial transactions, accounts, contracts, agreements, promissory notes, loans, lines of credit, instruments, deeds of trust, mortgages, security deeds, assignment of rents or leases, pledge or security agreements, or other asserted property rights or interests, in which the person asserting the claim or right, or such person's predecessor-in-interest from whom the claim or right has derived, has unclean hands;

(2) "Court" means any court of general or limited jurisdiction established pursuant to the laws of Tennessee or the laws or constitutions of the United States of America or any state or commonwealth thereof, and shall include all appellate courts having jurisdiction thereover;

(3) "Person" means any individual as well as any for-profit corporation, non-profit corporation, company, general partnership, limited partnership, limited liability company, trust, association, charity or other entity of any type or nature, whether organized under the laws of Tennessee or any other jurisdiction, foreign or domestic;

(4) "Unclean hands" means any fraud, deceit, intentional misrepresentation or other unconscionable or inequitable scheme or conduct in connection with any commercial transaction or series of related commercial transactions pursuant to which any person has or may seek financial or other gain from another person, or by recourse to such other person's property, in connection with such fraud, deceit, intentional misrepresentation or other unconscionable or inequitable scheme or conduct; and

(5) "Uniform Commercial Code" means the Tennessee Uniform Commercial Code, codified in title 47. [Acts 2010, ch. 908, § 1.]

**16-1-203. Enforceability of claims.** — If any person, or such person's predecessor-in-interest from whom the claim has derived, is found by the applicable trier of the fact in any court of competent jurisdiction to have unclean hands with respect to any claim, then such claim shall not be enforceable in such court, or any other court, unless the holder of such claim is a holder in due course of a negotiable instrument as provided in § 16-1-204 or unless such finding and the judgment, order and decree embodying such finding is overturned following timely appeal in accordance with applicable rules of civil or appellate procedure from which no further appeal may be

taken. Nor may the person whose claim is determined to be unenforceable by reason of unclean hands in any proceeding before any court thereafter enforce any lien, encumbrance or security interest to enforce such claim pursuant to any deed of trust, mortgage, security deed, assignment of rents or leases, pledge agreement, security agreement or other security instrument of any kind, type or nature, unless such finding, and the judgment, order and decree in which such finding is embodied is overturned on appeal. [Acts 2010, ch. 908, § 1.]

**16-1-204. Defenses based on unclean hands.** — Defenses based on unclean hands pursuant to this part are comprehended by, and may be asserted by an obligor pursuant to § 47-3-305, except as against a holder in due course of a negotiable instrument, as each such term is defined in the Uniform Commercial Code, unless otherwise permitted under § 47-3-305(a)(1). [Acts 2010, ch. 908, § 1.]

**16-1-205. Injunctive relief or restraining orders.** — Any court of competent jurisdiction may issue any temporary, preliminary or permanent injunctive relief or restraining order which may be appropriate in the circumstances in accordance with the applicable procedural rules and requirements governing such proceedings before such court, to declare, uphold and enforce the provisions of this part, and to maintain the status quo pending the adjudication of the rights of any person under this part prior to the entry of any judgment, order or decree which may be entered by such court and during the pendency of any appeals which may be permitted therefrom. [Acts 2010, ch. 908, § 1.]

**16-1-206. Pleading a defense of unclean hands.** — The defense of unclean hands codified by this part may be pled by any person in any court, and shall apply to all cases, suits, actions, and other proceedings arising out of any commercial transaction or series of related commercial transactions before any court established under Tennessee law, as well as all courts of general or limited jurisdiction established pursuant to the constitutions or laws of the United States of America or any state or commonwealth thereof, if the fraud, deceit, intentional misrepresentation or other unconscionable or inequitable scheme or conduct was made or directed by any person from within Tennessee, or was aimed or directed by a person outside Tennessee at or against a person who is either a resident within Tennessee, or conducting business or charitable operations and activities within Tennessee and such fraud, deceit, intentional misrepresentation, or other unconscionable or inequitable scheme or conduct affects or would damage the business or charitable operations and activities conducted by such person within Tennessee. [Acts 2010, ch. 908, § 1.]

**TITLE 20**  
**CIVIL PROCEDURE**  
**CHAPTER 12**  
**COSTS**

SECTION.  
20-12-116. Usury.

**20-12-116. Usury.** — If it appears in the action that usurious interest has been intentionally taken or reserved, the person taking or reserving such usury shall pay full costs. [Code 1858, § 3205; Shan., § 4947; Code 1932, § 9100; T.C.A. (orig. ed.), § 20-1618.]

**TITLE 23**  
**ATTORNEYS-AT-LAW**

**CHAPTER 3**

**UNAUTHORIZED PRACTICE AND IMPROPER CONDUCT**

SECTION.	SECTION.
23-3-101. Chapter definitions.	23-3-108. Falsely representing self as a lawyer.
23-3-102. Public officers prohibited from practicing.	23-3-109. Advertised fee as basis for court award for services.
23-3-103. Unlawful practice prohibited — Penalties.	23-3-110. [Repealed.]
23-3-104. Unlawful division of fees — Penalties.	23-3-111. Delinquency in student loan repayment.
23-3-105. Privileged communications.	23-3-112. Action to recover damages for loss as a result of unlawful action or conduct.
23-3-106. Testimony as to interests transferred pending action.	23-3-113. Practice before administrative boards and agencies excepted.
23-3-107. Penalty for improper testimony.	

**23-3-101. Chapter definitions** — As used in this chapter, unless the context otherwise requires:

(1) “Law business” means the advising or counseling for valuable consideration of any person as to any secular law, the drawing or the procuring of or assisting in the drawing for valuable consideration of any paper, document or instrument affecting or relating to secular rights, the doing of any act for valuable consideration in a representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services;

(2) “Person” means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized; and

(3) “Practice of law” means the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services. [Acts 1935, ch. 30, § 1; C. Supp. 1950, § 9983.1 (Williams, § 7116.1); T.C.A. (orig. ed.), § 29-302; Acts 1996, ch. 781, §§ 1, 2; 2006, ch. 945, §§ 1, 2.]

**23-3-102. Public officers prohibited from practicing.** — Judges and chancellors are prohibited from practicing law in any of the courts of this state. The clerks of the several courts and their deputies are also prohibited from practicing in their own courts, or in any causes commenced, brought to or carried from their courts, or commenced in any court from which an appeal lies to their court. Sheriffs and other executive officers shall not practice law in the county for which they were elected, or in any cause, originating or pending in the courts of that county. With the exception of judges, chancellors and justices,

nothing in this section or any other law shall be construed to prohibit employees of the executive and judicial branches of the government of this state who are licensed to practice law in this state from voluntarily providing pro bono legal services through an organized program of pro bono legal services that receives funding pursuant to § 16-3-808 and that provides professional liability insurance for losses sustained by clients of lawyers participating in the program. [Code 1858, § 3969 (deriv. Acts 1817, ch. 51, § 2; 1827, ch. 63, § 1); Shan., § 5780; Code 1932, § 9973; T.C.A. (orig. ed.), § 29-301; Acts 2009, ch. 7, § 2.]

**23-3-103. Unlawful practice prohibited — Penalty.** — (a) No person shall engage in the practice of law or do law business, or both, as defined in § 23-3-101, unless the person has been duly licensed and while the person's license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both. However, nonresident attorneys associated with attorneys in this state in any case pending in this state who do not practice regularly in this state shall be allowed, as a matter of courtesy, to appear in the case in which they may be thus employed without procuring a license, if properly authorized in accordance with applicable rules of court, and when introduced to the court by a member in good standing of the Tennessee bar, if all the courts of the resident state of the nonresident attorney grant a similar courtesy to attorneys licensed in this state.

(b) Any person who violates the prohibition in subsection (a) commits a Class A misdemeanor.

(c)(1) The attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction or permanent injunction any violation of this chapter; to obtain a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) per violation, and to obtain restitution for any person who has suffered an ascertainable loss by reason of the violation of this chapter. The attorney general and reporter shall be entitled to be reimbursed for the reasonable costs and expenses of investigation and prosecution of acts under this chapter, including, but not limited to, reasonable attorney fees as well as expert and other witness fees.

(2) The action may be brought in a court of competent jurisdiction:

(A) In the county where the alleged violation took place or is about to take place;

(B) In the county in which the defendant resides, has a principal place of business or conducts, transacts or has conducted business; or

(C) If the defendant cannot be found in any of the locations in subdivisions (c)(2)(A) and (B), in the county in which the defendant can be found.

(3) The courts are authorized to issue orders and injunctions to restrain, prevent and remedy violations of this chapter, and the orders and injunctions shall be issued without bond.

(4) Any knowing violation of the terms of an injunction or order issued pursuant to this chapter shall be punishable by a civil penalty of not more than twenty thousand dollars (\$20,000) per violation, in addition to any other appropriate relief.

(d)(1) Any organized bar association of a municipality, county, except any county having a metropolitan form of government, or multi-county region in which a violation occurs may bring a civil action seeking relief, as provided in this chapter, against any person that violates this chapter. Any organized statewide bar association, primarily representing plaintiff attorneys and having no locally-based affiliate associations, may bring a civil action in the municipality or county in which a violation occurs seeking relief, as provided in this chapter, against any person that violates this chapter. Upon the commencement of any action brought under this section by any bar association, the bar association shall provide a copy of the complaint or other initial pleading to the attorney general and reporter, who, in the public interest, may intervene and prosecute the action. The pleadings shall be provided to the attorney general and reporter simultaneously with the initial service to the defendant or defendants. Additionally, all subsequent filings shall be provided to the attorney general and reporter, including any judgments or notices of appeal by the initiating bar association.

(2) Any bar association bringing suit under this section is presumed to be acting in good faith and is granted a qualified immunity for the suit and the consequences of the suit. The presumption of good faith is rebuttable upon a showing by a preponderance of the evidence that the suit was brought for a malicious purpose. [Acts 1935, ch. 30, § 2; C. Supp. 1950, § 9983.2 (Williams, § 7116.2); Acts 1974, ch. 604, § 1; 1974, ch. 640, § 1; T.C.A. (orig. ed.), § 29-303; Acts 1989, ch. 591, § 111; 1996, ch. 781, §§ 3, 4; 1999, ch. 123, §§ 1, 2; 2001, ch. 189, §§ 1, 2; 2006, ch. 945, § 3; 2007, ch. 236, § 1.]

**23-3-104. Unlawful division of fees — Penalties.** — (a) Except as provided in the Tennessee rules of professional conduct, it is unlawful for any licensed attorney in the state to divide any fees or compensation received in the practice of law or in doing law business with any person not a licensed attorney.

(b) A violation of this section is a Class C misdemeanor. [Acts 1935, ch. 30, § 3; C. Supp. 1950, § 9983.3 (Williams, § 7116.3); T.C.A. (orig. ed.), § 29-304; Acts 1989, ch. 591, § 113; 2006, ch. 945, § 4.]

**23-3-105. Privileged communications.** — No attorney, solicitor or counselor shall be permitted, in giving testimony against a client or person who consulted the attorney, solicitor or counselor professionally, to disclose any communication made to the attorney, solicitor or counselor as such by such person during the pendency of the suit, before or afterward, to the person's injury. [Code 1858, § 3973 (deriv. Acts 1821, ch. 66, § 3); Shan., § 5785; mod. Code 1932, § 9978; T.C.A. (orig. ed.), § 29-305.]

**23-3-106. Testimony as to interests transferred pending action.** — No attorney, solicitor or other person, under the pretext of having transferred an interest in real estate, obligations for the performance of contracts or notes for money, during the pendency of any suit at law, shall be permitted to give testimony in favor of those who held a joint interest with the attorney, solicitor or other person at the commencement of such suits, or by which the

attorney, solicitor or other person would be released from any liability to perform contracts or pay money. [Code 1858, § 3974 (deriv. Acts 1821, ch. 66, § 3); Shan., § 5786; mod. Code 1932, § 9979; modified; T.C.A. (orig. ed.), § 29-306.]

**23-3-107. Penalty for improper testimony.** — Any attorney offering to give testimony in any of the cases provided for in §§ 23-3-105 and 23-3-106 shall be rejected by the court, and the attorney commits a Class C misdemeanor, for which, on conviction, the attorney shall also be stricken from the rolls, if a practicing attorney. [Code 1858, § 3975 (deriv. Acts 1821, ch. 66, § 3); Shan., § 5787; Code 1932, § 9980; T.C.A. (orig. ed.), § 29-307; Acts 1989, ch. 591, § 113.]

**23-3-108. Falsely representing self as a lawyer.** — (a) It is unlawful for any person, either directly or indirectly, falsely to advertise the person as, or hold the person out as, a lawyer.

(b) A violation of this section is a Class E felony. [Acts 1955, ch. 259, § 1; T.C.A., § 29-312; Acts 1989, ch. 591, § 27.]

**23-3-109. Advertised fee as basis for court award for services.** — Notwithstanding any the law to the contrary, whenever an attorney advertises a fee for a legal service, the advertisement shall be prima facie evidence of the reasonableness of the fee; and no court shall award a fee in excess of the advertised amount unless the attorney proves additional compensation is reasonable under the facts and circumstances of the legal service provided. [Acts 1980, ch. 684, § 1; T.C.A., § 29-313.]

**23-3-110. [Repealed.]**

**Compiler's Notes.** Former § 23-3-110 (Acts of clients, was repealed by Acts 2003, ch. 112 1996, ch. 930, § 1), concerning the solicitation § 3, effective May 12, 2003.

**23-3-111. Delinquency in student loan repayment.** — The supreme court is encouraged to establish guidelines to suspend, deny or revoke the license of an attorney who is delinquent or in default on a repayment or service obligation under a guaranteed student loan identified in § 63-1-141(a) or when the attorney has failed to enter into a payment plan or comply with a payment plan previously approved by TSAC or a guarantee agency. [Acts 1999, ch. 476, § 4.]

**23-3-112. Action to recover damages for loss as a result of unlawful action or conduct.** — (a)(1) Any person who suffers a loss of money or property, real, personal or mixed, or any other article, commodity or thing of value wherever situated, as a result of an action or conduct by any person that is declared to be unlawful under § 23-3-103, § 23-3-104 or § 23-3-108, may bring an action to recover an amount equal to the sum of treble any actual damages sustained by the person and treble any amount paid by the person, and may be afforded such other relief as the court considers necessary and proper.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged acts or conduct took place or is taking place, in the county in which the defendant resides, has a principal place of business, conducts, transacts or has transacted business, or, if the defendant cannot be found in any of those locations, the action may be brought in the county in which the defendant can be found.

(3) If the court finds that the defendant knowingly or willfully engaged in unlawful acts or conduct under § 23-3-103, § 23-3-104 or § 23-3-108, the court may award treble the actual damages sustained and treble the amount paid, and may provide such other relief as it considers necessary and proper.

(4)(A) Any person who has been affected by an act or conduct declared to be a violation of § 23-3-103, § 23-3-104 or § 23-3-108 may accept any written reasonable offer of settlement made by the person or persons considered to have violated this chapter; provided, that the tender of acceptance of a settlement offer shall not abate any proceeding commenced by the attorney general and reporter under this chapter.

(B) The settlement may be set aside by a court of competent jurisdiction at the request of the affected person, if the request is made within one (1) year from the date of the settlement agreement and if the court finds the settlement to be unreasonable. If the person was not represented by legal counsel at the time of the offer of settlement, the person claiming the benefit of the settlement shall have the burden of establishing that it is reasonable.

(5) Any permanent injunction, judgment or final court order made pursuant to § 23-3-103(c)(1) that has not been complied with shall be prima facie evidence of the violation of this chapter in any action brought pursuant to this section.

(6) Upon a finding by the court that a provision of § 23-3-103, § 23-3-104 or § 23-3-108 has been violated, the person bringing the action shall be entitled to be reimbursed for the reasonable costs and expenses of investigation and prosecution of acts under this chapter, including, but not limited to, reasonable attorney fees, as well as expert and other witness fees.

(b) This section shall not apply to an action initiated by the attorney general and reporter, any district attorney general or bar association as defined in § 23-3-103(d).

(c)(1) Upon the commencement of any action brought under this section, the plaintiff shall mail a copy of the complaint or other initial pleading to the attorney general and reporter, who, in the public interest, may intervene in the case. If the attorney general and reporter does not intervene, the plaintiff shall mail a copy of the judgment, order or decree to the attorney general and reporter upon the entry of any judgment, order or decree in the action.

(2) If a party to an action under this section appeals a judgment, order or decree concluding this action, a copy of the notice of appeal shall be served by the appellant upon the attorney general and reporter, who, in the public interest, may intervene on appeal.

(d) Any private action commenced pursuant to this section shall be brought within three (3) years from the person's discovery of the unlawful act or conduct. [Acts 2006, ch. 945, § 5.]

**23-3-113. Practice before administrative boards and agencies excepted.** — The enforcement provisions of this chapter shall not apply to any person while practicing before state administrative boards and agencies who is authorized by statute to practice and act in a representative capacity before the state or local administrative boards and agencies. [Acts 2006, ch. 945, § 7.]

**TITLE 35**  
**FIDUCIARIES AND TRUST ESTATES**  
**CHAPTER 5**  
**JUDICIAL OR TRUST SALES**

SECTION.  
35-5-117. Legal notices of foreclosure.

**35-5-117. Legal notices of foreclosure.** — (a) Prior to the first publication of a notice of a foreclosure sale of a deed of trust, mortgage or other lien securing the payment of money or other thing of value on an owner-occupied residence pursuant to § 35-5-101, the lender, trustee or other creditor shall send, or arrange to have sent, to the debtor a notice of the right to foreclose. The lender, a servicer, an agent of the lender or servicer, or, at the discretion of the lender, the trustee may send such notice.

(b) The notice of the right to foreclose shall be sent not less than sixty (60) days prior to the first publication required by § 35-5-101.

(c) The notice of the right to foreclose shall be sent to the last known mailing address of:

(1) The principal debtor; and

(2) Any co-debtor or guarantor, but only if the address of the co-debtor or guarantor is different from the address of the principal debtor.

(d) The notice of the right to foreclose shall be sent by regular mail. The notice of the right to foreclose shall be effective upon deposit with the United States postal service and shall be effective for any foreclosure sale initiated by publication pursuant to § 35-5-101, after sixty (60) days and within twelve (12) months of sending such notice of the right to foreclose pursuant to this subsection (d).

(e) The notice of the right to foreclose shall be sent in a separate mailing.

(f)(1) The notice of the right to foreclose shall contain sufficient information to permit the debtor to contact the lender, servicer or creditor and federal government officials responsible for any existing loan modification program to discuss the account and the options that may be available to the debtor.

(2) The lender, servicer or creditor shall include in the notice of the right to foreclose the Internet web site address of the department of housing and urban development and may include the Internet web site address of any other governmental agency that is operating existing loan modification programs, of which the lender, servicer or creditor is aware.

(3) The lender, servicer or creditor shall provide such information about persons authorized by the lender, servicer or creditor to assist debtors in applying for such loan modification programs.

(4) The notice shall include content in a form similar to the following; provided, however, that the lender, servicer or creditor may delete all references in the notice to federal loan modification programs if no such programs are in existence or the loan would not qualify for any such programs at the time the notice the of right to foreclose is mailed to the debtor:

## NOTICE OF THE RIGHT TO FORECLOSE

Date of Notice: \_\_\_\_\_

The holder of the mortgage, deed of trust or other lien on your property has the right to begin the process of foreclosing on the debt and may sell your property at public auction to satisfy the debt at any time after sixty (60) days from the date of this notice of the right to foreclose for a period of twelve (12) months without sending you another notice of right to foreclose.

You should IMMEDIATELY contact the lender, servicer or creditor listed below to discuss repayment options for which you may qualify, or if none are available, foreclosure alternatives such as short sale or deed in lieu of foreclosure. Failure to satisfy your payment obligations may result in loss of your home.

Debt counseling may be available in your area. You can determine if debt counseling is available in your area and locate an approved counselor at the U.S. Department of Housing and Urban Development (HUD) web site at [www.HUD.gov](http://www.HUD.gov).

You may also be eligible for certain Federal loan modifications programs. You should review your options under these programs immediately at the Department of Housing and Urban Development web site ([www.HUD.gov](http://www.HUD.gov)) and or at other applicable websites, and consult your lender. If you wish to participate in one of these programs, you must make timely application as required by the program. You should notify the lender, servicer or creditor of your interest in participating in one of these programs.

**YOU MUST ACT IMMEDIATELY IF YOU WISH TO TRY TO SAVE YOUR HOME**

Name of creditor: \_\_\_\_\_

Address of creditor: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Web site and e-mail address: \_\_\_\_\_  
\_\_\_\_\_Contact person: \_\_\_\_\_  
\_\_\_\_\_Government Loan Modification Program Web site and contact information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(g) For purposes of this section, "owner-occupied residence" means a one to four (1-4) family residence purchased and occupied as the principal residence of the debtor.

(h) The provisions of this section shall not apply to any:

- (1) Judicial sale ordered or conducted by any court;
- (2) Sale conducted by a trustee in bankruptcy;
- (3) Sale conducted after a bankruptcy petition is filed and the automatic stay has been lifted by the bankruptcy court; or
- (4) Sale conducted if the borrower has obtained a prior loan modification or refinance before July 1, 2010.

(i) The giving of the notice of the right to foreclosure shall be set forth in any notice of foreclosure and recited in any deed memorializing the sale and shall be conclusory on third parties without notice of any actual defect in the notice.

(j) If the trustee determines at the time of the sale that the notice of the right to foreclose was not sent to the debtor as required by subsection (a), the debtor may, in writing, request and consent to the postponement of the sale for not less than thirty (30) days nor more than sixty (60) days. Upon the receipt of the written request and consent of the debtor, the trustee shall postpone the sale. During any period of agreed postponement of the sale, no additional notice of sale or republication of notice of sale under § 35-5-101, shall be required.

[Acts 2010, ch. 834, § 1.]

**TITLE 46**  
**CEMETERIES**

**CHAPTER 1**

**REGULATION OF CEMETERIES**

PART 1—General Provisions

SECTION.

46-1-105. Cemetery consumer protection account.

PART 1—GENERAL PROVISIONS

**46-1-105. Cemetery consumer protection account.** — (a) There is established within the state general fund a cemetery consumer protection account. All funds received by the commissioner under this section shall be deposited into the account and held solely for the purposes of this section.

(b) Moneys within the account shall be invested by the state treasurer in accordance with the provisions of § 9-4-603 for the sole benefit of the account.

(c) No renewal cemetery registration shall be issued unless the applicant pays, in addition to the renewal fee, a consumer protection fee of twenty dollars (\$20.00) for every pre-need sales contract entered into during the preceding renewal period.

(d) One half ( $\frac{1}{2}$ ) of the funds received pursuant to this section shall be used to fund the cemetery registration program, and one half ( $\frac{1}{2}$ ) of the funds received pursuant to this section shall be used to fund any receivership action initiated by the commissioner against a cemetery due to a deficiency in the cemetery's improvement care or pre-need merchandise and services trust fund. [Acts 2006, ch. 1012, § 2.]

**TITLE 47**  
**COMMERCIAL INSTRUMENTS AND TRANSACTIONS**  
**CHAPTER 10**  
**UNIFORM ELECTRONIC TRANSACTIONS**

SECTION.	SECTION.
47-10-101. Short title.	47-10-114. Automated transaction.
47-10-102. Definitions.	47-10-115. Time and place of sending and receipt.
47-10-103. Scope.	47-10-116. Transferable records.
47-10-104. [Repealed.]	47-10-117. Creation and retention of electronic records and conversion of written records by governmental agencies.
47-10-105. Use of electronic records and electronic signatures — Variation by agreement.	47-10-118. Acceptance and distribution of electronic records by governmental agencies.
47-10-106. Construction and application.	47-10-119. Filing of pre-implementation statement and post-implementation review.
47-10-107. Legal recognition of electronic records, electronic signatures, and electronic contracts.	47-10-120. Interoperability.
47-10-108. Provision of information in writing — Presentation of records.	47-10-121. Severability clause.
47-10-109. Attribution and effect of electronic record and electronic signature.	47-10-122. Relationship to the federal E-Sign Act.
47-10-110. Effect of change or error.	47-10-123. Relevancy and construction of official commentary.
47-10-111. Notarization and acknowledgment.	
47-10-112. Retention of electronic records — Originals.	
47-10-113. Admissibility in evidence.	

**47-10-101. Short title.** — This chapter may be cited as the “Uniform Electronic Transactions Act.” [Acts 2001, ch. 72, § 1.]

**47-10-102. Definitions** — In this chapter:

(1) “Agreement” means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) “Automated transaction” means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course of forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) “Computer program” means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) “Contract” means the total legal obligation resulting from the parties’ agreement as affected by this chapter and other applicable law.

(5) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) “Electronic agent” means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action

by an individual.

(7) “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) “Governmental agency” means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government, the state, a county, municipality, or other political subdivision of a state.

(10) “Information” means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(16) “Transaction” means an action or set of actions occurring between two (2) or more persons relating to the conduct of business, commercial, or governmental affairs. [Acts 2001, ch. 72, § 2.]

**47-10-103. Scope.** — (a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) Title 47, chapters 1-9, excepting §§ 47-1-107, 47-1-206, and titles 47, chapters 2 and 2A.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) to the extent it is governed by a law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law. [Acts 2001, ch. 72, § 3.]

#### **47-10-104. [Repealed.]**

**Compiler's Notes.** Former § 47-10-104 repealed by Acts 2008, ch. 814, § 1, effective (Acts 2001, ch. 72, § 4), concerning the prospective application of title 47, chapter 10 was July 1, 2008.

**47-10-105. Use of electronic records and electronic signatures — Variation by agreement.** — (a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law. [Acts 2001, ch. 72, § 5.]

**47-10-106. Construction and application.** — This chapter must be construed and applied to:

- (1) Facilitate electronic transactions consistent with other applicable law;
- (2) Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) Effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [Acts 2001, ch. 72, § 6.]

**47-10-107. Legal recognition of electronic records, electronic signatures, and electronic contracts.** — (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law. [Acts 2001, ch. 72, § 7.]

**47-10-108. Provision of information in writing — Presentation of records.** — (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law;

(2) Except as otherwise provided in subsection (d)(2), the record must be sent, communicated, or transmitted by the method specified in the other law; and

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this chapter to send, communicate, or transmit a record by first class mail, postage prepaid or by regular United States mail, may be varied by agreement to the extent permitted by the other law. [Acts 2001, ch. 72, § 8.]

**47-10-109. Attribution and effect of electronic record and electronic signature.** — (a) An electronic record or electronic signature is attributable to a person as if it were the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to whom the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law. [Acts 2001, ch. 72, § 9.]

**47-10-110. Effect of change or error.** — If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record;

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person;

(3) If neither paragraph (1) nor paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and

(4) Paragraphs (2) and (3) may not be varied by agreement. [Acts 2001, ch. 72, § 10.]

**47-10-111. Notarization and acknowledgment.** — If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record. [Acts 2001, ch. 72, § 11.]

**47-10-112. Retention of electronic records — Originals.** — (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 1, 2001, specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction. [Acts 2001, ch. 72, § 12.]

**47-10-113. Admissibility in evidence.** — In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form. [Acts 2001, ch. 72, § 13.]

**47-10-114. Automated transaction.** — In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance; and

(3) The terms of the contract are determined by the substantive law applicable to it. [Acts 2001, ch. 72, § 14.]

**47-10-115. Time and place of sending and receipt.** — (a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one (1) place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement. [Acts 2001, ch. 72, § 15.]

**47-10-116. Transferable records.** — (a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under title 47, chapter 3, or a document under title 47, chapter 7, if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed that it is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to whom the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in § 47-1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under title 47, chapters 1-9, including, if the applicable statutory requirements under § 47-3-302(a), § 47-7-501, or § 47-9-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under title 47, chapters 1-9.

(f) If requested by a person against whom enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record. [Acts 2001, ch. 72, § 16.]

**47-10-117. Creation and retention of electronic records and conversion of written records by governmental agencies.** — (a) Except as may otherwise be specifically required or prohibited by applicable law, the information systems council established under § 4-3-5501, shall determine whether, and the extent to which, this state or any of its departments or agencies will create and retain electronic records and convert written records to electronic records.

(b) Except as may otherwise be specifically required or prohibited by applicable law, and subject to the provisions of § 47-10-120, all local governmental public officials, including but not limited to officials of counties, municipalities, utility districts, other local governmental entities and those offices enumerated under § 8-22-101, shall themselves determine whether, and the extent to which, they will create and retain electronic records and convert written records to electronic records.

(c) In addition to any requirements established by this chapter, any governmental agency creating and retaining records in electronic format shall do so in accordance with the standards and limitations established in § 10-7-121. Likewise, any county official providing computer access and remote electronic access to governmental records shall do so in accordance with the standards and limitations for such practice established in § 10-7-123. Nothing in this chapter shall be construed as relieving a county official from complying with

the provisions of title 10, chapter 7, part 4, regarding the retention of county public records, specifically the provisions of § 10-7-404(d), which requires approval of the county public records commission prior to the destruction of original documents which have been transferred to computer storage media. [Acts 2001, ch. 72, § 17.]

**47-10-118. Acceptance and distribution of electronic records by governmental agencies.** — (a) Except as may otherwise be specifically required or prohibited by applicable law, and except as otherwise provided in § 47-10-112(f):

(1) The information systems council established under § 4-3-5501, shall further determine whether, and the extent to which, this state or any of its agencies and departments will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures; and

(2) Subject to the provisions of § 47-10-120, any local governmental public official, including but not limited to officials of counties, municipalities, utility districts, other local governmental entities and those offices enumerated under § 8-22-101, making determinations under § 47-10-117(b), shall each themselves further determine whether, and the extent to which, they will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that any governmental agency uses electronic records or electronic signatures under subsection (a), the information systems council established under § 4-3-5501, giving due consideration to security, may so specify as set forth below:

(1) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identify of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) Any other required attributes for electronic records which are specified for corresponding non-electronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in § 47-10-112(f), this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures. [Acts 2001, ch. 72, § 18.]

**47-10-119. Filing of pre-implementation statement and post-implementation review.** — (a) Any local governmental public official including, but not limited to, officials of counties, municipalities, utility districts, other local governmental entities and those offices enumerated under § 8-22-101, implementing an electronic business system that provides for the sending and receiving of electronic records that contain electronic signatures and/or authorizations shall file a statement with the comptroller of the treasury at least thirty (30) days prior to offering such service. The statement shall contain the following information:

- (1) A description of the computer hardware and software to be utilized;
- (2) A description of the policies and procedures related to the implementation of the system;
- (3) Documentation of the internal controls that will ensure the integrity of the system;
- (4) A description of the local governmental public official's personnel who will be responsible for the implementation of the system;
- (5) A description of the types of records and transactions to be electronically communicated, as well as a description of the transaction and/or record authorization process including a description of any electronic signatures to be used;
- (6) The estimated cost of the system including development and implementation costs; and
- (7) The expected benefits and/or the estimated cost savings, if any, of conducting business by electronic means.

(b) A local governmental public official who implements an electronic business system shall provide to the comptroller of the treasury a post-implementation review of the system between twelve (12) and eighteen (18) months after the date a statement described in this section has been filed with the comptroller. The review shall include:

- (1) An assessment of the system by the local governmental public official;
- (2) Responses from a survey of users of the system; and
- (3) Any recommendations for improvements to the electronic business system. [Acts 2001, ch. 72, § 19.]

**47-10-120. Interoperability.** — The information systems council may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states, and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application. Any deviation from the standards established by the information systems council by a local governmental public official, including, but not limited to, officials of counties, municipalities, utility districts, other local governmental entities and those offices enumerated under § 8-22-101, shall be subject to the approval of the comptroller of the treasury. [Acts 2001, ch. 72, § 20.]

**47-10-121. Severability clause.** — If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Acts 2001, ch. 72, § 21.]

**47-10-122. Relationship to the federal E-Sign Act.** — (a) Except as provided in subsection (b), this chapter is intended to supercede, to the fullest possible extent, the provision of § 101 of the Electronic Signatures in Global and National Commerce Act, United States Public Law 106-229, as permitted under § 102 of that act.

(b) No provision of the Electronic Transaction Act, compiled in this chapter, shall be construed to limit, modify or supercede the requirements of § 101(c), (d) or (e), which are compiled in 15 U.S.C. § 7001, or to authorize the electronic delivery of any notice of the type described in § 103(b), which is compiled in 15 U.S.C. § 7003 of the Electronic Signatures in Global and National Commerce Act. [Acts 2001, ch. 72, § 22; 2003, ch. 107, § 1.]

**47-10-123. Relevancy and construction of official commentary.** — In any dispute as to the proper construction of one (1) or more sections of the Uniform Electronic Transactions Act, the official comments pertaining to the corresponding sections of the official text, as adopted by the National Conference of Commissioners on Uniform State Laws, and as in effect on July 1, 2001, shall constitute evidence of the purposes and policies underlying such sections unless:

(1) The sections of this chapter that are applicable to the dispute differ materially from the sections of the official text that would be applicable thereto; or,

(2) The official comments are inconsistent with the plain meaning of the applicable sections of this chapter. [Acts 2001, ch. 72, § 23(e).]

## CHAPTER 18

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### PART 1—CONSUMER PROTECTION ACT OF 1977

**47-18-101. Short title.** — This part shall be known and may be cited as the “Tennessee Consumer Protection Act of 1977.” [Acts 1977, ch. 438, § 1.]

**47-18-102. Purposes.** — The provisions of this part shall be liberally construed to promote the following policies:

(1) To simplify, clarify, and modernize state law governing the protection of the consuming public and to conform these laws with existing consumer protection policies;

(2) To protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade

or commerce in part or wholly within this state;

(3) To encourage and promote the development of fair consumer practices;

(4) To declare and to provide for civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state; and

(5) To promote statewide consumer education. [Acts 1977, ch. 438, § 2.]

**47-18-103. Part definitions** — As used in this part, unless the context otherwise requires:

(1) “Bait and switch” or “switch” means advertising items to lure consumers, then inducing the consumers to buy different and more expensive items by failing to make available the goods or services advertised, or by disparaging the less expensive product. Provision of accurate factual information shall not be considered disparagement;

(2) “Consumer” means any natural person who seeks or acquires by purchase, rent, lease, assignment, award by chance, or other disposition, any goods, services, or property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated or any person who purchases or to whom is offered for sale a franchise or distributorship agreement or any similar type of business opportunity;

(3) “Contract for home improvement services” means a contractual agreement, written or oral, between a person performing home improvement services and a residential owner, and includes all labor, services and materials to be furnished and performed under such agreement;

(4) “Covered file-sharing program” means a computer program, application, or software that enables the computer on which such program, application, or software is installed to designate files as available for searching by and copying to one (1) or more other computers, to transmit such designated files directly to one (1) or more other computers, and to request the transmission of such designated files directly from one (1) or more other computers. “Covered file-sharing program” does not mean a program, application, or software designed primarily to operate as a server that is accessible over the Internet using the Internet domain name system, to transmit or receive email messages, instant messaging, real-time audio or video communications, or real-time voice communications, or to provide network or computer security, network management, hosting and backup services, maintenance, diagnostics, technical support or repair, or to detect or prevent fraudulent activities;

(5) “Division” means the division of consumer affairs in the department of commerce and insurance;

(6) “Documentary material” means the original or copy of any book, record, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated;

(7) “Goods” means any tangible chattels leased, bought, or otherwise obtained for use by an individual primarily for personal, family, or household purposes or a franchise, distributorship agreement, or similar business opportunity;

(8) “Home improvement services” means the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to any residential property, and includes but is not limited to, the repair, replacement, remodeling, alteration, conversion, modernization, improvement, or addition to driveways, swimming pools, porches, garages, landscaping, fences, fall-out shelters, and roofing;

(9) “Home improvement services provider” means any person or entity, whether or not licensed pursuant to title 62, chapter 6, who undertakes to, attempts to, or submits a price or bid or offers to construct, supervise, superintend, oversee, schedule, direct, or in any manner assume charge of the home improvement service for a fee. “Home improvement services provider” specifically includes but is not limited to a “residential contractor” as defined in § 62-6-102 when performing home improvement services and a “home improvement contractor” as defined in § 62-6-501;

(10) “Knowingly” or “knowing” means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a reasonable person would have known or would have had reason to know of the falsity or deception;

(11) “Local telephone directory” means a telephone directory that is distributed by a telephone company or directory publisher, or provided as a service to subscribers located in the local exchanges contained in the directory. “Local telephone directory” includes:

(A) A classified advertising directory, commonly referred to as the yellow pages;

(B) A directory of individual telephone listings, commonly referred to as the white pages, whether identified as “business listings” or combined in listings of residences and businesses in a directory that does not have separate residence and business listings;

(C) A directory that includes listings of more than one (1) telephone company; or

(D) A directory assistance database or similar service, commonly used by dialing “411” and speaking with a live person or through an automated system;

(12) “Local telephone number” means a telephone number that has the three (3) number prefix used by the provider of telephone service for telephones physically located within the area covered by the local telephone directory in which the number is listed. “Local telephone number” does not include long distance numbers or 800, 888, or 900 exchange numbers listed in a local telephone directory;

(13) “Person” means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(14) “Physical address” means the mailing address, including a zip code, which details the actual location of a person or entity, but does not include a post office box;

(15) “Possession” means actual care, custody, control, or management of residential property, but shall not include occupancy of residential property through a lease or rental agreement;

(16) “Residential owner” means a person who has possession of residential real property, including any person authorized by such residential owner to act on the residential owner’s behalf;

(17) “Residential property” means the building structure where a person abides, lodges, resides or establishes a living accommodation or where a residential owner intends to abide, lodge, reside or establish a living accommodation following the completion of home improvement services made pursuant to a contract for home improvement services and includes the land on or adjacent to such building structure;

(18) “Services” means any work, labor, or services including services furnished in connection with the sale or repair of goods or real property or improvements thereto; and

(19) “Trade,” “commerce,” or “consumer transaction” means the advertising, offering for sale, lease or rental, or distribution of any goods, services, or property, tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated; [Acts 1977, ch. 438, § 3; 1986, ch. 860, § 1; 1988, ch. 974, § 1; 1999, ch. 473, § 1; 2008, ch. 873, § 1; 2010, ch. 779, § 1; 2010, ch. 1055, § 2.]

**47-18-104. Unfair or deceptive acts prohibited.** — (a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practices and are Class B misdemeanors.

(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(1) Falsely passing off goods or services as those of another;

(2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services. This subdivision (b)(2) does not prohibit the private labeling of goods and services;

(3) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another. This subdivision (b)(3) does not prohibit the private labeling of goods or services;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;

(6) Representing that goods are original or new if they are deteriorated, altered to the point of decreasing the value, reconditioned, reclaimed, used or secondhand;

(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(8) Disparaging the goods, services or business of another by false or misleading representations of fact;

(9) Advertising goods or services with intent not to sell them as advertised;

(10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of

quantity;

(11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

(13) Representing that a service, replacement or repair is needed when it is not;

(14) Causing confusion or misunderstanding with respect to the authority of a salesperson, representative or agent to negotiate the final terms of a consumer transaction;

(15) Failing to disclose that a charge for the servicing of any goods in whole or in part is based on a predetermined rate or charge, or guarantee or warranty, instead of the value of the services actually performed;

(16) Disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge, except as provided for in § 39-14-132(b);

(17) Advertising of any sale by falsely representing that a person is going out of business;

(18) Using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase goods or services and, in connection with the purchase, receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if the receipt of compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve; provided, that nothing in this subdivision (b)(19) shall be construed to alter the implied warranty of merchantability as defined in § 47-2-314;

(20) Selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a pyramid distributorship. As used in this subdivision (b)(20), a "pyramid distributorship" means any sales plan or operation for the sale or distribution of goods, services or other property wherein a person for a consideration acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services or other property sold or delivered to consumers, and is based upon the inducement of additional persons, by such person or others, regardless of number, to participate in the same plan or operation;

(21) Using statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value, age, size, color, usability or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods or services to other goods or services;

(22) Using any advertisement containing an offer to sell goods or services when the offer is not a bona fide effort to sell the advertised goods or services. An offer is not bona fide, even though the true facts are subsequently made known to the buyer, if the first contact or interview is secured by deception;

(23) Representing in any advertisement a false impression that the offer of goods has been occasioned by a financial or natural catastrophe when such is not true, or misrepresenting the former price, savings, quality or ownership of any goods sold;

(24) Assessing a penalty for the prepayment or early payment of a fee or charge for services by a utility or company which has been issued a franchise license by a municipal governing body to provide services. Nothing in this subdivision (b)(24) shall be construed to prohibit a discount from being offered for early payment of the applicable fee or charge for services. This subdivision (b)(24) does not apply to a utility or company whose billing statement reflects charges both for service previously rendered and in advance of services provided;

(25) Discriminating against any disabled individual, as defined by §§ 47-18-802(b) and 55-21-102(3), in violation of the Tennessee Equal Consumer Credit Act of 1974, compiled in part 8 of this chapter. This subdivision (b)(25) does not apply to any creditor or credit card issuer regulated by the department of financial institutions. The division shall refer any complaint against such a creditor or credit card issuer involving the Equal Consumer Credit Act to such department for investigation and disposition;

(26) Violating the provisions of § 65-5-106;

(27) Engaging in any other act or practice which is deceptive to the consumer or to any other person;

(28)(A)(i) Failing of a motor vehicle repair facility to return to a customer any parts which were removed from the motor vehicle and replaced during the process of repair if the customer, at the time repair work was authorized, requested return of such parts; provided, that any part retained by the motor vehicle repair facility as part of a trade-in agreement or core charge agreement for a reconditioned part need not be returned to the customer unless the customer agrees to pay the facility the additional core charge or other trade-in fee; and provided further, that any part required to be returned to a manufacturer or distributor under a warranty agreement or any part required by any federal or state statute or rule or regulation to be disposed of by the facility need not be returned to the customer; or

(ii) Failing of a motor vehicle repair facility to permit inspection of any parts retained by the repair facility if the customer, at the time repair work was authorized, expressed the customer's desire to inspect such parts; provided, that if, after inspection, the customer requests return of such parts, the restrictions set forth in subdivision (b)(28)(A)(i) shall apply;

(B)(i) Failing of a motor vehicle repair facility to post in a prominent location notice of the provisions of this subdivision (b)(28); or

(ii) Failing of a motor vehicle repair facility to print on the repair contract notice of the provisions of this subdivision (b)(28);

(C) The motor vehicle repair facility need not retain any parts not returned to the customer after the motor vehicle has been returned to the

customer;

(29) Advertising that a business is “going out of business” more than ninety (90) days before such business ceases to operate;

(30) Failing to comply with §§ 6-55-401 — 6-55-413, where a municipality has adopted the regulations of liquidation sales pursuant to § 6-55-413;

(31) Offering lottery winnings in exchange for making a purchase or incurring a monetary obligation pursuant to § 47-18-120;

(32)(A) The act of misrepresenting the geographic location of a person through a business name or listing in a local telephone directory or on the Internet is an unfair or deceptive act or practice affecting the conduct of trade or commerce, if:

(i) The name misrepresents the person’s geographic location; or

(ii) The listing fails to clearly and conspicuously identify the locality and state of the person’s business;

(iii) Calls to the listed telephone number are routinely forwarded or otherwise transferred to a person’s business location that is outside the calling area covered by the local telephone directory, or that is outside the local calling area for the telephone number that is listed on the Internet;

(iv) The person’s business location is located in a county that is not contiguous to a county in the calling area covered by the local telephone directory, or is located in a county that is not contiguous to a county in the local calling area for the telephone number that is listed on the Internet; and

(v) The person does not have a business location or branch, or an affiliate or subsidiary of the person does not have a business location or branch, in the calling area or county contiguous to the local calling area.

(B) This subdivision (b)(32) shall not apply:

(i) To a telecommunications service provider, an Internet service provider, or to the publisher or distributor of a local telephone directory unless the act is on behalf of the Internet or telecommunications service provider or on behalf of the publisher or distributor of the local telephone directory; or

(ii) To the act of listing a number for a call center. For purposes of this subdivision (b)(32)(B)(ii), “call center” means a location that utilizes telecommunication services for activities related to an existing customer relationship, including, but not limited to, customer services, reactivating dormant accounts or receiving reservations.

(C) Notwithstanding any other law to the contrary, and without limiting the scope of § 47-18-104, a violation of this subdivision (b)(32) shall be punishable by a nonremedial civil penalty of a minimum of one thousand dollars (\$1,000) to a maximum of five thousand dollars (\$5,000) per violation. Civil penalties assessed under this subdivision (b)(32) are separate and apart from the remedial civil penalties authorized in § 47-18-108(b)(3).

(D) This subdivision (b)(32) applies only to information supplied to a telephone directory published after July 1, 2008, information that is published on the Internet after July 1, 2008, or to information supplied for entry into a directory assistance database after July 1, 2008;

(33) Advertising that a person is an electrician for hire when such person has not been licensed by a local jurisdiction to perform electrical work within such jurisdiction or by the state as a limited licensed electrician or contractor, as appropriate or, if no such licenses are then available, such person is not

registered with the state;

(34) Unreasonably raising prices or unreasonably restricting supplies of essential goods, commodities or services in direct response to a crime, act of terrorism, war, or natural disaster, regardless of whether such crime, act of terrorism, war, or natural disaster occurred in the state of Tennessee;

(35) Representing that a person is a licensed contractor when such person has not been licensed as required by § 62-6-103 or § 62-37-104; or, acting in the capacity of a “contractor” as defined in §§ 62-6-102(4)(A), 62-6-102(7) or 62-37-103(5), and related rules and regulations of the state of Tennessee, or any similar statutes, rules and regulations of another state, while not licensed;

(36)(A) Using any advertisement for a workshop, seminar, conference, or other meeting that contains a reference to a living trust or a revocable living trust, or that otherwise offers advice or counsel on estate taxation unless such advertisement also includes the information required in this subdivision (b)(36);

(B) An advertisement as provided in this subdivision (b)(36) shall, at a minimum, include the following:

(i) The maximum exclusion for federal estate tax purposes and the maximum exemption for state inheritance tax purposes for the year in which the advertisement appears;

(ii) Includes a statement that certain property, including real property, insurance proceeds, deposit accounts, stocks and retirement fund, may be taxable or not taxable, depending on how legal title is held or beneficiary designation is made, or both;

(iii) Includes a statement that certain property may be transferred through several different means including, but not limited to, joint ownership of property with rights of survivorship, joint deposit accounts, beneficiary designations or elections permitted under retirement plans, insurance policies, trusts, or wills; and

(iv) A statement that before creating any transfer through a living trust, revocable living trust, or otherwise, the individual should seek advice from an attorney, accountant or other tax professional to determine the true tax impact and ensure that assets are properly transferred into any trust;

(C) The disclosure required in this subdivision (b)(36) shall be printed in not less than 10-point type;

(D) The provisions of this subdivision (b)(36) shall not apply to an advertisement by any attorney, law firm, bank, savings institution, trust company, or registered securities broker-dealer which is directed to clients or customers of such person with whom such person has had a client or customer relationship within the prior two (2) years. The provisions of this subdivision (b)(36) shall also not apply to any continuing education seminars or conferences conducted for the benefit of bankers, attorneys, accountants, or other professional financial advisors;

(37) Refusing to accept the return of clothing or accessories sold at retail directly to a purchaser, who seeks to return the same for any reason for refund or credit; provided, that:

(A) The purchaser presents the clothing or accessories within the retailer’s prescribed period for return of merchandise;

(B) The purchaser presents satisfactory proof of purchase;

(C) The merchandise is, in no way, damaged and exhibits no sign of wear or cleaning;

(D) All tags and stickers affixed or attached to the merchandise at the time of sale remain affixed or attached at the time of return; and

(E) The sale of the merchandise was not marked, advertised or otherwise characterized as “final”, “no return”, “no refunds”, or in any manner reasonably indicating that the merchandise would not be accepted for return;

(38)(A) Requiring the purchaser to present that purchaser’s driver license as a prerequisite for accepting the return of clothing or accessories for refund or credit, notwithstanding compliance with the conditions set forth in subdivision (b)(37), unless such a requirement is for the purpose of preventing fraud and abuse;

(B) Notwithstanding any provision of subdivision (b)(37) or (b)(38)(A) to the contrary, return denials are permitted for the purpose of preventing fraud and abuse;

(39) [Deleted by 2009 amendment.]

(40) Representing that a person, or such person’s agent, authorized designee or delegee for hire, has conducted a foreclosure on real property, when such person knew or should have known that a foreclosure was not actually conducted on the real property;

(41)(A) Selling or offering to sell a secondhand mattress in this state or importing secondhand mattresses into this state for the purpose of resale in violation of § 68-15-203(b), or offering a comfort exchange policy to a mattress buyer pursuant to the sale of the mattress in violation of title 68, chapter 15, part 2;

(B) Subdivision (b)(41)(A) shall apply to a mattress manufacturer, wholesaler or retailer. Subdivision (b)(41)(A) shall not apply to an institution or organization that has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(3), and as described in § 67-6-348. The exemption provided in this subdivision (b)(41)(B) shall be limited to institutions or organizations that are not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(42)(A) Knowingly advertising or marketing for sale a newly constructed residence as having more bedrooms than are permitted by the newly constructed residence’s subsurface sewage disposal system permit, as defined in § 68-221-402, unless prior to the execution of any sales agreement the permitted number of bedrooms is disclosed in writing to the buyer. The real estate licensee representing the owner may rely upon information furnished by the owner;

(B) If a newly constructed residence is marketed for sale as having more bedrooms than are permitted by the subsurface sewage disposal system permit and no disclosure of the actual number of bedrooms permitted occurs prior to the execution of a sales agreement, then the buyer shall have the right to rescind the sales agreement and may recover treble damages as provided in § 47-18-109;

(C) A subsurface sewage disposal system permit issued in the name of the owner of a newly constructed residence shall serve as constructive notice to that owner of the newly constructed residence for the purpose of establishing knowledge as to the number of bedrooms of the newly constructed residence for the purpose of finding a violation of this subdivision (b)(42). A real estate licensee representing the owner must have actual knowledge transmitted from the owner to the real estate licensee to be in violation of this subdivision (b)(42);

(43) Offering, through the mail or by other means, a check that contains an obligation to advertise with a person upon the endorsement of the check. The obligation is effective upon the check being signed and deposited into the consumer's bank account;

(44) The act or practice of directly or indirectly:

(A) Making representations that a person will pay or reimburse for a motor vehicle traffic citation for any person who purchases a device or mechanism, passive or active, that can detect or interfere with a radar, laser or other device used to measure the speed of motor vehicles;

(B) Advertising, promoting, selling or offering for sale any radar jamming device that includes any active or passive device, instrument, mechanism, or equipment that interferes with, disrupts, or scrambles the radar or laser that is used by law enforcement agencies and officers to measure the speed of motor vehicles; or

(C) Advertising, promoting, selling or offering for sale any good or service that is illegal or unlawful to sell in the state;

(45) Violating § 47-18-5402;

(46)(A) Installing, offering to install, or making available for installation, reinstallation or update a covered file-sharing program onto a computer without being an authorized user of that computer or without first providing clear and conspicuous notice to the authorized user of the computer that the files on that computer will be made available to the public, obtaining consent of the authorized user to installation of the program, and requiring affirmative steps by the authorized user to activate any feature on the program that will make files on that computer available to the public; or

(B) Preventing reasonable efforts to disable or remove, or to block the installation or execution of, a covered file-sharing program on a computer;

(47)(A) The act or practice of directly or indirectly advertising, promoting, selling, or offering for sale international driver's licenses. It is a per se violation of this subdivision (b)(47) to:

(i) Misrepresent that any international driver's license sold or offered for sale confers a privilege to operate a motor vehicle on the streets and highways in this state; or

(ii) Represent that any international driver's license sold or offered for sale is of a particular standard, quality or grade;

(B) For purposes of this subdivision (b)(47), unless the context otherwise requires:

(i) "International driver's license" means a document that purports to confer a privilege to operate a motor vehicle on the streets and highways in this state and is not issued by a governmental entity. Such document may be

an imitation of an international driving permit; and

(ii) "International driving permit" means the document issued by a duly authorized automobile association to a holder of a valid driver license which grants such holder the privilege to operate a motor vehicle in countries or international bodies that are signatory parties to article 24 of the 1949 United Nations Convention on Road Traffic, pursuant to 3 U.S.T. § 3008;

(C) Notwithstanding any other law to the contrary, and without limiting the scope of this section, a violation of this subdivision (b)(47) shall be punishable by a non-remedial civil penalty of a minimum of one thousand dollars (\$1,000) to a maximum of three thousand dollars (\$3,000) per violation. Civil penalties assessed under this subdivision (b)(47) are separate and apart from the remedial civil penalties authorized in § 47-18-108(b)(3); and

(48) A home improvement services provider entering into a contract for home improvement services without providing to the residential owner in written form:

(A) That it is a criminal offense for the person entering into the contract for home improvement services with a residential owner to do any of the prohibited acts set out in § 39-14-154(b), by writing out the text of each prohibited act, and provide the penalty and available relief for such; or

(B) The true and correct name, physical address and telephone number of the home improvement services provider.

(c) The following are among the acts or practices which will be considered in determining if an offer to sell goods or services is not bona fide:

(1) Refusal to reasonably show, demonstrate or sell the goods or services offered in accordance with the terms of the offer;

(2) Disparagement by acts or words of the advertised goods or services or disparagement with respect to the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with the advertised goods or services;

(3) Failure to make available at all outlets listed in the advertisement a sufficient quantity of the advertised goods or services to meet reasonably expectable public demand, unless the advertisement clearly and conspicuously discloses that the availability of a particular good is limited and/or the goods or services are available only at designated outlets, or unless the advertisement discloses that a particular good is to be closed out or offered for a limited time. In the event of an inadequate inventory, issuing of "rain checks" for goods or offering comparable or better goods at the sale price may be considered a good faith effort to make the advertised goods available, unless there is a pattern of inadequate inventory or unless the inadequate inventory was intentional. If rain checks are offered, the goods must be delivered within a reasonable time;

(4) Refusal to take orders or give rain checks for the advertised goods or services, when the advertisement does not disclose their limited quantity or availability to be delivered within a reasonable period of time;

(5) Showing or demonstrating goods or services which are defective, unusable or impractical for the purpose represented or implied in the advertisement when such defective, unusable or impractical nature is not fairly and adequately disclosed in the advertisement; and

(6) Use of a sales plan or method of compensating or penalizing salespersons designed to prevent or discourage them from selling the advertised goods or services. This does not prohibit compensating salespersons by use of a commission.

(d) The fact that a seller occasionally sells the advertised goods or services at the advertised price does not constitute a defense when the seller's overall purpose is to engage in bait and switch tactics.

(e) Nothing in § 47-18-103(1) or subdivisions (b)(21)-(23) and subsections (c) and (d) shall prevent a seller from advertising goods and services with the hope that consumers will buy goods or services in addition to those advertised. [Acts 1977, ch. 438, § 4; 1986, ch. 860, §§ 2-4; 1988, ch. 974, § 2; 1989, ch. 498, §§ 1, 2; 1989, ch. 591, § 113; 1990, ch. 675, § 2; 1990, ch. 1030, § 33; 1990, ch. 1041, § 1; 1990, ch. 1050, §§ 1-4; 1991, ch. 264, § 1; 1991, ch. 507, § 2; 1992, ch. 803, § 1; 1992, ch. 890, § 1; 1993, ch. 180, § 1; 1993, ch. 402, § 1; 1997, ch. 234, § 2; 1998, ch. 627, § 3; 1999, ch. 473, § 2; 2000, ch. 643, § 1; 2002, ch. 849, § 8; 2004, ch. 492, § 1; 2004, ch. 637, § 1; 2005, ch. 134, § 1; 2005, ch. 199, § 1; 2005, ch. 272, § 1; 2006, ch. 628, § 1; 2006, ch. 671, § 1; 2006, ch. 746, § 1; 2007, ch. 35, § 1; 2007, ch. 78, § 1; 2007, ch. 121, § 1; 2007, ch. 503, § 1; 2008, ch. 873, § 2; 2009, ch. 198, § 2; 2009, ch. 469, § 2; 2010, ch. 779, § 2; 2010, ch. 918, § 1; 2010, ch. 1055, § 3.]

#### **47-18-105. [Repealed.]**

**Compiler's Notes.** Former § 47-18-105 advisory board, was repealed by Acts 1981, ch. (Acts 1977, ch. 438, § 6), creating the consumer 58, § 1.

**47-18-106. Investigations — Requests for information — Penalties for noncompliance.** — (a) Whenever the division has reason to believe that a person is engaging in, has engaged in, or, based upon information received from another law enforcement agency, is about to engage in any act or practice declared to be unlawful by this part, or has reason to believe it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in such act or practice, the division upon the approval of the attorney general and reporter or through the office of the attorney general and reporter may:

(1) Require the person to file a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and to furnish and make available for examination whatever documentary material and information are relevant to the subject matter of the investigation;

(2) Examine under oath any person in connection with the alleged violation; and

(3) Examine any merchandise or any sample of merchandise deemed relevant to the subject matter of the investigation.

(b) At any time prior to the return date specified in the division's request for information pursuant to subsection (a), or within ten (10) days following notice of such a request, whichever is shorter, any person from whom information has been requested may petition the circuit or chancery court of Davidson County, stating good cause, for a protective order to extend the return date for a

reasonable time, or to modify or set aside the request. The division shall receive at least one (1) day's notice of such a petition and shall be given an opportunity to respond.

(c) If no protective order from the court is secured and the written request by the division is not complied with by its return date, the division, upon notice to the person requested to provide information, may apply to a court of competent jurisdiction for an order compelling compliance with the request made pursuant to subsection (a).

(d) Any court of competent jurisdiction in this state, upon a showing by the division that there are reasonable grounds to believe that the provisions of this part are being, have been, or are about to be violated; that the persons who are committing, have committed, or are about to commit such acts or practices or who possess the relevant documentary material have left the state or are about to leave the state; and that such an order is necessary for the enforcement of this part, may order such persons to comply with the provisions of subsection (a) whether the division has made a prior request for information or not. The court may also, notwithstanding any provision to the contrary, immediately and without notice, forbid the removal from any place, concealment, withholding, destruction, mutilation, falsification, or alteration by any other means of any documentary material in the possession, custody, or control of any person believed by the division to be connected with acts or practices which violate this part.

(e) Any person who has received notice of a request for information pursuant to subsection (a), or of an order pursuant to subsection (c) or (d), and with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation or order under this part, removes from any place, conceals, withholds, destroys, mutilates, falsifies or by any other means alters any documentary material in the possession, custody, or control of any person subject to such notice, shall be subject to a civil penalty of not more than one thousand dollars (\$1,000), recoverable by the state in addition to any other appropriate sanction.

(f) Documentary material or merchandise requested pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person possessing such documentary material or merchandise, or at such other time and place as may be agreed upon by the possessor and the division.

(g) No documentary material, merchandise, or other information, including trade secrets, obtained pursuant to a request under this section, unless otherwise ordered by the court for good cause shown, shall be produced for inspection, copied by, or its contents disclosed to, any person other than an authorized representative of the division or other proper law enforcement official for the purpose of prosecution without the consent of the person who produced the material or information. The division may use copies of the documentary material produced in accordance with the provisions of this section and merchandise impounded under a court order as it determines necessary in the enforcement of this part, including the presentation before any court; provided, that none of the powers conferred upon the division by this part shall be used for the purpose of compelling any natural person to furnish

testimony or evidence which may be protected by such person's right against self-incrimination.

(h) In conducting an inquiry pursuant to this section, the division, whenever such aid is determined to be necessary and desirable, may request the aid of any agency of the state; and any agency, as requested, shall give full aid, support, and cooperation to the division in such investigation.

(i) Service of any notice, order, or request for information by the division may be made in compliance with the Tennessee Rules of Civil Procedure or by:

(1) Delivering a duly executed copy of the notice, order, or request for information to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) Mailing by registered or certified mail a duly executed copy of the notice, order, or request for information addressed to the person, to be served at the person's principal place of business in this state, or if the person has no place of business within this state, to the person's principal office, place of business, home, or last known address; or

(3) Personal service, pursuant to §§ 20-2-214 — 20-2-220. [Acts 1977, ch. 438, § 7.]

**47-18-107. Assurance of voluntary compliance — Penalty for violation.** — (a) In the administration of this part, the attorney general and reporter, at the request of the division, may negotiate and accept an assurance of voluntary compliance with respect to any act or practice considered to violate this part, from any person who allegedly is engaging in, has engaged in, or, based upon information received from another law enforcement agency, is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the circuit or chancery court of Davidson County.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person considered to be in violation of this part restore to any person in interest any money or property, real, personal, or mixed, which may have been acquired by means of acts or practices which are considered to violate this part.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this part. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of the assurance is prima facie evidence of a violation of this part.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened for cause by the division at any time.

(e) Assurance of voluntary compliance shall in no way affect individual rights of action which may exist independent of the recovery of money or property received pursuant to a stipulation in voluntary compliance under subsection (b).

(f) Any knowing violation of the terms of an agreement of voluntary compliance, unless it has been rescinded by agreement of the parties or voided by a court for good cause, shall be punishable by a civil penalty of not more

than one thousand dollars (\$1,000), recoverable by the state for each violation, in addition to any other appropriate sanction. [Acts 1977, ch. 438, § 8.]

**47-18-108. Restraining orders or injunctions — Penalty for violation.** — (a)(1) Whenever the division has reason to believe that any person has engaged in, is engaging in, or, based upon information received from another law enforcement agency, is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest, the attorney general and reporter, at the request of the division, may bring an action in the name of the state against such person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such act or practice.

(2) Unless the division determines in writing that the purposes of this part will be substantially impaired by delay in instituting legal proceedings, it shall, at least ten (10) days before instituting legal proceedings as provided for in this section, give notice to the person against whom proceedings are contemplated and give such person an opportunity to present reasons why such proceedings should not be instituted.

(3) The action may be brought in a court of competent jurisdiction in the county where the alleged unfair or deceptive act or practice took place or is about to take place or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(4) The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part, and such orders and injunctions shall be issued without bond.

(5) Whenever any permanent injunction is issued by a court in connection with any action which has become final, reasonable costs shall be awarded to the state.

(b)(1) The court may make such orders or render such judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act, or practice, any money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, which may have been acquired by means of any act or practice declared to be unlawful by this part.

(2) The court may also enter an order temporarily or permanently revoking a license or certificate authorizing that person to engage in business in this state, if evidence has been presented to the court establishing knowing and persistent violations of this part.

(3) The court may also order payment to the state of a civil penalty of not more than one thousand dollars (\$1,000) for each violation.

(4) The court may also order reimbursement to the state for the reasonable costs and expenses of investigation and prosecution of actions under this part, including attorneys' fees.

(c) Any knowing violation of the terms of an injunction or order issued pursuant to subsection (a) or (b) shall be punishable by a civil penalty of not more than two thousand dollars (\$2,000), recoverable by the state for each

violation, in addition to any other appropriate relief. [Acts 1977, ch. 438, § 9; 1991, ch. 468, §§ 1, 2.]

**47-18-109. Private right of action — Damages — Notice to division. —**

(a)(1) Any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of the use or employment by another person of an unfair or deceptive act or practice declared to be unlawful by this part, may bring an action individually to recover actual damages.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged unfair or deceptive act or practice took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(3) If the court finds that the use or employment of the unfair or deceptive act or practice was a willful or knowing violation of this part, the court may award three (3) times the actual damages sustained and may provide such other relief as it considers necessary and proper.

(4) In determining whether treble damages should be awarded, the trial court may consider, among other things:

(A) The competence of the consumer or other person;

(B) The nature of the deception or coercion practiced upon the consumer or other person;

(C) The damage to the consumer or other person; and

(D) The good faith of the person found to have violated the provisions of this part.

(5) The provisions of this subsection do not apply with respect to alleged violations of the Tennessee Equal Consumer Credit Act of 1974, compiled in part 8 of this chapter.

(b) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed once the division has commenced a proceeding pursuant to § 47-18-107 or § 47-18-108.

(c)(1) Any person who has been affected by an act or practice declared to be a violation of this part may accept any written reasonable offer of settlement made by the person or persons considered to have violated this part; provided, that the tender of acceptance of such a settlement offer shall not abate any proceeding commenced by the division pursuant to § 47-18-107 or § 47-18-108.

(2) Such a settlement may be set aside by a court of competent jurisdiction at the request of the affected person or of the division if such a request is made within one (1) year from the date of the settlement agreement and if the court finds the settlement to be unreasonable.

(3) In determining the reasonableness of a settlement, the court shall

consider:

- (A) The competence of the consumer or other person;
- (B) The nature of the deception or coercion practiced upon the consumer or other person;
- (C) The value of the consideration received; and
- (D) The nature and extent of the legal advice received by the consumer or other person.

If the consumer or other person was not represented by legal counsel at the time of the offer of settlement, the person claiming the benefit of the settlement shall have the burden of establishing that it is reasonable.

(4) In any private action commenced under this section, the court may, upon the introduction of proof that the person against whom the action is filed has made a written, reasonable offer of settlement which has been communicated to the affected party, limit the amount of recovery to the terms of the offer of settlement.

(d) Any permanent injunction, judgment, or final court order made pursuant to § 47-18-108, or assurance of voluntary compliance entered into pursuant to § 47-18-107, which has not been complied with, shall be prima facie evidence of the violation of this part in any action brought pursuant to this section.

(e)(1) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorney's fees and costs.

(2) In any private action commenced under this section, upon finding that the action is frivolous, without legal or factual merit, or brought for the purpose of harassment, the court may require the person instituting the action to indemnify the defendant for any damages incurred, including reasonable attorney's fees and costs.

(3) The provisions of this subsection shall not apply to an action initiated by the division.

(f)(1) Upon the commencement of any action brought under subsections (a) and (b), the clerk of the court shall mail a copy of the complaint or other initial pleading to the division and, upon the entry of any judgment, order, or decree in the action, shall mail a copy of such judgment, order or decree to the division.

(2) A copy of any notice of appeal shall be served by the appellant upon the director of the division, who in the public interest may intervene on appeal. [Acts 1977, ch. 438, § 10; 1988, ch. 974, § 3; 1989, ch. 498, § 3; 1991, ch. 468, §§ 3, 4.]

**47-18-110. Limitations of actions.** — Any action commenced pursuant to § 47-18-109 shall be brought within one (1) year from a person's discovery of the unlawful act or practice, but in no event shall an action under § 47-18-109 be brought more than five (5) years after the date of the consumer transaction giving rise to the claim for relief. [Acts 1977, ch. 438, § 11; 1991, ch. 468, § 5; 2002, ch. 617, § 1.]

**47-18-111. Exemptions.** — (a) The provisions of this part do not apply to:

(1) Acts or transactions required or specifically authorized under the laws administered by, or rules and regulations promulgated by, any regulatory bodies or officers acting under the authority of this state or of the United States;

(2) A publisher, broadcaster, or other person principally engaged in the preparation or dissemination of information or the reproduction of printed or pictorial matter, who has prepared or disseminated such information or matter on behalf of others without notification from the division that the information or matter violates or is being used as a means to violate the provisions of this part;

(3) Credit terms of a transaction which may be otherwise subject to the provisions of this part, except insofar as the Tennessee Equal Consumer Credit Act of 1974, compiled in part 8 of this chapter may be applicable; or

(4) A retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that such claims violated this part.

(b) The burden of proving an exemption from the provisions of this part, as provided in this section, shall be upon the person claiming the exemption. [Acts 1977, ch. 438, § 12; 1988, ch. 974, § 4.]

**47-18-112. Supplementary law.** — The powers and remedies provided in this part shall be cumulative and supplementary to all other powers and remedies otherwise provided by law. The invocation of one power or remedy herein shall not be construed as excluding or prohibiting the use of any other available remedy. [Acts 1977, ch. 438, § 13.]

**47-18-113. Waiver of rights — Restrictions on jurisdiction or venue prohibited.** — (a) No provision of this part may be limited or waived by contract, agreement, or otherwise, notwithstanding any other provision of law to the contrary; provided, that the provisions of this part shall not alter, amend, or repeal the provisions of the Uniform Commercial Code relative to express or implied warranties or the exclusion or modification of such warranties.

(b) Any provision in any agreement or stipulation, verbal or written, restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state with respect to any claim arising under or relating to the Tennessee Consumer Protection Act and related acts set forth in this title is void as a matter of public policy. Further, no action of a consumer or other person can alter, amend, obstruct or abolish the right of the attorney general and reporter to proceed to protect the state of Tennessee and consumers or other persons within this state or from other states who are victims of illegal practices of persons located, wholly or in part, in Tennessee's borders.

(c)(1) No other right or benefit conferred on consumers by any other provision of this code may be waived or otherwise varied except as provided for in this section.

(2) Any waiver of a right or benefit described in this subsection must be knowingly and intelligently made.

(3) The competence of the consumer, the consumer's actual knowledge of the rights or benefits being waived, or lack thereof, the manner in which the right or benefit was pointed out to the consumer at the time of the consumer transaction, the nature of the deception or coercion practiced upon the consumer, the nature and extent of the legal advice received by the consumer, and the value of consideration received are relevant to the issue of whether the waiver was knowingly and intelligently made.

(4) If the consumer was not specifically informed of the effect of the waiver and did not specifically waive such consumer's rights or benefits at the time of the consumer transaction, the party claiming waiver shall have the burden of establishing that the waiver was knowingly and intelligently made. [Acts 1977, ch. 438, § 14; 1979, ch. 303, § 1; 1999, ch. 395, § 5.]

**47-18-114. Powers of attorney general.** — The attorney general and reporter, at the request of the division, may bring any appropriate action or proceeding in any court of competent jurisdiction pursuant to the provisions of this part. [Acts 1977, ch. 438, § 15.]

**47-18-115. Construction.** — This part, being deemed remedial legislation necessary for the protection of the consumers of the state of Tennessee and elsewhere, shall be construed to effectuate the purposes and intent. It is the intent of the general assembly that this part shall be interpreted and construed consistently with the interpretations given by the federal trade commission and the federal courts pursuant to § 5(A)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)). [Acts 1977, ch. 438, § 16.]

**47-18-116. Costs.** — No costs shall be taxed against the division in actions commenced under the provisions of this part. [Acts 1977, ch. 438, § 17.]

**47-18-117. Out-of-state liquor advertisers — Warning.** — (a) Any publication of general circulation, at least twenty percent (20%) of the published copies of which are sold or distributed in the state of Tennessee, which publishes any advertisement by or on behalf of any person, firm or corporation selling or distributing alcoholic beverages at retail in a state other than Tennessee, shall publish a notice to consumers as a part of, or immediately adjacent to, each such advertisement.

(b) The notice shall read as follows:

WARNING: The importation or transportation of alcoholic beverages into the State of Tennessee by any person not possessing a permit from the Tennessee Alcoholic Beverage Commission is a CRIMINAL OFFENSE which could be punished by FINE or IMPRISONMENT or BOTH.

(c) The notice shall be printed in a space equal to or greater than thirty percent (30%) of the total space devoted to each such advertisement in print no smaller than the largest print type employed in such advertisement. [Acts 1981, ch. 339, § 1.]

**47-18-118. Failure to respond to request for information.** — Upon receipt of a written request from the division, failing to submit written answers concerning the basis upon which the approximate verifiable retail value was determined pursuant to the requirements of § 47-18-104(f)(2)(D) [deleted], including supplying the division with copies of invoices, receipts, or other business records that would substantiate the disclosed retail value, shall be a violation of this part. [Acts 1989, ch. 498, § 4.]

**47-18-119. New passenger motor vehicle.** — For the purposes of § 47-18-104(b)(6), any passenger motor vehicle which meets the requirements of the definition for a new passenger car in § 55-5-106(e)(5) shall be construed to be new. [Acts 1990, ch. 798, § 1.]

**47-18-120. Definition — Prizes offered as inducements — Unfair or deceptive practices.** — (a) As used in this section, unless the context otherwise requires:

(1) “Accepts,” “accepted,” or “acceptance” means the positive indication by a consumer or person, in response to an offer, that such person agrees to incur a monetary obligation or otherwise begins performance of the terms of the offer;

(2) “Initial offer” means the first contact with a consumer or person, whether verbally or in writing;

(3) “Prize” means prize, gift, award, incentive promotion or any thing of value. “Prize” includes, but is not limited to, any thing of value offered in a sweepstakes, contest, drawing, incentive offer, premium promotion or similar promotional offer by whatever name the company uses; and

(4) “Travel service” means travel-related or tourist-related services, whether for individuals or groups, through vacation or tour packages, or through lodging or travel certificates, vouchers or other devices.

(b) This section applies to:

(1) Any person engaged in trade or commerce, directly or indirectly, by any means, including, but not limited to, by mail, by telephone, by advertisement, or in person, who offers to a consumer or other person, or represents or leads a consumer or person to believe, that the consumer or person will or may receive any prize as an inducement to purchase a good, service or other product or otherwise incur a monetary obligation, visit a business, attend or listen to a sales presentation or otherwise contact a salesperson; or

(2) Any person engaged in trade or commerce, directly or indirectly, by any means, who offers to sell travel services, at wholesale or retail, to a consumer or other person.

(c) In addition to and without limiting the prohibitions contained in § 47-18-104, the following unfair or deceptive acts or practices are declared unlawful and in violation of this part:

(1) In an initial offer, the offeror is in violation of this part if the offeror:

(A) Fails to clearly and conspicuously state the name and street address of the person making the offer;

(B) Represents or leads a person to believe that, when, in fact, the offer is simply a promotional plan designed to make contact with prospective buyers, the person:

(i) Is or could be a winner, if those contacted have not won or are not eligible to win; or

(ii) Has been “selected” or is otherwise part of a select or special group eligible to receive, claim, or otherwise obtain the prize or travel service, if that person has not been selected or is not part of a select or special group;

(C) Represents that a person has won or could win a prize or travel service, has been selected or is eligible to win a prize or travel service or will receive a prize or travel service, if the receipt of the prize or travel service is conditioned upon listening to or observing a sales promotional effort, making a purchase, or incurring any monetary obligation, unless it is clearly and conspicuously disclosed, at the time of the initial offer of the prize or travel service, that an attempt will be made to induce the consumer or person to incur a monetary obligation, including the amount of that monetary obligation;

(D) Fails to clearly and conspicuously disclose the approximate verifiable retail price of each prize or travel service or the price of any product offered for sale through the promotional program in a position immediately adjacent to the item when the initial offer is in writing. The approximate verifiable retail value is the price at which the person offering the item can substantiate that a substantial number of these items have been sold at retail by another person or, in the event such substantiation is unavailable, an amount equal to no more than three (3) times the amount actually paid by the sponsor or promoter for the item;

(E) Fails to clearly and conspicuously disclose each item’s approximate verifiable retail value as defined in subdivision (c)(1)(D), when the initial offer is verbal;

(F) Fails to clearly and conspicuously disclose, immediately adjacent to each prize or travel service offered, a statement of the odds, if applicable, in arabic numerals, of receiving each item offered, when the initial offer is in writing. The offeror must also give the recipient a written statement, if applicable, that those offers are not exclusive to the recipient and must disclose to such recipient whether all prizes or travel services will be awarded;

(G) Fails to clearly and conspicuously disclose a statement of odds, if applicable, in arabic numerals, of receiving each item offered if the initial offer is verbal. The offeror must make a verbal statement, if applicable, that those offers are not exclusive to the recipient and must disclose to such recipient whether all prizes or travel services will be awarded;

(H) Fails to give a recipient a general description of the types and categories of restrictions, qualifications, or other conditions, that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered;

(I) Fails to give a recipient an approximate total of all costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered; or

(J) Offers lottery winnings to a consumer in exchange for incurring a monetary obligation or making a purchase;

(2) Either in an initial offer or, at a minimum, before an offer can be accepted, the offeror is in violation of this part if the offeror fails to clearly and conspicuously state verbally, or in writing, and upon request, in writing:

(A) A general description of the types and categories of restrictions, qualifications, or other conditions, that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered, including:

(i) Any deadline by which the recipient must visit the business, attend or listen to the sales presentation or otherwise respond in order to receive the prize or travel service, or product or service offered;

(ii) The date or dates on or before which the prize or travel service, product or service offer will terminate or expire and, if applicable, when the prizes or travel services will be awarded;

(iii) The approximate duration of any mandatory sales presentation or tour, if applicable;

(iv) Any other conditions, such as minimum or maximum age qualifications, financial qualifications, or requirements that, if the recipient is married, both husband and wife must be present or respond in order to receive the prize or travel service, or product or service offered; and

(v) All other material rules, terms or restrictions governing an offer that is an inducement to purchase a good, service or other product or to otherwise incur a monetary obligation;

(B) The refund, exchange or return policies in regard to any offer that is an inducement to purchase a good, service or other product or otherwise incur a monetary obligation; and

(C) The approximate total of costs, fees or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or travel service, or product or service offered, including, but not limited to, handling, shipping, delivery, freight, postage or processing fees, charges or other additional costs for the receipt or use of the prize or travel service, or product or service offered. This subdivision shall not be construed to require that foreign tax rates be included;

(3) The offeror is in violation of this part if at any time the offeror:

(A) Misrepresents in any manner the rules, terms, restrictions, monetary obligations or conditions of participation in the promotional plan or offer;

(B) Represents that the prize or travel service offered or any product offered for sale through the promotional plan possesses particular features or benefits if it does not, or is of a particular standard, quality, grade, or model, if it is of another;

(C) Makes the receipt of an offered prize or travel service contingent upon the consent of individual winners or recipients to allow their names to be used for promotional purposes, or failing to obtain the express written or oral consent of individual winners or recipients before their names are used for a promotional purpose in connection with a mailing to a third person;

(D) Refuses to disclose or make available, upon request, the names of the recipients of any prizes or travel services within the geographic area wherein the promotional offers were made; or

(E) Fails to award and distribute the prize or travel service, or product or service offered in accordance with the rules, terms and conditions of the offer or promotional program as stated or disclosed in accordance with the above subdivisions;

(4)(A) Either in an initial offer for a prize or travel service or, at a minimum, before an offer can be accepted, the offeror is in violation of this part if the offeror fails to clearly and conspicuously state verbally, or in writing, and upon request in writing, uses or makes a statement or representation in the main, primary or emphasized portion of the text of a solicitation, promotion, advertisement or other offering that is contradicted in a disclosure that is not easily read, readily noticeable or presented in small or fine print.

(B) If a motor vehicle dealer is in compliance with the advertising regulations of the Tennessee motor vehicle commission, as such regulations exist on July 1, 2003, and as amended from time to time thereafter, the provisions of subdivision (c)(4)(A) shall not apply to such dealer.

(d) In addition to, and without limiting, the foregoing provisions:

(1) It is unlawful to require the consumer or person to incur any monetary obligation, excluding nominal postage costs, in order to determine which, if any, prize or travel service the consumer or person is offered or will receive, or to continue to remain eligible to receive any prize or travel service; and

(2) Acceptance of an offer is not valid and binding on the consumer unless all of the disclosures required in subsection (c) have been made.

(e) The provisions of subdivisions (c)(1)(D), (E), and (I), and (c)(2)(B) and (C) do not apply in a promotion for books, records, videos or magazines when the person has the right to review the merchandise without obligation for at least seven (7) days and the right to return without charge any undamaged merchandise.

(f) The provisions of this section do not apply to:

(1) Advertising and promotional plans of persons covered by the provisions of the Tennessee Time-Share Act of 1981, compiled in title 66, chapter 32, part 1, and the Membership Camping Act, compiled in title 66, ch. 32, part 3; and

(2) Retail promotions which offer savings on consumer goods or services, including "one-cent sales," "two-for-the-price-of-one sales," or a manufacturer's "cents-off" coupons, when the consumer accepts the offer on-site.

The burden of proving these exemptions is upon the person claiming the exemption.

(g) Notwithstanding any other provision of law, a violation of this section constitutes an unfair deceptive act or practice, and without limiting the scope of § 47-18-104 shall be punishable by a civil penalty of a minimum of one thousand dollars (\$1,000) to a maximum of ten (10) times the amount collected or requested by the offeror for each violation. [Acts 1993, ch. 180, § 2; 1998, ch. 627, §§ 1, 2; 2003, ch. 240, § 1.]

**47-18-121. Unlicensed motor vehicle dealers to comply with advertising requirements.** — (a) Any motor vehicle dealer not currently licensed as a motor vehicle dealer by the state of Tennessee, or any advertising cooperative composed of such unlicensed motor vehicle dealers, shall comply with all advertising requirements of title 55, chapter 17, including any

regulations promulgated under that chapter. An unlicensed motor vehicle dealer shall be responsible for any advertising copy bearing its name.

(b) A violation of this section constitutes a violation of the Consumer Protection Act of 1977, codified in this chapter. [Acts 1993, ch. 222, § 1.]

**47-18-122. Applicability to violations of part 2.** — For the purpose of application of the Tennessee Consumer Protection Act, compiled in this part, any violation of the provisions of part 2 of this chapter shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by the act. [Acts 1999, ch. 55, § 4.]

**47-18-123. Products, services or memberships purchased by negotiation of unsolicited negotiable instruments.** — (a) Any person who purchases, subscribes to or receives products, services or membership in any organization by negotiating an unsolicited negotiable instrument shall have thirty (30) days from the date of the first statement or bill for such services, products, membership or subscription to:

- (1) Cancel the services if services have not been rendered;
- (2) Return the products if products are unused and in the condition received;
- (3) Cancel the subscription; or
- (4) Cancel the membership if services have not been rendered pursuant to such membership.

(b) The provisions of subsection (a) do not apply to the execution of an unsolicited negotiable instrument that creates a loan or line of credit through a credit or lending institution with which the person has an existing relationship.

(c) For purposes of this section, “unsolicited negotiable instrument” means an unconditional order or promise to pay a specific amount of money, signed by the maker or drawer, payable on demand or at a specific time, payable to order or to the bearer which was received by the bearer without prior notice from the maker or drawer.

(d) A violation of this section constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in this part. For purposes of applying the Tennessee Consumer Protection Act to this section, a violation of this section shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce, subject to the penalties and remedies provided in such act. [Acts 1999, ch. 64, § 1.]

**47-18-124. Prizes — Unfair or deceptive practices.** — (a) As used in this section, unless the context otherwise requires:

(1) “Prize” means a gift, award, incentive promotion, or other item or service of value. “Prize” includes, but is not limited to, anything of value that is offered or awarded to a participant in a real or purported contest, competition, sweepstakes, puzzle, drawing, incentive offer, premium promotion or similar promotional offer by whatever name the company uses, scheme, plan, or other selection process;

- (2) “Retail value” of a prize includes:

(A) A price at which the sponsor can substantiate that a substantial number of the goods or services which constitute the prizes have been sold to the public in Tennessee in the preceding year; or

(B) If the sponsor is unable to satisfy the requirement in subdivision (a)(2)(A), then no more than one and one-half (1.5) times the amount the sponsor paid for the prize in a bona fide purchase from an unaffiliated seller; and

(3) "Sponsor" includes a corporation, partnership, limited liability company, sole proprietorship, or natural person, that requires a person in Tennessee to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, or that creates the reasonable impression that such a payment is required.

(b) No sponsor shall require a person in Tennessee to pay the sponsor money as a condition of awarding the person a prize, or as a condition of allowing the person to receive, use, compete for, or obtain information about a prize, nor shall a sponsor use any solicitation that creates the reasonable impression that a payment is required, unless the person has first received a written prize notice containing the information required in subsections (c) and (d).

(c) A written prize notice must contain each of the following:

(1) The true name or names of the sponsor and the address of the sponsor's actual principal place of business;

(2) The retail value of each prize the person receiving the notice has been selected to receive or may be eligible to receive;

(3) A statement of the person's odds of receiving each prize identified in the notice;

(4) Any requirement that the person pay shipping or handling fees or any other charges to obtain or use a prize, including the nature and amount of the charges;

(5) If receipt of the prize is subject to a restriction, a statement that a restriction applies, and a description of the restriction;

(6) Any limitations on eligibility; and

(7) If a sponsor represents that the person is a "winner," is a "finalist," has been "specially selected," is in "first place," or is otherwise among a limited group of persons with an enhanced likelihood of receiving a prize, the written prize notice must contain a statement of the maximum number of persons in the group or purported group with this enhanced likelihood of receiving a prize.

(d) The information required by subsection (c) must be presented in the following form:

(1) The retail value and the statement of odds required under subdivisions (c)(2) and (3) must be stated in immediate proximity to each identification of a prize on the written notice, and must be in the same size and boldness of type as the reference to the prize;

(2) The statement of odds must include for each prize, the total number of prizes to be given away and the total number of written prize notices to be distributed. The number of prizes and written prize notices must be stated in Arabic numerals. The statement of odds must be in the following form:

“ \_\_\_\_ (number of prizes) out of \_\_\_\_ notices distributed”.

(3) A statement required under subdivision (c)(7) must appear in immediate proximity to each representation that the person is among a group of persons with an enhanced likelihood of receiving a prize, and must be in the same size and boldness of type as the representation.

(e) A sponsor who represents to a person that the person has been awarded a prize shall, not later than thirty (30) days after making the representation, provide the person with the prize, or with a voucher, certificate, or other document giving the person the unconditional right to receive the prize, or shall provide the person with either of the following items selected by the person:

(1) Any other prize listed in the written prize notice that is available and that is of equal or greater value; or

(2) The retail value of the prize, as stated in the written notice, in the form of cash, a money order, or a certified check.

(f) Nothing in this section creates liability for acts by the publisher, owner, agent, or employee of a newspaper, periodical, radio station, advertising medium arising out of the publication or dissemination of a solicitation, notice, or promotion governed by this section, unless the publisher, owner, agent, or employee had knowledge that the solicitation, notice, or promotion violated the requirements of this section, or had financial interest in the solicitation, notice, or promotion governed by this section.

(g) The provisions of this section do not apply to:

(1) Advertising and promotional plans of persons covered by the provisions of the Tennessee Time-Share Act of 1981, compiled in title 66, chapter 32, part 1, or the Membership Camping Act, compiled in title 66, chapter 32, part 3;

(2)(A) Retail promotions which offer savings on consumer goods or services, including “one-cent sales,” “two-for-the-price-of-one sales,” or a manufacturer’s “cents-off” coupons, when the consumer accepts the offer on-site.

(B) The burden of proving these exemptions is upon the person claiming the exemption; and

(3) This section does not apply to solicitations or representations in connection with the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission or to contractual plans or arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements, single sales, and series arrangements, under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis.

(h) Notwithstanding any other provision of law, a violation of this section constitutes an unfair deceptive act or practice and, without limiting the scope of § 47-18-104, shall be punishable by a civil penalty of a minimum of one thousand dollars (\$1,000) to a maximum of ten (10) times the amount collected or requested by the offeror for each violation. [Acts 1999, ch. 126, § 1.]

**47-18-125. Protection of elder persons — Cumulative, additional and supplemental penalties.** — (a) Any person who knowingly uses, or has knowingly used, a method, act or practice which targets elderly persons and is

in violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, is liable to the state of Tennessee for a civil penalty of not more than ten thousand (\$10,000) dollars for each violation. Each violation may include but is not limited to, each elder person solicited, each advertisement that was distributed, each misrepresentation or deceptive statement that appeared on a solicitation, each time that an advertisement appeared on television or on radio, each contact, i.e., telephone call, direct mail solicitation or in person solicitation with an elder person to promote or solicit using unfair, misleading or deceptive acts or practices.

(b) In addition, when determining the amount of the civil penalty to be imposed pursuant to this part, the court may consider:

- (1) The good or bad faith of the violator as it relates to the violations;
- (2) The injury to the public;
- (3) The violator's ability to pay;
- (4) The public's interest in eliminating the benefits derived by the violator from the violations; and
- (5) The necessity of vindicating the authority of the state and the strong need to defer future violations.

(c) The civil penalties recoverable by the state of Tennessee under this part are supplemental and cumulative to any other available civil penalties and relief available under other laws, regulations and rules, including, but not limited to, those available pursuant to § 47-18-108.

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

(1) "Elder person" means any person who is sixty (60) years of age or older. The elder person need not be a citizen of Tennessee if the company or individual is operating from Tennessee or the court otherwise has jurisdiction over the company or individual for engaging in an unfair, misleading or deceptive act or practice from Tennessee.

(2) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include, but are not limited to, the Prize and Promotion Act, § 47-18-120; Health Club Act, compiled in part 3 of this chapter; Buyer's Clubs Act, compiled in part 5 of this chapter; Home Solicitations Sales Act of 1974, compiled in part 7 of this chapter; Tennessee Credit Services Businesses Act, compiled in part 10 of this chapter; Consumer Telemarketing Protection Act of 1990, compiled in part 15 of this chapter; Unsolicited Telefacsimile Advertising Act, compiled in part 16 of this chapter; Tennessee Employment Agency Act, compiled in part 17 of this chapter; and Membership Camping Act, compiled in title 66, chapter 32, part 3. [Acts 1999, ch. 200, § 1.]

**47-18-126. Electronically printed receipts for credit and debit cards — Violations — Application.** — (a) Except as otherwise provided in subsection (b), no person that accepts credit cards or debit cards for the transaction of business shall print or cause to be printed more than five (5)

digits of the card number or the expiration date upon either the receipt retained by the merchant or the receipt provided to the cardholder at the point of the sale or transaction.

(b) This section shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(c) A violation of this section is an unfair and deceptive trade practice and punished as provided in this part.

(d)(1) Effective May 13, 2005, the provisions of this section shall apply to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that was first put into use on or after January 1, 2005.

(2) Effective January 1, 2007, the provisions of this section shall apply to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that was in use prior to January 1, 2005. [Acts 2005, ch. 161, § 1.]

**47-18-127. Gift certificates** — (a) Subject to subsection (d), no person or entity shall sell a gift certificate to a purchaser containing an expiration date that is less than two (2) years after the date the gift certificate is issued or shall charge a fee for the issuance of a gift certificate.

(b) No person or entity, within two (2) years after a gift certificate is issued, shall charge service charges or fees relative to the gift certificate, including dormancy fees, latency fees, or administrative fees that have the effect of reducing the total amount for which the holder of the gift certificate may redeem the gift certificate.

(c) A gift certificate or prepaid card, as defined in subsection (e), sold without an expiration date is valid until redeemed or replaced with a new gift certificate or prepaid card.

(d) Subsections (a) and (b) shall not apply to a gift certificate that is:

(1) Distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or anything of value being given in exchange for the gift certificate by the consumer;

(2) Sold below face value at a volume discount to employers or given or sold below face value to nonprofit or charitable organizations for fundraising purposes;

(3) Sold by a nonprofit or charitable organization for fundraising purposes;

(4) Given to an employee by an employer, if use of the gift certificate is limited to the employer's business establishment, which may include a group of merchants that are affiliated with the business establishment; or

(5) [Deleted by 2009 amendment.]

(6) Issued by an employer to an employee in recognition of services performed by the employee.

(e) A gift certificate does not include a prepaid calling card used to make telephone calls or a prepaid card usable at multiple, unaffiliated merchants or at automated teller machines, or both. [Acts 2006, ch. 622, § 1; 2006, ch. 929, § 1; 2009, ch. 277, §§ 1-3.]

**47-18-128. Disclosure of holds on debit cards.** — (a) Any person providing goods or services who initiates a preauthorized debit card transaction that is more than twenty-five percent (25%) of the actual transaction amount, or fifty dollars (\$50.00), whichever is greater, shall disclose at the time and point of sale that a hold will be placed on the customer's debit card account. The person initiating the hold shall disclose the dollar amount of the hold, if the amount is known. If the hold is initiated at an unmanned remote terminal, service device, or gas pump, the disclosure shall be made in conspicuous type at a location proximate to the point of payment. If the hold initiated is subject to a contractual agreement, order of the purchaser, or other written document, the notice shall be placed in conspicuous type in a segregated box on the front of the document.

(b) A violation of this section constitutes an unfair and deceptive act or practice. [Acts 2006, ch. 683, § 1.]

**47-18-129. Sale or gift of certain novelty lighters prohibited.** — (a) No supplier of novelty cigarette lighters in this state, including a manufacturer, distributor, importer, retailer or anyone giving away lighters as prizes or promotions, shall sell or give away an operable novelty lighter. This prohibition does not apply to the transportation of novelty lighters through this state or the storage of novelty lighters in a warehouse or distribution center in this state that is closed to the public for purposes of retail sales.

(b) This section shall not apply to cigarette lighters that were made before January 1, 1980, or that are considered to be collectable items.

(c) "Novelty lighter" means a mechanical or electrical device typically used for lighting cigarettes, cigars, or pipes that has entertaining audio or visual effects, or that resembles, in physical form or function, articles commonly recognized as appealing to or intended for use by children ten (10) years of age or younger. This includes, but is not limited to, lighters that resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel.

(d) Any violation of this section is a prohibited practice under § 47-18-104.

(e) The commissioner of commerce and insurance is authorized to promulgate rules and regulations to effectuate the purposes of this section. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 2008, ch. 798, § 1.]

**47-18-130. Violations by commercial breeders. [Effective until June 30, 2014. See the Compiler's Notes.]** — (a) Notwithstanding any other law, and to be construed as supplementary to any other law, the following shall constitute a separate violation of this part:

(1) Each companion animal sold, offered for sale or advertised while a commercial breeder is unlicensed or has had the breeder's license suspended or revoked; or

(2) Each unfair or deceptive statement, material omission or action taken by a commercial breeder.

(b) Any commercial breeder who commits a violation of this section shall be subject to a remedial civil penalty for each separate violation not to exceed one thousand dollars (\$1,000).

(c) Upon reason to believe that a commercial breeder is selling dogs or cats without the license required by title 44, chapter 17, part 7, the attorney general and reporter, after consultation with the director of the division of consumer affairs, may issue a pre-filing request for consumer protection information in accordance with § 47-18-106. Should a person deny the representative access to the premises, the attorney general and reporter shall petition, without cost or bond, any circuit or chancery court of competent jurisdiction for an order granting access to such premises and records. This part shall apply to the issuance of such request.

(d) This section shall terminate and expire on June 30, 2014. [Acts 2009, ch. 591, § 2.]

**Compiler's Notes.** Acts 2009, ch. 591, § 3(b) provided that the act, which added title 44, ch. 17, part 7 and § 47-18-130, shall terminate and expire on June 30, 2014. The comptroller of the treasury is urged to study the implementation and impact of the provisions of the act as it implements the licensing of commercial breeders of dogs and cats. As a part of the study, the comptroller shall examine the benefits afforded

to the public by the licensing of commercial breeders, the health of dogs and cats maintained by these commercial breeders, and the impact upon the costs of dogs and cats that are sold to the public by these commercial breeders. If a study is conducted, the comptroller shall report any findings and recommendations of the study to the general assembly on or before January 15, 2014.

## PART 2—BEAUTY PAGEANTS

**47-18-201. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Beauty pageant” means any contest or competition in which entrants are judged on the basis of physical beauty, skill, talent, poise, and personality, and in which a winner, or winners, are selected as representing an ideal in one (1) or more of these areas. “Beauty pageant” does not include any such contest or competition in which no application fee or entrance charge is made for contestants, to which no admission charge is made for attendance, and in connection with which no tickets or chances are sold;

(2) “Bond” means a surety bond with power of attorney attached, and a Tennessee resident agent;

(3) “Entrant’s fee” means any payment of money, or other thing of value, including, but not limited to, the selling of advertisements or tickets, or the obtaining of sponsors, which activity is a precondition to participation in a beauty pageant; and

(4) “Operator” means any person, franchisee, firm or corporation, civic group, or elementary or secondary educational institution, which promotes, organizes, or otherwise operates, a beauty pageant, participation in which is limited to persons paying an entrant’s fee. [Acts 1980, ch. 846, § 1; 1982, ch. 570, § 1; 1984, ch. 728, § 14.]

**47-18-202. Registration of operators — Bond — Fee — Exemptions.**

— (a)(1) Every operator shall register with the division of consumer affairs in the department of commerce and insurance on forms prescribed by the division.

(2) The registration form shall contain, but shall not be limited to, the following information:

(A) Name, address, and telephone number of the operator;

(B) Name, address, and telephone number of the individual or officer of the organization having full responsibility for the conducting of the pageant;

(C) Names of pageants customarily promoted by the operator;

(D) Name, address, and telephone number of the financial institution in which the entrants' fee is held; and

(E) The operator's exemption certificate number from the tax imposed by title 67, chapter 6, or the operator's sales tax registration number.

(b)(1) Except as provided in subsection (d), each operator shall, at the time of registration, file and have approved by the division of consumer affairs, a bond in which the candidate for registration shall be the principal obligor in the sum of ten thousand dollars (\$10,000).

(2) Such bond shall be payable to the state of Tennessee for the use of the division of consumer affairs and any person who may have a cause of action against the obligor of the bond for any losses caused by a failure to conduct a beauty pageant.

(c)(1) Except as provided in subsection (d), each operator shall, at the time of registration, submit a nonrefundable registration fee of fifty dollars (\$50.00).

(2) In order to continue to hold a valid registration in a subsequent year each operator shall annually renew the operator's registration.

(3) Such an annual renewal shall be accompanied by a nonrefundable fifty-dollar (\$50.00) fee.

(4) Each registration shall expire on December 31 of each year.

(d) A bona fide civic club in existence for one (1) year, a community fair, a county fair, a district fair or a division fair as defined in § 43-21-104, or any other regional fair, or a religious organization or church, or a local governmental entity or organizations auxiliary to or affiliated with such local governmental entities, including, but not necessarily limited to, school booster clubs, shall be exempt from the requirements of subsections (b) and (c). [Acts 1980, ch. 846, § 3; 1982, ch. 570, § 2; 1984, ch. 728, § 15; 1986, ch. 593, § 1; 1999, ch. 55, §§ 1, 2, 6.]

**47-18-203. Cancellations — Refunds.** — (a) If a beauty pageant is cancelled or otherwise does not take place, all entrants' fees shall be refunded by the operator.

(b) The surety shall be liable for any unrefunded entrants' fees in the case of a default by the operator. [Acts 1980, ch. 846, § 3; 1982, ch. 570, § 3.]

**47-18-204. Denial, suspension, revocation of registration — Rules and regulations.** — (a) The division of consumer affairs in the department of commerce and insurance may deny, suspend, or revoke a registration for:

(1) A violation of any of the provisions of this part; or

(2) The making of a false statement on the registration application form.

(b) The division of consumer affairs may adopt rules and regulations to administer the provisions of this part. Such rules and regulations shall be adopted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 1980, ch. 846, § 4; 1982, ch. 570, § 4; 1984, ch. 728, § 16; 1999, ch. 55, § 6.]

**47-18-205. Exceptions.** — (a) The provisions of this part shall not apply to any operator existing as a nonprofit corporation for twenty (20) years or more whose primary function involves the annual organization, promotion, and sponsorship of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by such operator, as well as for the opportunity of being Tennessee's representative and contestant in an annual nationwide talent and beauty pageant with which such operator is affiliated.

(b) The provisions of this part do not apply to any operator who operates an annual talent and beauty pageant in which the contestants have an opportunity to represent the pageant pursuant to a franchise agreement at a statewide talent and beauty pageant exempted from the provisions of this part under subsection (a). [Acts 1980, ch. 846, § 5; 1999, ch. 114, § 1.]

**47-18-206. Penalty.** — A violation of this part is punishable by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000). [Acts 1980, ch. 846, § 6.]

**47-18-207. Notice of incomplete forms — Missing certificate or registration numbers.** — The division of consumer affairs in the department of commerce and insurance shall notify the department of revenue within three (3) working days of any operator whose registration form does not include the operator's exemption certificate number or the operator's sales tax registration number as required by § 47-18-202(a)(2)(E). [Acts 1986, ch. 593, § 2; 1999, ch. 55, § 6.]

**47-18-208. Transfer of registration to division of consumer affairs.** — The registration of beauty pageant operators by the secretary of state prior to April 7, 1999, shall be transferred to, and be administered by, the division of consumer affairs in the department of commerce and insurance on and after April 7, 1999. [Acts 1999, ch. 55, § 3.]

**47-18-209. Violations subject to Tennessee Consumer Protection Act.** — A violation of any of the provisions of this part, relative to beauty pageants, or rules promulgated under this part constitutes a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter. [Acts 1999, ch. 55, § 4.]

**47-18-210. Cease and desist orders — Hearing.** — Whenever it appears to the director of the division of consumer affairs that an operator, as defined in § 47-18-201(4), is acting in violation of this part, and the director determines that the public health, safety or welfare is endangered, the director may

issue an order to that operator to cease and desist in such violations, without prior notice. The operator shall be afforded an opportunity for a hearing within seven (7) business days to show cause why such order should be lifted, rescinded, or modified. [Acts 1999, ch. 55, § 5.]

### PART 3—HEALTH CLUBS

**47-18-301. Definitions** — As used in this part, unless the context otherwise requires:

- (1) “Buyer” means a purchaser under a health club agreement;
- (2) “Commissioner” means the commissioner of commerce and insurance;
- (3) “Division” means the consumer affairs division of the department of commerce and insurance;
- (4)(A) “Health club” means any enterprise, however styled, which offers on a regular, full-time basis, and pursuant to a health club agreement, services or facilities for the development or preservation of physical fitness through exercise, weight control or athletics;
- (B) “Health club” does not include the following:
  - (i) Any organization primarily operated for the purpose of teaching a particular form of martial arts such as judo or karate;
  - (ii) Weight loss or control services which do not provide physical exercise services, facilities, or equipment; or
  - (iii) Any nonprofit health club that is exempt from taxation under the provisions of § 67-6-330(a)(17), or any nonprofit health club operated as part of a licensed nonprofit hospital exempt from taxation under § 67-5-212;
- (5)(A) “Health club agreement” means an agreement whereby a buyer purchases, or is obligated to purchase, any right to use health club facilities or services; and such services or facilities are for personal, family, employee, or household use; and
- (B) “Health club agreement” does not include the following:
  - (i) Any agreement for personal training services; or
  - (ii) Any agreement for tangible products sold by the health club.
- (6) “Operator” means any person, firm, corporation, or business entity which operates a health club. [Acts 1984, ch. 630, § 1; 1989, ch. 460, §§ 14, 18; 1996, ch. 929, §§ 1, 2; 2001, ch. 126, § 1; 2005, ch. 95, § 1; 2008, ch. 926, § 1.]

**47-18-302. Certificat of registration.** — (a) It is unlawful to operate a health club unless a valid certificate of registration is obtained for each location where health club services or facilities are provided and payment of the fee required for such registration is made.

(b) Each holder of a certificate of registration shall display such certificate in a conspicuous place at the location where health club services or facilities are provided.

(c) Certificates of registration shall be renewed annually. [Acts 1984, ch. 630, § 2; 1986, ch. 894, § 1; 1989, ch. 460, § 1.]

**47-18-303. Unenforceable health club agreements.** — A health club agreement shall be unenforceable against the buyer, and the buyer shall be entitled to a refund less that portion of the total price which represents actual use of the facilities and less the cost of goods and services consumed by the buyer if:

(1) The buyer entered into the agreement in reliance upon any false, deceptive, or misleading information, representation, notice, or advertisement;

(2) The health club fails to obtain or fails to maintain a certificate of registration as required by this part; or

(3) The agreement fails to conform with the provisions of this part. [Acts 1984, ch. 630, § 3; 1986, ch. 894, § 2; 1989, ch. 460, §§ 5, 6; 1996, ch. 929, § 3.]

**47-18-304. [Transferred.]**

**Code Commission Notes.** Former § 47-18-304, concerning enforcement, was transferred to § 47-18-320 in 1986.

**47-18-305. Requirements for valid agreements.** — (a) All health club agreements shall:

(1) Be in writing;

(2) Be signed by the buyer;

(3) Designate the date on which the buyer actually signed the agreement; and

(4) Contain in boldface type of at least ten (10) points, in immediate proximity to the space reserved for the signature of the buyer, the following statement:

**BUYER'S RIGHT TO CANCEL**

**YOU (THE BUYER) MAY CANCEL THIS AGREEMENT BY SENDING NOTICE OF YOUR WISH TO CANCEL TO THE HEALTH CLUB BEFORE MIDNIGHT OF THE THIRD DAY (EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS) OR, IF THE AGREEMENT IS SUBJECT TO A FINANCE CHARGE, THE SEVENTH DAY AFTER THE DAY YOU SIGNED THE AGREEMENT. THIS NOTICE MUST BE SENT BY REGISTERED MAIL TO THE FOLLOWING ADDRESS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THE NOTICE OF CANCELLATION, THE HEALTH CLUB WILL RETURN ANY PAYMENTS MADE AND ANY NOTE EXECUTED BY YOU IN CONNECTION WITH THE AGREEMENT.**

(5)(A) Contain in boldface type of at least ten (10) points, the following statement:

**SHOULD YOU (THE BUYER) CHOOSE TO PAY THIS AGREEMENT IN FULL, BE AWARE THAT YOU ARE PAYING FOR FUTURE**

**SERVICES AND MAY BE RISKING LOSS OF YOUR MONEY IN THE EVENT THIS HEALTH CLUB CEASES TO CONDUCT BUSINESS.**

(B) Contain in boldface type, the following statements in separated paragraphs:

(i) **IN ADDITION TO ANY OTHER REMEDIES PROVIDED BY LAW, IN THE EVENT THIS HEALTH CLUB CEASES OPERATION AND FAILS TO OFFER YOU (THE BUYER) AN ALTERNATE LOCATION WITHIN FIFTEEN (15) MILES, WITH NO ADDITIONAL COST TO YOU, THEN NO FURTHER PAYMENTS SHALL BE DUE TO ANYONE, INCLUDING ANY PURCHASER OF ANY NOTE ASSOCIATED WITH OR CONTAINED IN THIS CONTRACT.**

(ii) **STATE LAW REQUIRES THAT HEALTH CLUB AGREEMENTS BE PAYABLE ONLY IN THE FOLLOWING MANNER, AND ANY HEALTH CLUB WHICH ENTERS INTO HEALTH CLUB AGREEMENTS SHALL OFFER BOTH PAYMENT OPTIONS AT THE SAME PRICE, EXCLUDING INTEREST OR FINANCE CHARGES OR OTHER EQUIVALENT CHARGES WHICH SHALL NOT EXCEED EIGHTEEN PERCENT (18%) OF THE TOTAL CONTRACT PRICE:**

(a) **Full payment within ninety (90) days after entering into the health club agreement; or**

(b) **Equal monthly installments with any down payment (unless exempt as provided by law) limited to thirty percent (30%) of the total cost of the agreement. Prepayment is allowed at any time with full refund of unearned finance charges.**

(iii) **THIS CONTRACT DOES NOT CONTAIN ANY PAYMENTS OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ENROLLMENT FEES, MEMBERSHIP FEES, OR ANY OTHER DIRECT PAYMENTS TO THE HEALTH CLUB, OTHER THAN FULL PAYMENT FOR THE HEALTH CLUB AGREEMENT OR MONTHLY INSTALLMENT PAYMENTS WITH ANY DOWN PAYMENT (UNLESS EXEMPT AS PROVIDED BY LAW) LIMITED TO THIRTY PERCENT (30%) OF THE TOTAL COST OF THE AGREEMENT, AND, IN THE CASE OF INSTALLMENT PAYMENTS WHICH ARE NOT MADE BY ELECTRONIC FUND TRANSFER OR CASH, AN ADMINISTRATIVE CHARGE, NOT TO EXCEED FIVE DOLLARS (\$5.00) FOR EACH BILLING PERIOD.**

(iv) **THERE ARE NO AUTOMATIC OR LIFETIME RENEWALS OF THE TERM INCIDENT TO THE TERM OF THIS CONTRACT. IF THE HEALTH CLUB PROVIDES FOR A RENEWAL OPTION, SUCH OPTION MUST BE AFFIRMATIVELY AGREED TO IN WRITING BY THE BUYER AT THE BEGINNING OF THE RENEWAL PERIOD. IF THE HEALTH CLUB FACILITY IS LESS THAN OR EQUAL TO TEN THOUSAND (10,000) SQUARE FEET (GROSS) OF BUILDING SPACE, THEN THE ANNUAL COST OF SUCH RENEWAL SHALL NOT BE LESS THAN THIRTY PERCENT (30%) OF THE ANNUALIZED COST OF THE BASE MEMBERSHIP CONTRACT OR SEVENTY-FIVE DOLLARS (\$75), WHICHEVER IS GREATER. HOWEVER, IF THE HEALTH CLUB FACILITY IS GREATER THAN TEN**

**THOUSAND (10,000) SQUARE FEET (GROSS) OF BUILDING SPACE, THEN THE ANNUAL COST OF SUCH RENEWAL SHALL NOT BE LESS THAN THIRTY PERCENT (30%) OF THE ANNUALIZED COST OF THE BASE MEMBERSHIP CONTRACT OR ONE HUNDRED TWENTY-FIVE DOLLARS (\$125), WHICHEVER IS GREATER. PAYMENT OF ANY RENEWAL SHALL BE MADE AS REQUIRED BY TENNESSEE CODE ANNOTATED, SECTION 47-18-305(A)(5)(B)(ii).**

**(v) A CONTRACT OR AGREEMENT MAY HAVE A CONTINUING PROVISION OR STIPULATION THAT PROVIDES FOR A MONTH TO MONTH CONTINUATION OF THE INITIAL TERM OF THE AGREEMENT PROVIDED THE BUYER HAS THE RIGHT TO CANCEL THE CONTINUING PORTION OF THE AGREEMENT AFTER FULFILLING THE ORIGINAL TERM OF THE AGREEMENT BY TENDERING THIRTY (30) DAYS WRITTEN NOTICE OF SUCH INTENT TO THE OPERATOR BY REGISTERED MAIL. IF SUCH CONTRACTUAL OBLIGATION HAS A CONTINUING PROVISION OR STIPULATION, NOTIFICATION MUST BE SENT BY THE HEALTH CLUB OPERATOR TO CONFIRM THAT THE ORIGINAL OBLIGATION WAS FULFILLED AND TO REAFFIRM THE MONTH TO MONTH OR CONTINUING PROVISION OR STIPULATION. SUCH NOTIFICATION SHALL ALSO INCLUDE NOTICE OF THE BUYER'S RIGHT TO CANCEL THE CONTINUING MONTH-TO-MONTH OBLIGATION UPON THIRTY (30) DAYS' WRITTEN NOTICE SENT BY THE BUYER TO THE OPERATOR BY REGISTERED MAIL.**

**(vi) ANY RENEWAL RIGHT GRANTED UNDER THIS CONTRACT SHALL EXPIRE ON THE FINAL DAY OF THE AGREEMENT. HOWEVER, THE BUYER SHALL HAVE A THIRTY (30) DAY GRACE PERIOD FROM THE DATE OF THE EXPIRATION OF THE RENEWAL RIGHT IN WHICH TO EXERCISE ANY RENEWAL RIGHT GRANTED TO THE BUYER UNDER THIS CONTRACT. THE OPERATOR SHALL HAVE THE RIGHT TO CHARGE A LATE PENALTY OF UP TO \$25 IF THE RENEWAL RIGHTS ARE NOT EXERCISED ON OR BEFORE THE EXPIRATION DATE AS STIPULATED IN THE AGREEMENT OR ANY FUTURE RENEWAL PERIODS.**

(b) A health club shall not enter into or offer to enter into a health club agreement unless the health club is fully operational and available to use by prospective buyers. The division shall, upon application by a health club operator, certify that a health club facility is fully operational if all of the promised equipment and services are available for use by prospective buyers. No payment or promise to pay by a prospective buyer may be accepted by any health club operator unless and until the health club facility has been certified by the division to be fully operational as described herein. This subsection shall not apply to any health club that has maintained a satisfactory registration with the division for five (5) consecutive years; provided, that, such health clubs notify the division by certified mail of their intent to enter into agreements for a location not fully operational as otherwise required by this subsection. In order to be eligible to use this exemption, an operator must use

the same identification as described in any existing facility registration information as well as use the same federal and state tax accounts for payments of any related taxes due to this extension of operations.

(c) It is unlawful for a health club to offer any cash or discounted prepayment option that exceeds a reduction of the cash value of the highest stated price for any similar period or service-type of agreement:

(1) By an excess of ten percent (10%) for any term less than two (2) years duration;

(2) By an excess of fourteen percent (14%) for any term of two (2) years duration, but less than three (3) years duration; or

(3) By an excess of eighteen percent (18%) for any term of three (3) years duration.

(d) It shall be unlawful for a health club to offer free or no cost periods of enrollment in addition to the initial paid term of the agreement in order to circumvent the discounting provision of subsection (c).

(e)(1) Notwithstanding this part or any rules promulgated pursuant to this part to the contrary, a health club may enter into or offer to enter into a health club agreement with, or accept payment or a promise of payment from, a prospective buyer prior to certification by the division of its facility as fully operational as set forth in subsection (b); provided, however, that the health club has:

(A) Acquired a property right or interest in this state with respect to the facility;

(B) Filed a registration application with the division as required by § 47-18-309; and

(C) Purchased from a surety company authorized to do business in this state a surety bond in favor of the division in the amount of twenty-five thousand dollars (\$25,000).

(2)(A) If the division determines, based on the financial statement required by § 47-18-309(a)(3), that the financial condition of the health club is insufficient to protect prospective buyers, then the division may require that the health club post a surety bond in an amount greater than twenty-five thousand dollars (\$25,000) but not to exceed two hundred thousand dollars (\$200,000). The health club shall file a copy of the bond with the division.

(B) A buyer who suffers loss of payments made to a health club prior to certification due to the health club's failure to open the facility may recover the amount of the payments from the surety; provided, that the liability of the surety may not exceed the aggregate amount of the bond regardless of the number or amount of claims filed with the surety.

(C) Upon certification by the division that the health club is fully operational, the health club may cancel the surety bond upon thirty (30) days written notice of cancellation from the surety to the division.

[Acts 1986, ch. 894, § 3; 1989, ch. 460, §§ 9-11; 1990, ch. 832, §§ 1, 2; 1996, ch. 929, §§ 4-8; 2008, ch. 771, § 1; 2008, ch. 926, § 2.]

**47-18-306. Duration of agreements.** — (a) Unless the buyer is granted a right to cancel the health club agreement as provided in subsection (b), no buyer shall be bound by any health club agreement with a stated initial term greater than thirty-six (36) months.

(b)(1) A health club agreement may include a provision or stipulation that provides for a month-to-month continuation of the agreement, either as an initial agreement between the operator and the buyer or as an extension of an agreement beyond a stated term or duration; provided, that the buyer has the right to cancel the continuing portion of the agreement by providing the health club operator thirty (30) days written notice by registered mail of the buyer's intent to cancel the agreement.

(2) A buyer shall have until midnight of the seventh business day after the date on which the first service under the health club agreement is available to cancel if the health club agreement is subject to a finance charge. "Business day" for the purposes of this subdivision (b)(2) means any day the health club is open unless the seventh day is a day the health club is not open for business to the buyer; provided, however, that if the health club is closed on the seventh day, the buyer shall have until midnight of the next day the health club is open to cancel the health club agreement. Cancellation is evidenced by the buyer giving written notice of cancellation to the health club at the address of any facility available for use by the buyer under the health club agreement. The buyer shall deliver the notice by personal delivery or by certified mail delivery, return receipt requested. Personal delivery is effective when delivered to the health club or to the health club's address, whichever comes first. Notice of cancellation by certified mail delivery shall be effective upon the date of post marking. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the buyer not to be bound by the contract. [Acts 1986, ch. 894, § 4; 1989, ch. 460, § 13; 1996, ch. 929, §§ 9, 10; 2008, ch. 926, § 3.]

**47-18-307. Provisions contrary to public policy.** — Any provision in a health club agreement, or in any document signed by the buyer in connection with such agreement, whereby the buyer agrees to waive any requirement of this part, shall be void as contrary to public policy. [Acts 1986, ch. 894, § 5.]

**47-18-308. Applicability of provisions.** — Acts 1989, ch. 460 does not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before January 1, 1990. [Acts 1986, ch. 894, § 6; 1989, ch. 460, § 16.]

**47-18-309. Certificat of registration — Application — Issuance.** — (a) An application for a certificate of registration shall be submitted on forms furnished by the division and shall be accompanied by:

- (1) A registration fee of two hundred fifty dollars (\$250) per location;
- (2) Copies of all membership and health club agreements offered by the health club; and
- (3) A current personal or corporate financial statement prepared by a certified public accountant.

(b) Upon compliance with the provisions of this part by an applicant, the division shall issue a certificate of registration.

(c) No health club operator shall accept payment or a promise to pay pursuant to any health club agreement or pursuant to any subsequent

amendment to an existing health club agreement until a copy of the health club agreement or the amendment thereto has been filed with and accepted by the division as being in compliance with the provisions of this chapter. A health club agreement or amendment shall be deemed accepted for use unless the division furnishes the health club operator written notice of rejection of the agreement or amendment within forty-five (45) days of the date of filing with the division. [Acts 1989, ch. 460, § 2; 1996, ch. 929, § 11; 2008, ch. 771, § 2.]

**47-18-310. Certificat of registration — Duration — Renewal.** — (a) A certificate of registration shall be valid for one (1) year from the date of issuance and shall be invalid upon expiration until it is renewed.

(b) Application for renewal of a certificate of registration shall be submitted to the division before the expiration date on forms furnished by the division, and shall be accompanied by:

(1) A fee of one hundred fifty dollars (\$150) per location; and

(2) Copies of all membership and health club agreements offered by the health club.

(c) Certificates of registration shall be subject to late renewal for thirty (30) days following their expiration date by payment of the prescribed fee plus a penalty of fifty dollars (\$50.00).

(d) No renewal application will be accepted more than thirty (30) days from its expiration.

(e) Upon compliance with the provisions of this part by an applicant, the division shall renew a certificate of registration. [Acts 1989, ch. 460, § 3.]

**47-18-311. Certificat of registration — Transferability — Change of ownership.** — (a) No certificate of registration shall be transferable to another person.

(b) Upon a change in the information contained in the original application for a certificate of registration or in the most current application for renewal thereof, which reflects a change of ownership of more than forty-nine percent (49%) of a health club or any of its locations, a new certificate of registration shall be applied for and obtained prior to commencing or continuing business. [Acts 1989, ch. 460, § 4.]

**47-18-312. Violations.** — In addition to any other penalty provided by this part, the following, upon conviction, constitutes a Class A misdemeanor:

(1) The violation of any provision of this part;

(2) Obtaining or attempting to obtain a certificate of registration or a certificate of exemption through material misrepresentation or fraud;

(3) Obtaining an ownership interest in a health club or its assets when such health club is in violation of any provision of this part; or

(4) The willful failure to display conspicuously a proper certificate of registration or certificate of exemption. [Acts 1989, ch. 460, § 7; 1989, ch. 591, §§ 1, 6.]

**47-18-313. Responsibility for compliance — Change in ownership — Notice.** — (a) Any individual, firm, corporation, association, or other legal entity which obtains an ownership interest in a health club or its assets shall be responsible for determining that such health club is in compliance with the provisions of this part.

(b) A health club shall provide written notice to the division by registered or certified mail within ten (10) days after any change in ownership or the sale of a health club or any of its locations.

(c) A health club shall provide written notice to the division within ten (10) days after the health club or any of its locations ceases to conduct business. [Acts 1989, ch. 460, § 8.]

**47-18-314. Certificate of exemption.** — (a) It is unlawful to accept a down payment for a health club agreement in excess of thirty percent (30%) of the total cost of the agreement without a valid certificate of exemption.

(b) Each holder of a certificate of exemption shall display such certificate in a conspicuous place at each location where health club services or facilities are provided.

(c) Certificates of exemption shall be valid for one (1) year from the date of issuance.

(d) Application for renewal of a certificate of exemption shall be submitted before the expiration date on forms furnished by the division, and shall contain a sworn certification by the holder that the requirements for exemption continue to be met, and that the holder is in full compliance with all provisions of this part.

(e) In the event a holder of a certificate of exemption ceases to meet the requirements for exemption, then the certificate of exemption shall be invalid.

(f) Within ten (10) days after any change in the information contained in the original application or the application for renewal, each holder of a certificate of exemption shall notify the division of the change by registered or certified mail.

(g) An application for exemption shall be submitted on forms furnished by the division and shall be accompanied by:

- (1) A nonrefundable application fee of fifty dollars (\$50.00); and
- (2) A current personal or corporate financial statement prepared by a public accountant who holds a valid permit to practice in Tennessee.

(h) A certificate of exemption shall be granted; provided, that the application provides proof satisfactory to the division that the following criteria are met:

(1) The applicant has a net worth in excess of two hundred fifty thousand dollars (\$250,000) per location where health club services or facilities are provided; and

(2) The applicant has operated under substantially the same ownership and control for at least five (5) years.

(i) For the purpose of calculating net worth as provided in subsection (h), the following are excluded:

- (1) Assets which represent pre-payment for future services; and
- (2) Accounts receivable due from health club members for future services.

(j) Any health club which had applied for and obtained an exemption from the bond requirement under prior law shall be exempt from the provisions of this part which prohibit acceptance of a down payment for a health club agreement in an amount in excess of thirty percent (30%) of the total cost of the agreement. The exemption established by this subsection shall only be valid as long as the health club operates under the same or substantially the same ownership and control that existed when the exemption was granted under prior law. [Acts 1989, ch. 460, § 12.]

**47-18-315. Suspension, revocation, and nonrenewal of registration.**

— (a) Notwithstanding any other provision to the contrary in this chapter, the commissioner or the commissioner's designee may suspend, revoke or refuse to renew any registration held under the provisions of this part.

(b) The commissioner or the commissioner's designee may assess a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of this part, the rules promulgated hereunder, or order of the commissioner or the commissioner's designee. Each day of continued violation constitutes a separate violation.

(c) The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this part. [Acts 2001, ch. 126, § 2.]

**47-18-316. Promulgation of rules.** — The commissioner may promulgate rules and regulations to administer the provisions of this part. Such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 2001, ch. 126, § 3.]

**47-18-317 — 47-18-319. [Reserved.]**

**47-18-320. Violations — Penalties and remedies.** — (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act. [Acts 1984, ch. 630, § 4; T.C.A., § 47-18-304; Acts 1989, ch. 460, § 15.]

**47-18-321. Surety bond — Applicability — Filing of audited financial statement.** — (a) In order to provide a degree of protection to members of health clubs, each health club shall post a bond of twenty-five thousand dollars (\$25,000) with the department of commerce and insurance for each location conducting business in this state. The bond may be made through deposit of cash, a certificate of deposit, securities or with a bond issued by a corporate surety acceptable to the commissioner.

(b) The bond shall be maintained for two (2) years following the date on which the health club location ceases to conduct business in this state.

(c) In an action brought by the attorney general and reporter pursuant to part 1 of this chapter, the attorney general and reporter shall have the right to request that the total amount of the bond posted by the health club be awarded to the state for consumer restitution.

(d) This section shall not apply to any health club or health club operator that has, for at least seven (7) consecutive years, operated under substantially the same ownership and control and maintained a satisfactory registration with the division.

(e)(1) In lieu of the surety bond required in this section, a health club may file with the department of commerce and insurance a current audited financial statement prepared by a certified public accountant licensed in this state that demonstrates to the department that either the health club or its operator has a financial net worth of at least ten million dollars (\$10,000,000) available to satisfy any claims imposed by the division.

(2) Any health club that files an audited financial statement in lieu of posting the surety bond required by this section shall annually file an updated audited financial statement that complies with subdivision (e)(1). Within thirty (30) calendar days of receiving information that would render the health club ineligible for exemption from the surety bond requirement under this subsection (e), either the health club or its operator must notify the division of the change in its financial status and post the required surety bond with the department.

(f) Any health club subject to this section and registered with the division on June 5, 2008, shall post a surety bond or file an audited financial statement on or before July 1, 2010. [Acts 2008, ch. 1107, § 1; 2009, ch. 229, § 1.]

**47-18-322. Cease and desist orders.** — Notwithstanding any other provision to the contrary in this chapter, whenever it appears to the commissioner that a person has violated or is violating this part, the rules promulgated under this part or an order of the commissioner, the commissioner may issue an order to the person to cease and desist in those violations, without prior notice. The recipient of the order shall be afforded an opportunity for a hearing within thirty (30) business days to show cause why the order should be lifted, rescinded or modified. [Acts 2008, ch. 1107, § 2.]

#### PART 4—MEMBERSHIP CAMPING ACT

#### **47-18-401 — 47-18-412. [Transferred to title 66, ch. 32, part 3.]**

**Compiler's Notes.** Former part 4, §§ 47-18-401 — 47-18-412, concerning the Membership Camping Act, was transferred to title 66, ch. 32, part 3 in 1995.

#### PART 5—BUYERS' CLUBS

**47-18-501. Definitions** — As used in this part, unless the context otherwise requires:

- (1) "Business day" means any day other than a Saturday, Sunday, or legal holiday;
- (2) "Buyer" or "member" means any status by which any natural person is

entitled to any of the benefits of a discount buying organization;

(3) "Buying service," "buying club," or "club" means any person, corporation, partnership, unincorporated association, or other business enterprise operating for profit within the state of Tennessee, the primary purpose of which is to provide benefits to members from the cooperative purchase of services or merchandise;

(4) "Contract" means any oral or written agreement by which one becomes a member of a club;

(5) "Division" means the consumer affairs division of the department of commerce and insurance; and

(6) "Prepayment" means any payment greater than fifty dollars (\$50.00) for service, merchandise, or membership made before the service is rendered. Money received by a club from a financial institution upon assignment of a contract shall be considered prepayment when and to the extent the member is required to make prepayments to the financial institution pursuant to the contract. [Acts 1986, ch. 863, § 1.]

**47-18-502. Cancellation of membership.** — (a) Any person who has elected to become a member of a club may cancel such membership by giving written notice any time before twelve o'clock (12:00) midnight of the third business day following the date on which membership was attained, subject to the provisions of § 47-18-503. Such cancellation shall be without liability on the part of the member and shall entitle the member to a refund of the entire consideration paid for the contract.

(b) Notice of cancellation must be in writing and delivered personally or by mail. If given by mail, the notice is effective upon deposit in a mailbox, properly addressed and postage paid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the member not to be bound by the contract. If delivered personally, the notice is to be accepted by any agent or employee of the club, and a receipt for the notice must be given by that agent or employee to the person cancelling.

(c) The entitled refund shall be delivered to the member within fourteen (14) days after notice of cancellation is given.

(d) Rights of cancellation may not be waived or otherwise surrendered.

(e) Cancellation shall not relieve the member from paying for any merchandise or services purchased or ordered prior to the date of cancellation. [Acts 1986, ch. 863, § 1.]

**47-18-503. Contracts — Notice of right to cancel.** — (a) A fully completed copy of every contract shall be delivered to the member at the time the contract is signed. Every contract shall constitute the entire agreement between seller and member, shall be in writing, shall be signed by the member, shall designate the date on which the member signed the contract and shall state, clearly and conspicuously in boldface type of a minimum size of fourteen (14) points, in immediate proximity to the space reserved for the signature of the buyer, the following:

### MEMBER'S RIGHT TO CANCEL

If you wish to cancel this contract, you may cancel by delivering or mailing a written notice to the company. Certified mail would provide greater protection than first class mail, but is not necessary. If you deliver the notice personally, you are entitled to a receipt. Your notice must make known that you do not wish to be bound by the contract. If the notice is delivered or mailed before twelve o'clock midnight (12:00) of the third business day after you sign this contract, you are entitled to a refund of the entire consideration paid for the contract. The notice must be delivered or mailed to (insert name and mailing address of company). If you cancel, the club is required to return, within fourteen (14) days of the date on which you give notice of cancellation, any payments you have made.

(b) Until the buying club has complied with this section, the member may cancel the contract by notifying the buying club, in any manner and by any means, of the member's intention to cancel and the member is then entitled to a refund of the entire consideration paid for the contract.

[Acts 1986, ch. 863, § 1.]

**47-18-504. Contracts — Nondelivery of goods — Savings claims.** — (a) Every contract shall provide that if any goods, except furniture or custom manufactured goods, ordered by the member from the buying club, are not delivered to the member or available for pick up by the member at the location where the order was placed within six (6) weeks from the date the member placed an order for such goods, then any payment by the member for such goods in advance of delivery shall, upon the member's request, be fully refunded, unless a predetermined delivery date has been furnished to the member in writing at the time the member ordered such goods, and the goods are delivered to the member or available for pick up by that date. Every contract must disclose that delivery dates for furniture or custom manufactured goods cannot be predicted, if such is the case.

(b) Every contract shall provide that all savings claims made by the buying club are based on price comparisons with retailers doing business in the trade area in which the claims are made if the same or comparable items are offered for sale in the trade area and with prices at which the merchandise is actually sold or offered for sale.

(c) Any contract which does not comply with subsections (a) and (b) shall be void and unenforceable. [Acts 1986, ch. 863, § 1.]

**47-18-505. Contracts — Duration.** — No contract shall be valid for a term longer than eighteen (18) months from the date upon which the contract is signed. However, a club may allow a member to convert such member's contract into a contract for a period longer than eighteen (18) months after the member has been a member of the club for a period of at least six (6) months. The duration of the contract shall be clearly and conspicuously disclosed in the contract in boldface type of a minimum size of fourteen (14) points. No contract shall contain an automatic renewal clause; provided, that such an agreement may provide for the buyer to exercise a renewal. [Acts 1986, ch. 863, § 1.]

**47-18-506. Exemptions.** — This part shall not apply to:

(1) Any buyers club in which the total consideration paid by each buyer in any manner whatsoever under the contract for discount buying services does not exceed fifty dollars (\$50.00) over the expected life of the contract;

(2) Any buyers club in which persons receive discount buyer services incidentally as part of a package of services provided to or available to such individuals on account of their membership in such organization, which is not organized for the profit of any person or corporation or which does not have as one (1) of its primary purposes or businesses the provision of discount buying services; and

(3) Any buyers club which files with the director of the division a declaration, executed under penalty of perjury by the owner or manager of such club, stating that the club does not require or, in the ordinary course of business, receive prepayment. [Acts 1986, ch. 863, § 1.]

**47-18-507. Required disclosures — Unfair or deceptive trade practices.** — (a) It is unlawful for any buying club to fail to disclose to a prospective member in writing, prior to the sale of any contract for discount buying services:

(1) That goods or services can only be bought through catalogs with no opportunity to inspect samples if such is the case;

(2) The buyers club's policies regarding warranties or guarantees on goods ordered, return of ordered goods by buyers, procedures for cancellation of merchandise orders by the buyer, and refunds of deposits for the cancellation of orders;

(3) Any charges, such as estimated freight costs, handling fees, credit life or disability insurance, suppliers' and buyers clubs' markup, and other costs incidental to the purchase of goods through the buyers club and which are to be paid by the buyer;

(4) A list of the categories of merchandise which are available to buyers from cooperating suppliers. If the list includes savings claims based on reference prices, the reference prices must be those at which the same or comparable goods are offered or sold in the trade area;

(5) Advice that the contract for discount buying service or incidental retail installments contracts will be transferred, sold, or assigned to a third party if such practice is to be used by the buyers club; and

(6) The percentage of the purchase price required as a down payment on merchandise orders of any nature. This prohibition applies in all cases where rebates are offered, regardless of whether such promised rebates are contingent upon the seller's ability to enroll the referred persons into the buyers club.

(b) It is an unfair or deceptive trade practice for a buying club to:

(1) Represent that it is affiliated with any other buyers club organization or showroom, unless an affiliation in fact exists and unless the prospective buyer would be legally entitled to services from the allegedly affiliated organization as a result of being a buyer of the subject buyers club. If such an affiliation is claimed by the representative of the buyers club, written proof of such a binding legal right must be given the prospective buyer, including a description of the services available from the affiliated club, before the signing of any

contract for discount buying services or application;

(2) Represent that the prospective buyer will be entitled to a particular benefit unless that benefit is currently available from the buyers club on a regular basis;

(3) Offer any gifts or consideration of any nature to a prospective buyer as a solicitation for such person to attend a buyers club sales presentation or to sign a membership application or a contract for discount buying services where the club fails to honor or deliver the gift or consideration in accordance with the terms of its promise;

(4) Represent or suggest in any manner that it offers its buyers the lowest prices, excluding freight and service charges, available on all categories of merchandise handled by the club, unless such is true; or

(5) Represent that merchandise is available to the buyer from any particular supplier unless such is true at the time the representation is made. Reference to unavailable suppliers or manufacturers may be made only for purposes of allowing prospective buyers to compare merchandise costs against those manufacturers which are available through the club. No buyers club may represent to a prospective buyer, unless it is true, that the club can purchase any item of merchandise at supplier's cost if the buyer provides the club with the necessary model number for the item. [Acts 1986, ch. 863, § 1.]

**47-18-508. Requirements nonwaivable.** — Any waiver by the member of the provisions of this part shall be deemed contrary to public policy and shall be void and unenforceable. [Acts 1986, ch. 863, § 1.]

**47-18-509. Violations of part — Penalties.** — A violation of this part shall constitute a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter. For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act. [Acts 1986, ch. 863, § 1.]

#### PART 6—RENTAL-PURCHASE AGREEMENTS

**47-18-601. Short title.** — This part shall be known and may be cited as the “Tennessee Rental-Purchase Agreement Act.” [Acts 1987, ch. 225, § 2.]

**47-18-602. Legislative finding and purpose.** — The general assembly finds that a significant number of consumers have sought to acquire ownership of personal property through rental-purchase agreements. Often, these rental-purchase agreements have been offered without adequate cost disclosures. It is the purpose of this part to assure meaningful disclosure of the terms of rental-purchase agreements, to make consumers aware of the total cost attendant with such agreements, to inform the consumer when ownership will transfer, and to assure accurate disclosures of rental-purchase terms in advertising. [Acts 1987, ch. 225, § 3.]

**47-18-603. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Advertisement” means a commercial message in any medium that aids, promotes, or assists directly or indirectly a rental-purchase agreement;

(2) “Cash price” means the price at which the lessor would have sold the property to the consumer for cash on the date of the rental-purchase agreement;

(3) “Consumer” means a natural person who rents personal property under a rental-purchase agreement;

(4) “Consummation” means the time a consumer becomes contractually obligated on a rental-purchase agreement;

(5) “Division” means the division of consumer affairs in the department of commerce and insurance;

(6) “Lessor” means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of property under a rental-purchase agreement; and

(7) “Rental-purchase agreement” means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four (4) months or less (whether or not there is any obligation beyond the initial period) that is automatically renewable with each payment and that permits the consumer to become the owner of the property. “Rental-purchase agreement” shall not be construed to be, nor be governed by, any of the following:

(A) A lease or agreement which constitutes a “credit” sale as defined in 12 C.F.R. 226.2(a)(16) and Section 1602(g) of the Truth In Lending Act, 15 U.S.C. § 1601 et seq.;

(B) A lease which constitutes a “consumer lease” as defined in 12 C.F.R. 213.2(a)(6);

(C) Any lease for agricultural, business, or commercial purposes;

(D) Any lease made to an organization;

(E) A lease or agreement which constitutes a “retail installment contract” or “retail installment transaction” as defined in § 47-11-102;

(F) A “security interest” as defined in § 47-1-201; or

(G) A “home solicitation sale” as defined in § 47-18-702. [Acts 1987, ch. 225, § 4.]

**47-18-604. Required disclosures.** — (a) For each rental-purchase agreement, the lessor shall disclose the following items as applicable:

(1) A brief description of the leased property, sufficient to identify the property to the consumer and lessor;

(2) The number, amount, and timing of all lease payments necessary to acquire ownership of the property;

(3) The maximum amount of all initial and periodic payments and other charges to acquire ownership of the property pursuant to the ownership provisions of the rental-purchase agreement;

(4) A statement that the consumer will not own the property until the consumer has made the number of payments and the total of payments necessary to acquire ownership;

(5) A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, and that the consumer should see the contract for an explanation of these charges;

(6) If applicable, a statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed;

(7) A statement indicating whether the property is new or used; however, a statement that indicates new property is used is not a violation of this part;

(8) A statement of the cash price of the property. Where the agreement involves a lease for five (5) or more items, a statement of the aggregate cash price of all items shall satisfy this requirement;

(9) The total of initial payments required to be paid before consummation of the agreement or delivery of the property, whichever is later;

(10) A statement clearly summarizing the terms of the consumer's options to purchase;

(11) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with the description of that responsibility and a statement that, if any part of a manufacturer's express warranty covers the leased property at the time the consumer acquires ownership of the property, it will be transferred to the consumer, if allowed by the terms of the warranty; and

(12) The date of the transaction and the identities of the lessor and consumer.

(b) With respect to matters specifically governed by the federal Consumer Credit Protection Act, compliance with such act satisfies the requirements of this section.

(c) Subsection (a) does not apply to a lessor who complies with the disclosure requirements of Section 182 of the federal Consumer Credit Protection Act, 15 U.S.C. § 1667a, 90 Stat. 258, with respect to a rental-purchase agreement entered into with a consumer. [Acts 1987, ch. 225, § 5.]

**47-18-605. Form of disclosures.** — (a) The lessor shall disclose to the consumer the information required by this part. In a transaction involving more than one (1) consumer, a lessor need disclose only to one (1) of the consumers who is primarily obligated. In a transaction involving more than one (1) lessor, only one (1) lessor need make the required disclosures.

(b) The disclosures required under this part shall be made no later than the time that the lessor delivers the merchandise to the consumer, or upon consummation of the rental-purchase agreement, whichever is earlier.

(c)(1) The disclosures shall be made using words and phrases of common meaning, in a form that the consumer may keep.

(2) The disclosures required under § 47-18-604 may be made a part of the rental-purchase agreement or provided on a separate form.

(3) The required disclosures shall be set forth clearly and conspicuously. The disclosures shall be placed all together, on the front side of the rental-purchase agreement or on a separate form. The form setting forth the required disclosures must contain spaces for the consumer's signature and the date appearing immediately below the disclosures. The requirements of this section shall not have been complied with unless the consumer signs the statement

and receives, at the time disclosures are made, a legible copy of the signed statement. The inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt thereof.

(d) Information required to be disclosed may be given in the form of estimates and shall be identified as such when the lessor does not know the exact information.

(e) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy is not a violation of this part.

(f) At the lessor's option, information in addition to that required by § 47-18-604 may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or distract attention from the required information. [Acts 1987, ch. 225, § 6.]

**47-18-606. Prohibited terms of agreement.** — A rental-purchase agreement may not contain a provision:

- (1) Requiring a confession of judgment;
- (2) Requiring a garnishment of wages;
- (3) Granting authorization to the lessor or a person acting on the lessor's behalf to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of goods;
- (4) Requiring the consumer to waive any defense, counterclaim, or right of action against the lessor or a person acting on the lessor's behalf in collection of payment under the lease or in the repossession of goods; or
- (5) Requiring purchase of insurance from the lessor to cover the merchandise. [Acts 1987, ch. 225, § 7.]

**47-18-607. Termination and reinstatement provisions.** — (a) Each rental-purchase agreement must:

(1) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the merchandise upon expiration of any lease term; and

(2) Contain a provision for reinstatement which, at a minimum:

(A) Permits a consumer who fails to make a timely rental payment to reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of all past due rental charges, the reasonable costs of pickup, redelivery, any refurbishing and any applicable late fee within five (5) days of the renewal date if the consumer pays monthly, or within two (2) days of the renewal date if the consumer pays more frequently than monthly;

(B) In the case where a consumer, at the request of the lessor or its agent, has returned or voluntarily surrendered the property, other than through judicial process, permits the consumer to reinstate the agreement during a period of not less than thirty (30) days after the date of the return of the property. In the event the consumer has paid not less than sixty percent (60%) of the amount called for under the contract to obtain ownership, the reinstatement period under this subsection shall be extended to a total of

ninety (90) days after the date of the return of the property. In the event the consumer has paid not less than eighty percent (80%) of the amount called for under the contract to obtain ownership, the reinstatement period under this subsection shall be extended to a total of one hundred eighty (180) days after the date of the return of the property.

(b) Nothing in this section prevents a lessor from attempting to repossess property during the reinstatement period, but such a repossession does not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition. [Acts 1987, ch. 225, § 8.]

**47-18-608. Receipts for payments.** — A lessor shall provide the consumer with a written receipt for each payment made by cash or money order. [Acts 1987, ch. 225, § 9.]

**47-18-609. Renegotiations — Extensions.** — (a) A renegotiation occurs when an existing rental-purchase agreement is satisfied and replaced by a new lease agreement undertaken by the same consumer. A renegotiation is a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

(1) The addition or return of property in a multiple item agreement or the substitution of lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent (25%);

(2) A deferral or extension of one (1) or more periodic payments, or portions of a periodic payment;

(3) A reduction in charges in the agreement;

(4) An agreement involving a court proceeding; and

(5) Any other event described in regulations prescribed by the division.

(b) No disclosures are required for any extension of a rental-purchase agreement. [Acts 1987, ch. 225, § 10.]

**47-18-610. Advertisements.** — (a) If an advertisement for a rental-purchase agreement refers to or states the amount of any payment or the right to acquire ownership for any specific item, the advertisement also must state clearly and conspicuously the following items, as applicable:

(1) That the transaction advertised is a rental-purchase agreement;

(2) The total of payments necessary to acquire ownership; and

(3) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(b) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(c) Subsection (a) does not apply to an advertisement which does not refer to a specific item of merchandise. The disclosures also need not be made in an advertisement which does not refer to or state the amount of any payment, and which is published in the yellow pages of a telephone directory or any similar directory of business.

(d) With respect to matters specifically governed by the federal Consumer Credit Protection Act, compliance with such act satisfies the requirements of this section. [Acts 1987, ch. 225, § 11.]

**47-18-611. Civil liability.** — (a)(1) A lessor who fails to comply with a requirement imposed in § 47-18-604 or §§ 47-18-606 — 47-18-608 with respect to a consumer is liable to the consumer in an amount equal to the greater of:

(A) The actual damages sustained by the customer as a result of the violation; or

(B)(i) In the case of an individual action, twenty-five percent (25%) of the total of payments necessary to acquire ownership but not less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000); or

(ii) In the case of a class action, the amount the court determines to be appropriate with no minimum recovery as to each member. The total recovery in any class action or series of class actions arising out of the same violation may not be more than the lesser of five hundred thousand dollars (\$500,000) or one percent (1%) of the net worth of the lessor. In determining the amount of any award in a class action, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency and persistence of the violation, the lessor's resources, and the extent to which the lessor's violation was intentional.

(2) Such lessor is also liable to the consumer for the costs of the action and reasonable attorneys' fees as determined by the court.

(b) In the case of an advertisement, any lessor who fails to comply with the requirements of § 47-18-610 with regard to any person is liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorneys' fees.

(c) When there are multiple lessors, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been given, liability shall be imposed on all lessors.

(d) When there are multiple consumers in a rental-purchase agreement, there shall be only one (1) recovery of damages under subsection (a) for a violation of this part.

(e) Multiple violations in connection with a rental-purchase agreement entitle the consumer to a single recovery under this section.

(f) A consumer may not take any action to offset any amount for which a lessor is potentially liable under subsection (a) against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this part as an original action, or as a defense or counterclaim to an action brought by lessor to collect amounts owed by the consumer.

(g) In connection with any transaction covered under this part, the lessor shall preserve evidence of compliance with the provisions of this part for not less than two (2) years from the date of consummation of the agreement. [Acts 1987, ch. 225, § 12.]

**47-18-612. Limitation of actions.** — An action under this part may be brought in any court of competent jurisdiction within one (1) year of the date of the occurrence of any violation or within six (6) months of the time the rental-purchase agreement, together with any renewals or extensions thereof, ceases to be in effect, whichever is greater. Notwithstanding the above, an action under this part may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or its assignee. [Acts 1987, ch. 225, § 13.]

**47-18-613. Liability — Good faith defenses.** — (a) A lessor is not liable under § 47-18-612 for a violation of this part if the lessor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, even though the lessor maintained procedures reasonably adapted to avoid such an error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to requirements of this title is not a bona fide error.

(b) A lessor is not liable under this part for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation promulgated by the attorney general and reporter or by the division or by an official duly authorized by the attorney general and reporter or by the division. This rule applies even if, after the act or omission has occurred, the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. [Acts 1987, ch. 225, § 14.]

**47-18-614. Criminal liability.** — A willful and intentional violation of any provision of this part is a Class C misdemeanor. [Acts 1987, ch. 225, § 15; 1989, ch. 591, § 111.]

#### PART 7—HOME SOLICITATION SALES

**47-18-701. Short title.** — This part shall be known and may be cited as the “Tennessee Home Solicitation Sales Act of 1974.” [Acts 1974, ch. 712, § 1; T.C.A., § 47-16-101.]

**47-18-702. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Business day” means any calendar day except Sunday, or the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day;

(2) “Buyer” means buyer or lessee;

(3) “Goods” means tangible personal property and also includes a merchandise certificate whereby a writing is issued by the seller which is not redeemable in cash and is usable in lieu of cash in exchange for goods or services;

(4) “Home solicitation sale” means a consumer sale or lease of goods (other than farm equipment and/or motor vehicles) or services, other than insurance

and securities, in which the seller or a person acting for the seller engages in the personal solicitation of the sale or lease at any residence other than that of the seller, and the buyer's agreement or offer to purchase or lease is there given to the seller or a person acting for the seller. It does not include cash sales of less than twenty-five dollars (\$25.00), a sale or lease made pursuant to a preexisting revolving charge account, or a sale or lease made pursuant to prior negotiations between the parties. It does not include real estate sales or listing agreements. It does not include sales of farm animals or produce or similar perishable items; and

(5) "Seller" means seller or lessor. [Acts 1974, ch. 712, § 2; T.C.A., § 47-16-102.]

**47-18-703. Cancellation — Buyer's rights — Exceptions.** — Notwithstanding any other provisions of the law to the contrary:

(1) Except as provided in subdivision (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until twelve o'clock midnight (12:00) of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with § 47-18-704;

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase;

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid;

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale;

(5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and:

(A) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation;

(B) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer; and

(C) The buyer's emergency request is in a dated writing personally signed by the buyer and which expressly states that the buyer understands that the buyer is waiving the buyer's right to cancel the sale under the provisions of this part;

(6) Except as provided in subdivision (5), any waiver or modification of a buyer's right to cancel is void and of no effect. In the event the seller obtains from the buyer a waiver or modification of the buyer's right to cancel, the buyer's right to cancel shall commence on the first business day following the buyer's learning that the waiver or modification is void and of no effect. [Acts 1974, ch. 712, § 3; T.C.A., § 47-16-103.]

**47-18-704. Cancellation — Notice to buyer of rights.** — (a) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer a receipt if it is a cash or credit card sale or, in the case of a credit sale, obtain

the buyer's signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually makes payment in whole or in part or signs. Contained on any such receipt, written agreement, or offer to purchase, there shall be a readily legible statement as described in subsection (b).

(b) The statement required in subsection (a) shall:

(1) Appear on the front side of the receipt or contract, or immediately above the buyer's signature, under the conspicuous caption: "BUYER'S RIGHT TO CANCEL"; and

(2) Read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before twelve o'clock midnight (12:00) of the third business day after you sign this agreement. The notice must be mailed to: \_\_\_\_\_

(insert name and mailing address of seller)."

(c) In lieu of the form of notice required by subsection (b), a seller may comply with the requirements of the federal statutes, rules, or regulations governing the form of notice of the right of cancellation in door-to-door sales.

(d) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of the buyer's intention to cancel.

(e) A home solicitation sale shall be deemed to be in compliance with the notice requirements of this statute if:

(1) The buyer may at any time:

(A) Cancel the order;

(B) Refuse to accept delivery of the goods without incurring any obligation to pay for them; or

(C) Return the goods to the seller and receive a full refund for any amount the buyer has paid; and

(2) The buyer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and unmistakably set forth on the face or reverse side of the sales ticket. [Acts 1974, ch. 712, § 4; T.C.A., § 47-16-104.]

**47-18-705. Cancellation — Refund of payments — Lien pending refund.** — (a) Except as provided in this section, within ten (10) days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(b) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(c) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to the buyer by the seller and has a lien on the goods in the buyer's possession or control for any

recovery to which the buyer is entitled. [Acts 1974, ch. 712, § 5; T.C.A., § 47-16-105.]

**47-18-706. Cancellation — Return of goods — Compensation for services.** — (a) Except as provided in § 47-18-705(c), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but the buyer is not obligated to tender at any place other than the buyer's residence. If the seller fails to demand possession of goods within twenty (20) days after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them.

(b) The buyer has a duty to take reasonable care of the goods in the buyer's possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(c) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to compensation only to the extent of the fair market value for any such services performed prior to cancellation. [Acts 1974, ch. 712, § 6; T.C.A., § 47-16-106.]

**47-18-707. Misrepresentation of seller's identity.** — Notwithstanding any other provisions of law, if at the time of a home solicitation a seller or the seller's agent should fail to immediately identify such person as a seller or lessor, or should the seller or agent represent or imply that the seller's or agent's purpose at the time of solicitation is anything other than selling or leasing if that is not substantially true, the buyer shall have a total of thirty (30) days to cancel any home solicitation sales contract there entered into in the same manner and to the same extent as otherwise provided by this chapter; provided, that the goods or merchandise are made available for the seller's repossession and are tendered back to the seller in substantially as good condition as when received by the buyer. [Acts 1974, ch. 712, § 7; T.C.A., § 47-16-107.]

**47-18-708. Non-waivable buyer's rights.** — (a) No seller shall use a form or contract in providing goods or services that purports to waive a buyer's right to obtain:

- (1) Punitive damages;
- (2) Exemplary damages;
- (3) Treble damages; or
- (4) Attorney's fees.

(b) Any form or contract containing a prohibited provision as described above shall be deemed unconscionable and unenforceable as to such provision. [Acts 2001, ch. 116, § 1.]

#### PART 8—EQUAL CONSUMER CREDIT

**47-18-801. Short title.** — This part shall be known and may be cited as the "Tennessee Equal Consumer Credit Act of 1974." [Acts 1974, ch. 727, § 1; T.C.A., § 47-17-101.]

**47-18-802. Unlawful discrimination.** — (a) It is unlawful for any creditor or credit card issuer to discriminate between equally qualified individuals, whether male or female, or whether disabled, or to discriminate solely on account of marital status against any individual, with respect to the approval or denial of terms of credit in connection with any consumer credit sale, whether or not under an open end credit plan, any consumer loan, or any other extension of consumer credit, or with respect to the issuance, renewal, denial, or terms of any credit card.

(b) “Disabled,” as used in this section, means any physically disabled person who meets the requirements for disabled drivers established in § 55-21-102(1) and (2), and any other individual not otherwise covered under provisions of this section who is certified as disabled by a physician duly licensed to practice medicine in Tennessee.

(c) Any requirement of a public utility for the continuation of a utility service account in the name of the spouse in whose name the account was originally opened shall not be a violation of this section where both spouses reside in the same household and have the benefit of the utility service. [Acts 1974, ch. 727, § 2; 1978, ch. 610, § 1; 1983, ch. 310, §§ 1, 2; T.C.A., § 47-17-102.]

**47-18-803. Damages and attorney’s fees.** — Any creditor or credit card issuer who discriminates against any individual in a manner prohibited by § 47-18-802 is liable to such individual in damages in an amount equal to the sum of:

(1) In the case of an individual action, not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000);

(2) In the case of a class action, not more than ten thousand dollars (\$10,000); and

(3) In the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney’s fee as determined by the court. [Acts 1974, ch. 727, § 3; T.C.A., § 47-17-103.]

**47-18-804. Jurisdiction and limitation of actions.** — Any action brought under the provisions of this part may be brought in any court of competent jurisdiction in this state during a period of one (1) year commencing on the date of occurrence of the violation. [Acts 1974, ch. 727, § 4; T.C.A., § 47-17-104.]

**47-18-805. Liability of spouse.** — Where the applicant for credit is married, the spouse of the applicant shall not be liable, other than to the extent common law liability is imposed for furnishing necessities, for any debts, charges, or accounts where the spouse has not signed the application for credit. [Acts 1974, ch. 727, § 6; 1975, ch. 378, § 1; T.C.A., § 47-17-105.]

## PART 9—UNSOLICITED MERCHANDISE

**47-18-901. Rights of recipient.** — Unless otherwise agreed, where unsolicited goods, wares, or merchandise of a value of less than fifty dollars (\$50.00) is delivered by United States mail or United Parcel Service to a person who has not actually ordered or requested it, either orally or in writing, the person has a right to refuse to accept delivery of it, is under no duty to return it to the sender, is under no duty to preserve and safe-keep it, and may at the person's option deem it to be, for all purposes, an outright and unconditional gift and may use or dispose of it in any lawful manner without any obligation on the person's part to the sender. [Acts 1969, ch. 162, § 1; T.C.A., §§ 47-15-114, 47-21-101.]

**47-18-902. Defense against action for value or return of goods.** — In any action for the monetary value or for the return of such unsolicited goods, wares, or merchandise, it shall be a complete defense that it was delivered voluntarily by the plaintiff and was not actually ordered or requested by the defendant, either orally or in writing. [Acts 1969, ch. 162, § 1; T.C.A., §§ 47-15-114, 47-21-102.]

## PART 10—CREDIT SERVICES BUSINESSES

**47-18-1001. Short title.** — This part shall be known and may be cited as the "Tennessee Credit Services Businesses Act." [Acts 1988, ch. 897, § 1.]

**47-18-1002. Definitions** — As used in this part, unless the context otherwise requires:

- (1) "Attorney general" means the office of the attorney general and reporter;
- (2) "Consumer" means any individual who is solicited to purchase or who purchases the services of a credit services business;
- (3)(A) "Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is furnished or is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:
  - (i) Credit or insurance to be used primarily for personal, family, or household purposes;
  - (ii) Employment purposes; or
  - (iii) Other purposes which shall be limited to the following circumstances:
    - (a) In response to the order of a court having jurisdiction to issue the order;
    - (b) In accordance with the written instructions of the consumer to whom the report relates; or
    - (c) To a person which the agency has reason to believe:
      - (1) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to or review or collection of an account of,

the consumer;

(2) Intends to use the information for employment purposes;

(3) Intends to use the information in connection with the underwriting of insurance involving the consumer;

(4) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(B) "Consumer report" does not include:

(i) Any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys the person's decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made, and the person makes the disclosures to the consumer as to the exact nature of the request and the effect of the report on its decision to extend credit.

(4)(A) "Consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports.

(B) "Consumer reporting agency" does not include a private detective or investigator licensed under the provisions of title 62, chapter 26.

(5)(A) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform any of the following services in return for the payment of money or other valuable consideration:

(i) Improving a consumer's credit record, history, or rating;

(ii) Obtaining an extension of credit for a consumer; or

(iii) Providing advice or assistance to a consumer with regard to either (i) or (ii) of this subdivision (5)(A).

(B) "Credit services business" does not include:

(i) The making, arranging, or negotiating directly for a loan or extension of credit under the laws of this state or the United States;

(ii) Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or any credit union organized and chartered under the laws of this state or the United States;

(iii) Any nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));

(iv) Any person licensed as a real estate broker by this state where the

person is acting within the course and scope of that license;

(v) Any person licensed to practice law in this state where the person renders services within the course and scope of that person's practice as a lawyer;

(vi) Any broker-dealer registered with the securities and exchange commission or the commodity futures trading commission where the broker-dealer is acting within the course and scope of that regulation; or

(vii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681t).

(6) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes;

(7) "File," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored;

(8) "Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted, or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency, when the information was obtained directly from a creditor of the consumer or from the consumer; and

(9) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity. [Acts 1988, ch. 897, § 2; 1998, ch. 854, § 1.]

**47-18-1003. Prohibited practices.** — A credit services business, and its salespersons, agents and representatives, and independent contractors who sell or attempt to sell the services of a credit services business, shall not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, including all representations made orally or in writing. "Full and complete performance" means fulfillment of all items listed in the contract and other solicitations or communications to consumers;

(2) Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

(3) Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer

reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity;

(4) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business; or

(5) Create, or assist or advise the consumer to create a new credit record by using a different name, address, social security number, or employee identification number;

(6) Provide, in any manner, the services of a credit services business within this state, without registering a bond consistent with the provisions of § 47-18-1011;

(7) Remove, assist or advise the consumer to remove or otherwise alter adverse information from the consumer's credit record which is accurate or not obsolete;

(8) Create, assist or advise the consumer to request that positive information be inserted or included on the consumer's credit record which is false, inaccurate or obsolete;

(9) Use a program or plan which uses or employs installment payments featuring payments charged directly to a credit card prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer; or

(10) Engaging in any violation of the federal Consumer Credit Protection Act. [Acts 1988, ch. 897, § 3; 1998, ch. 854, §§ 2, 3.]

**47-18-1004. Information statement required — Record on file** — (a) Before the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, whichever occurs first, the credit services business shall provide the consumer with an information statement in writing containing all of the information required under § 47-18-1005.

(b) The credit services business shall maintain on file or microfilm for a period of two (2) years from the date of the consumer's acknowledgement an exact copy of the information statement personally signed by the consumer acknowledging receipt of a copy of the information statement. [Acts 1988, ch. 897, § 4.]

**47-18-1005. Contents of information statement.** — The information statement required under § 47-18-1004 shall include all of the following:

(1)(A) A complete and accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681g);

(B) A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the

consumer reporting agency, if requested by the consumer within thirty (30) days from receipt of the consumer's request; and

(C) A statement that a nominal charge, not to exceed eight dollars (\$8.00), may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all information in the consumer's file, if the consumer has not been denied credit within sixty (60) days from receipt of the consumer's request.

(2) A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item contained in any file on the consumer that is maintained by any consumer reporting agency, as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681(i));

(3) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay, or become obligated to pay, for the services;

(4)(A) Name and address of the surety company which issued the bond in accordance with § 47-18-1011;

(B) A statement explaining the consumer's right to proceed against the bond; and

(5) A complete and accurate statement of the availability of non-profit credit counseling. [Acts 1988, ch. 897, § 5; 1998, ch. 854, §§ 4, 10.]

**47-18-1006. Contract — Cancellation notice.** — (a) Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include all of the following:

(1) A conspicuous statement in size equal to at least ten (10) point bold type, in immediate proximity to the space reserved for the signature of the consumer, as follows:

“You, the buyer, may cancel this contract at any time prior to twelve o'clock midnight (12:00) of the fifth business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.”;

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified; and

(4) The principal business address of the credit services business and the name and address of its agent in this state authorized to receive service of process.

(b)(1) The contract shall be accompanied by a completed form in duplicate, captioned “NOTICE OF CANCELLATION,” which shall be attached to the contract and easily detachable, and which shall contain in at least ten (10) point bold type the following statement:

## NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to twelve o'clock midnight (12:00) of the fifth business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten (10) days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to \_\_\_\_\_ (Name of Seller) at \_\_\_\_\_ (Address of Seller) \_\_\_\_\_ (Place of Business) not later than twelve o'clock midnight (12:00) \_\_\_\_\_ (Date)

I HEREBY CANCEL THIS TRANSACTION.

\_\_\_\_\_  
Date (Buyer's Signature)

(2) A copy of the fully completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

[Acts 1988, ch. 897, § 6; 1998, ch. 854, § 5.]

**47-18-1007. Violations — Proof of exemption.** — (a) Any breach by a credit services business of a contract under this part, or of any obligation arising under it, constitutes a violation of this part.

(b) Any contract for services from a credit services business that does not comply with the applicable provisions of this part shall be void and unenforceable as contrary to the public policy of this state.

(c) Any waiver by a consumer of any of the provisions of this part shall be deemed void and unenforceable by a credit services business as contrary to public policy of this state, and any attempt by a credit services business to have a consumer waive rights given by this part constitutes a violation of this part.

(d) In any proceeding involving this part, the burden of proving an exemption or an exception from the definition is upon the person claiming it. [Acts 1988, ch. 897, § 7.]

**47-18-1008. Damages, private actions.** — (a) In any private action, any credit services business, which willfully fails to comply with any requirement imposed under this part with respect to any consumer, is liable to the consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure, or any amount paid by the person to the credit services business whichever is greater. This remedy is supplemental to any other remedy contained within this chapter.

(2) Such amount of punitive damages as the court may allow.

(b) In any private action, any credit services business which is negligent in failing to comply with any requirement imposed under this part with respect

to any consumer is liable to that consumer in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure. [Acts 1988, ch. 897, § 8; 1998, ch. 854, § 6.]

**47-18-1009. Limitation of actions.** — A private action to enforce any liability created under this part may be brought within two (2) years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this part to be disclosed to a consumer, and the information so misrepresented is material to the establishment of the defendant's liability to that consumer under this part, the action may be brought at any time within two (2) years after discovery by the consumer of the misrepresentation. No action brought by the attorney general and reporter shall be subject to the limitation of actions contained herein. [Acts 1988, ch. 897, § 9; 1998, ch. 854, § 7.]

**47-18-1010. Violation of Consumer Protection Act — Institution of proceedings.** — (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled at part 1 of this chapter. For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.

(b) If the attorney general has reason to believe that any credit services business, or any salesperson, agent, representative, or independent contractor acting on behalf of a credit services business, has violated any provision of this part, the attorney general may institute a proceeding under this chapter. [Acts 1988, ch. 897, § 10; 1998, ch. 854, § 8.]

**47-18-1011. Bond.** — (1) In order to provide a degree of protection to customers of credit services businesses, each credit services business shall post a bond of one hundred thousand dollars (\$100,000) with the department of commerce and insurance. Such bond may be made through deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner.

(2) The bond must be maintained for two (2) years following the date on which the credit services business ceases to conduct business in this state.

(3) In an action brought by the attorney general and reporter pursuant to § 47-18-1010, the attorney general and reporter shall have the right to request that the total amount of the bond posted by the credit services business be awarded to the state for consumer restitution or civil penalties.

(4) Notwithstanding the provisions of subdivision (1), any credit services business that was registered with the division of consumer affairs in the department of commerce and insurance on May 1, 1998, in this state shall only be required to post a bond in the amount of ten thousand dollars (\$10,000) with the department. Such bond may be made through deposit of cash, a certificate of deposit, securities, or with a bond issued by a corporate surety acceptable to the commissioner. [Acts 1988, ch. 897, § 11; 1998, ch. 854, § 9; 2000, ch. 874, § 1.]

## PART 11—PERSONAL SERVICES PROVIDERS [REPEALED]

**47-18-1101, 47-18-1102. [Repealed.]**

**Compiler's Notes.** Former §§ 47-18-1101, 47-18-1102 (Acts 1988, ch. 1017, §§ 1, 2), concerning personal services providers, were repealed by Acts 1989, ch. 418, § 1.

## PART 12—WATER TREATMENT DEVICES

**47-18-1201. Definitions** — As used in this part, unless the context otherwise requires:

(1) "Contaminant" or "contamination" means any health-related physical, chemical, biological, or radiological substance or matter in water;

(2) "Person" means any individual, partnership, firm, corporation or association, or any employee or agent thereof; and

(3) "Water treatment device" means any product that:

(A) Is designed to alter the chemical or physical properties or characteristics of drinking water or plumbing, or which the seller, lessor or renter claims can alter the chemical or physical properties or characteristics of drinking water or plumbing; and

(B) Is used or sold, leased or rented for use on residential property. [Acts 1989, ch. 367, § 1.]

**47-18-1202. Prohibited acts.** — It is unlawful for any person to do any of the following in connection with the sale, lease, rental, offer to sell, lease, rent or other disposition of water treatment devices:

(1) Make any untrue or misleading oral or written statements regarding the presence of one (1) or more contaminants in drinking water, or the performance of water treatment devices, including, but not limited to, the following oral or written statements:

(A) Any contaminant exists or may exist in the drinking water of any person to whom the statement is directed unless the statement is reasonably based on factual data;

(B) A relationship between water quality and acute or chronic illness exists as a scientific certainty unless that statement is reasonably based on factual data;

(C) The public water system, utility, or treatment plant that supplies drinking water to the person to whom the statement is directed does not test, treat or remove particular contaminants actually present in the water unless the statement is reasonably based on factual data;

(D) The drinking water supplied by the public water system, utility or treatment plant to the person to whom the statement is directed is or may be unsafe to drink unless the statement is reasonably based on factual data;

(E) A water treatment device removes particular contaminants from drinking water unless the statement is reasonably based on factual data in existence at the time the statement is made;

(F) Use news events, reports or descriptions of water problems or health hazards associated with water systems or suppliers in a false or misleading manner;

(G) A water treatment device would provide a health benefit or diminish a health risk unless the statement is reasonably based on factual data; and

(H) A water treatment device will solve or contribute to the solution of any problem unless the statement is reasonably based on factual data;

(2) Make any statement about the ability of a water treatment device to remove particular contaminants in such a manner as to imply falsely that any of those contaminants are present in excess of permitted levels in the drinking water of the person to whom the statement is made;

(3) Perform tests or demonstrations of the individual consumer's drinking water without also clearly informing the consumer of the results, scope and limits of the test or demonstration;

(4) Use pictures, exhibits, graphs, charts, other graphic portrayals, endorsements or testimonials in a false or misleading manner;

(5) Fail to disclose clearly and conspicuously, in writing, to the purchaser, lessee or renter, the importance of maintaining the water treatment device according to the manufacturer's instructions, including, if applicable, the replacement of screens and filters. In addition, a separate printed gummed label, tag or other convenient form of reminder of the importance of proper maintenance shall be provided to the purchaser, lessee or renter;

(6) Represent expressly or implicitly that the person is authorized by, or associated in any manner with, a governmental agency without the express written authorization of that agency; or

(7) Represent an expected life of a water treatment device or component thereof unless it is reasonably based on factual data. [Acts 1989, ch. 367, § 2.]

**47-18-1203. Prohibited practices under Consumer Protection Act.**

— Any violation of this part is a prohibited practice under § 47-18-104. [Acts 1989, ch. 367, § 3.]

PART 13—KEROSENE AND MOTOR FUELS QUALITY INSPECTION

**47-18-1301. Short title.** — This part shall be known and may be cited as the "Kerosene and Motor Fuels Quality Inspection Act of 1989." [Acts 1989, ch. 397, § 1.]

**47-18-1302. Legislative intent.** — It is the intent of the general assembly, through this enactment, to promote and protect the public health, safety and welfare by ensuring that kerosene and motor fuels:

(1) Are adequately labeled and posted; and

(2) Meet or exceed certain minimum standards of quality. [Acts 1989, ch. 397, § 2.]

**47-18-1303. Definitions** — As used in this part, unless the context otherwise requires:

(1) "American Society for Testing and Materials (ASTM)" means the national scientific and technical organization formed for the development of standards on characteristics and performance of materials, products, systems, and services, and the promotion of related knowledge;

(2) "Commissioner" means the Tennessee commissioner of agriculture or a departmental employee designated by the commissioner to act as the commissioner's representative for purposes of this part;

(3) "Convey for consumption in Tennessee" means to commercially refine, blend, store, transport, distribute, retail, or otherwise participate in the preparation or transmittal of kerosene or motor fuels for use by consumers within this state;

(4) "Department" means the Tennessee department of agriculture;

(5) "Diesel fuel" means refined oils commonly used in internal combustion engines where ignition occurs by pressure and not by electric spark, the classification of which shall be defined by the American Society for Testing and Materials;

(6) "Field inspector" means an employee of the department, or an employee of a person contracting with the department, whose duties and responsibilities include the collection of kerosene or motor fuel samples for testing and other activities related to enforcement of this part;

(7) "Gasoline" means a volatile mixture of liquid hydrocarbons generally containing small amounts of additives suitable for use as a fuel in spark-ignition internal combustion engines;

(8) "Gasoline-alcohol blend" means a blend consisting primarily of gasoline and containing by volume at least one percent (1%) ethanol (ethyl alcohol) or methanol (methyl alcohol), or both;

(9) "Kerosene" means a refined oil intended for heating or illuminating use, the classification of which shall be defined by the American Society for Testing and Materials;

(10) "Motor fuel" means any liquid product used for the generation of power in an internal combustion or turbine engine and includes, but is not necessarily limited to, gasoline, diesel fuel and gasoline-alcohol blends; and

(11) "Person" means an individual, partnership, corporation, company, firm, association or other business entity. [Acts 1989, ch. 397, § 3.]

**47-18-1304. Labeling and posting — Standards — Waiver of standards or alternative standards.** — (a) Kerosene and motor fuels conveyed for consumption in Tennessee shall be labeled and posted in accordance with applicable federal and state law.

(b) Kerosene and motor fuels conveyed for consumption in Tennessee shall meet the standards established for such products in the annual book of ASTM standards, and supplements thereto; provided, that by duly promulgated rule:

(1) The department may adopt alternative volatility standards for gasoline-alcohol blends; provided, that the alternative standards are consistent with the protection and promotion of public health, safety and welfare; and

(2) The department shall adopt as a substitute standard any provision of federal law which imposes requirements in conflict with an ASTM standard.

(c) The commissioner is authorized to waive ASTM standards or to establish alternative standards for a specified period of time when such action is deemed necessary to protect or promote public health, safety and general welfare, and the interests of citizens of Tennessee; provided, that if such waiver or alternative standards remain in effect for more than one (1) year, the

commissioner shall promulgate emergency or permanent rules, as the commissioner deems appropriate, pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 1989, ch. 397, § 4; 1997, ch. 40, § 1; 2005, ch. 2, § 1.]

**47-18-1305. Inspections and testing.** — (a)(1) The commissioner shall implement and administer an inspection and testing program to enforce compliance with § 47-18-1304. The commissioner is authorized to contract for the performance of all, or any portion of, required on-site inspections, sample collection, sample transportation and sample testing.

(2) The test results of kerosene and motor fuel analyses shall constitute open records and shall be available for public inspection at the commissioner's office during regular business hours.

(3) At the request of any person, the department may test samples collected and delivered by the person to the department. No such test shall interfere with the testing of samples collected pursuant to subdivision (a)(1). Such tests shall be performed only after payment of a fee determined by the commissioner to be sufficient to reimburse the department for its cost in performing such tests.

(b)(1) The department shall, at least once each year, inspect and collect at least one (1) sample for testing from each location from which a person conveys kerosene or motor fuel for consumption in Tennessee. Subject to availability of resources, the department may inspect any such location more frequently than once each year and may test a greater number of samples. If transactions occurring at a particular location total an average of less than three hundred (300) gallons per month, then annual inspection and testing of the location shall not be required.

(2) When, in the discretion of the commissioner, promotion or protection of the public health, safety, or welfare so necessitates, inspection and testing in addition to the requirements of subdivision (b)(1) shall be performed with regard to:

(A) A person or business location which has been previously found by the department to be in violation of § 47-18-1304; and

(B) Any person or business location which refines, blends, stores, transports, or distributes kerosene or motor fuel to or for the person or business location referred to in subdivision (b)(2)(A).

(3) Upon receiving a consumer complaint alleging a violation of § 47-18-1304, which, in the discretion of the commissioner, indicates that the public health, safety or welfare may be threatened, inspection and testing in addition to that required by subdivision (b)(1) shall be performed with regard to:

(A) The person or business location which is the subject of the complaint; and

(B) Any person or business location which refines, blends, stores, transports, or distributes kerosene or motor fuel to or for the person or business location referred to in subdivision (b)(3)(A).

(4) The commissioner shall maintain a toll-free telephone line for the purpose of encouraging and receiving consumer complaints pertaining to kerosene and motor fuel quality. The commissioner shall undertake such

actions and activities as may be necessary to inform and periodically remind consumers of the existence and purpose of the toll-free telephone number. A log of consumer complaints pertaining to kerosene and motor fuel quality shall be maintained at the commissioner's office. The log shall constitute an open record and shall be available for public inspection during regular business hours. [Acts 1989, ch. 397, § 5.]

**47-18-1306. Samples for testing — Testing of ethanol or methanol. —**

(a) Upon request of a field inspector, a person who conveys kerosene or motor fuel for consumption in Tennessee shall immediately provide the department, free of cost, samples of kerosene or motor fuel. Samples shall be pumped, pulled, drawn, or otherwise procured in the presence of the field inspector.

(b) The department shall test the samples for compliance with the requirements of § 47-18-1304.

(c) The department may test ethanol or methanol, intended for blending with gasoline, separate from and prior to the time at which such ethanol or methanol is blended with gasoline. [Acts 1989, ch. 397, § 6.]

**47-18-1307. Sanctions for violations — Penalties. —** (a)(1) If a person or the person's agent or employee conveys, or offers to convey, kerosene or motor fuel in violation of § 47-18-1304, then the person shall be subject to an administrative fine, to issuance of a stop-sale order, or to both, in the discretion of the commissioner. A stop-sale order shall be issued by the commissioner either as a Class One stop-sale order or as a Class Two stop-sale order. A Class One stop-sale order shall be issued for a specified period of time. A Class Two stop-sale order shall be issued until conditions identified within the order have been remedied.

(2)(A) A Class One stop-sale order may not be issued by the commissioner for a specified period greater than twenty-four (24) hours unless the violation:

- (i) Threatens public health or safety;
- (ii) Is knowingly and intentionally committed; or
- (iii) Reflects a continuing and repetitive pattern of disregard for the requirements of § 47-18-1304.

(B) A Class One stop-sale order duly issued by the commissioner for a specified period greater than twenty-four (24) hours may be issued for any period not in excess of two hundred forty (240) hours.

(3)(A) An administrative fine may not be assessed by the commissioner in an amount greater than one thousand dollars (\$1,000) unless the violation:

- (i) Threatens public health or safety;
- (ii) Is knowingly and intentionally committed; or
- (iii) Reflects a continuing and repetitive pattern of disregard for the requirements of § 47-18-1304.

(B) An administrative fine duly assessed by the commissioner in an amount greater than one thousand dollars (\$1,000) may be assessed for any amount not in excess of ten thousand dollars (\$10,000).

(b)(1) If a person who conveys kerosene or motor fuel for consumption in Tennessee, or an agent or employee of such person, refuses during regular business hours to promptly provide, upon request, a sample for inspection and

testing, then the refusal shall constitute a knowing and intentional violation of § 47-18-1304, and the person shall be subject to imposition of the appropriate penalties set forth in subsection (a).

(2) If a person who conveys kerosene or motor fuel for consumption in Tennessee, or an agent or employee of such person, interferes or attempts to interfere with the reasonable efforts of a field inspector or departmental official or employee to perform any duty or responsibility assigned pursuant to this part, then the interference or attempted interference shall constitute a knowing and intentional violation of § 47-18-1304, and the person shall be subject to imposition of the appropriate penalties set forth in subsection (a).

(3) If a person who conveys kerosene or motor fuel for consumption in Tennessee fails to register with the department as required by § 47-18-1304, then the person shall be subject to imposition of the penalties set forth in subsection (a).

(4) If a person who conveys kerosene or motor fuel for consumption in Tennessee violates a rule duly promulgated by the department under the authority of this part, then the violation shall constitute a violation of § 47-18-1304 and shall be subject to imposition of the penalties set forth in subsection (a).

(c) If a person unknowingly receives kerosene or motor fuel that does not comply with the requirements of § 47-18-1304, and if as a result thereof the person is sanctioned pursuant to this section, then such person shall have the right to proceed in civil court to collect damages from those persons who, in violation of § 47-18-1304, conveyed the kerosene or motor fuel for consumption in Tennessee. [Acts 1989, ch. 397, § 7.]

**47-18-1308. Officials or employees administering or enforcing part — Reports of interests in conveyances — Restrictions on use of samples.** — (a) Each official and employee within the department, and each official and employee of a person contracting with the department, who is directly or indirectly involved in the administration or enforcement of this part, and who has a direct or indirect interest in the conveyance of kerosene or motor fuel for consumption in Tennessee, shall annually file a written statement summarizing the official's or employee's involvement in the administration or enforcement of this part as well as the official's or employee's interest in the conveyance of kerosene or motor fuel for consumption in Tennessee. The statements shall constitute open records, shall be kept on file in the commissioner's office, and shall be available for public inspection during the department's regular business hours.

(b) No official or employee within the department and no official or employee of a person contracting with the department shall take away or appropriate for the official's or employee's own use any sample collected by or submitted to the department for testing. By duly promulgated rule, the department shall establish policies and procedures governing the use, disposal, or sale of any samples remaining unused after testing thereon is completed. [Acts 1989, ch. 397, § 8.]

**47-18-1309. Rules and regulations — Contested cases.** — (a) In accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the department shall promulgate such rules as may be necessary to effectively and efficiently administer and enforce the provisions of this part.

(b) Such rules shall include, but shall not necessarily be limited to:

(1) Registration and disclosure procedures and requirements mandated by § 47-18-1304;

(2) Identification and statement of current, applicable federal and state labeling and posting requirements, compliance with which is mandated by § 47-18-1304;

(3) Identification and statement of current, applicable ASTM standards or federal standards, compliance with which is mandated by § 47-18-1304; and

(4) Description of any deviations from ASTM standards, permitted by the department without imposition of sanction, in order to equitably reflect the margin of error for test analyses.

(c) A person who is aggrieved by a proposed departmental order to enforce the provisions of this part, or any rule promulgated under the authority of this part, shall be entitled to a contested case hearing to be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Except under circumstances in which the public health or safety would be jeopardized by delay, any such hearing shall be conducted prior to the time at which an administrative fine is imposed or a stop-sale order becomes effective. [Acts 1989, ch. 397, § 9.]

**47-18-1310. Report to governor and general assembly.** — Each year, on or before September 15, the commissioner shall distribute to the governor and to the chairs of the house and senate transportation committees of the general assembly a report entitled, “Annual Report on the Quality of Kerosene and Motor Fuel in Tennessee.” The report shall summarize, for the preceding fiscal year, the activities of the department in performing the duties and responsibilities assigned by this part. The report shall identify:

(1) The total number of inspections performed and samples collected by the department;

(2) The total number of inspections performed and samples respectively collected from refiners, blenders, storage facilities, transporters, wholesalers, retailers and others;

(3) The results of inspections and tests conducted, including the number and categories of violations as well as enforcement activities undertaken with respect to such violations;

(4) The geographical distribution by county of violations;

(5) The number and categories of consumer complaints, alleging violations of this part, received by the department;

(6) A summary of investigations conducted in response to consumer complaints;

(7) The costs of conducting the inspection and testing program;

(8) Legislative recommendations for improving compliance with this part;

(9) Other information that would be useful in evaluating the quality of

kerosene and motor fuel in Tennessee; and

(10) Other information that would be useful in evaluating programmatic effectiveness and efficiency. [Acts 1989, ch. 397, § 10; 1995, ch. 189, § 1.]

**47-18-1311. Funding.** — Implementation and administration of this part shall be subject to an annual appropriation for such purpose as contained within the general appropriations act. The commissioner of finance and administration shall transfer from highway user tax revenues allocated to the highway fund an amount sufficient to support the annual appropriation for implementation and administration of this part. [Acts 1989, ch. 397, § 12.]

#### PART 14—CONSUMER PROTECTION WARRANTY EXTENSION

**47-18-1401. Short title.** — This part shall be known and may be cited as the “Tennessee Consumer Protection Warranty Extension Act.” [Acts 1989, ch. 450, § 2.]

**47-18-1402. Warranty extension period.** — Any written warranty or service contract purchased in this state on or after July 1, 1989, and in effect when there is a failure of the product under such written warranty or service contract shall be extended as follows:

(1) The number of days the consumer is deprived of the use of the product by reason of the product being in repair; plus

(2) Two (2) additional working days. [Acts 1989, ch. 450, § 3.]

**47-18-1403. Working days — Definition** — For the purposes of this part, working days shall not include Saturdays, Sundays or legal holidays pursuant to § 15-1-101. [Acts 1989, ch. 450, § 3.]

**47-18-1404. Applicability.** — The provisions of this part shall not apply to a written warranty or a service contract for a new or used motor vehicle. [Acts 1989, ch. 450, § 3.]

#### PART 15—CONSUMER TELEMARKETING PROTECTION

**47-18-1501. Short title — Definitions** — (a) This part shall be known as the “Consumer Telemarketing Protection Act of 1990.”

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

(1) “ADAD equipment” means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed;

(2) “Authority” means the Tennessee regulatory authority, created by § 65-1-201 [§ 65-1-101]; and

(3) “Telephone access line” means any seven-digit telephone number for each call to which a fee is charged. [Acts 1990, ch. 874, § 1; 1995, ch. 305, § 103.]

**47-18-1502. Unlawful use of ADAD equipment — Consent to calls. —**

(a) It is unlawful for any person to use, to employ or direct another person to use, or to contract for the use of ADAD equipment for the purpose of advertising or offering for sale, lease, rental or as a gift any goods, services or property, either real or personal, primarily for personal, family or household use or for the purpose of conducting polls or soliciting information where:

(1) Consent is not received prior to the initiation of the calls as specified in subsection (b);

(2) Such use is other than between the hours of eight o'clock a.m. (8:00 a.m.) and nine o'clock p.m. (9:00 p.m.);

(3) The ADAD equipment will operate unattended, or is not so designed and equipped with an automatic clock and calendar device that it will not operate unattended, even in the event of power failures;

(4) Such use involves either the random or sequential dialing of telephone numbers;

(5) The telephone number required to be stated in subdivision (a)(7) is not, during normal business hours, promptly and personally answered by someone who:

(A) Is an agent of the person or organization in whose behalf the automatic calls are made; and

(B) Is willing and able to provide information concerning the automatic calls;

(6) The automatic dialing and recorded message player does not automatically and immediately terminate its connection with any telephone call within ten (10) seconds after the person called:

(A) Fails to give consent for the playing of a recorded message; or

(B) Replaces the receiver on the person's telephone;

(7) The recorded message fails to state clearly the name and telephone number of the person or organization initiating the call within the first twenty-five (25) seconds of the call and at the conclusion of the call; or

(8) Such use involves calls to:

(A) Telephone numbers which, at the request of the customer, have been omitted from the telephone directory published by the telephone company or cooperative serving the customer; or

(B) Hospitals, nursing homes, fire protection agencies, or law enforcement agencies.

(b)(1) A person may give consent to a call made with ADAD equipment when a live operator introduces the call and states an intent to play a recorded message. Any such consent shall apply only to a particular call and shall not constitute prior consent to receive further calls through the use of such ADAD equipment.

(2)(A) Any person wishing to receive telephone calls through the use of ADAD equipment shall give written consent to the person using, employing, directing another person to use, or contracting for the use of such ADAD equipment.

(B) Any form used for such written consent by any person using, employing, directing another person to use, or contracting for the use of such ADAD equipment shall clearly and conspicuously state its purpose and effect, and

clearly and conspicuously give notice of how such consent may be withdrawn.

(C) A record of such written consent shall be maintained by the person to whom consent is given, and shall be made available to the authority or its authorized representative, without further action, during normal business hours and following reasonable notice.

(D) Such consent shall, unless withdrawn, be valid for a period of two (2) years from the date on which it is executed; and such record of written consent shall be maintained by the person to whom consent is given for at least the same period of time.

(E) Any consent to receive telephone calls through the use of ADAD equipment shall be void and withdrawn on the fifteenth day following the receipt of a letter withdrawing such consent. It is unlawful for any person to whom written consent is given to fail to maintain the record of such written consent for the time required by this subdivision, or to prevent or hinder the authority or its authorized representative from inspecting any such record of written consent. [Acts 1990, ch. 874, § 2; 1995, ch. 305, § 104.]

**47-18-1503. Registration requirements — Issuance and revocation of permits.** — (a) Prior to the utilization of ADAD equipment to call telephone numbers located in this state, any company or individual utilizing this equipment shall register the following with the authority to receive a permit as provided in this part:

(1) Name, address and telephone number of the company or individual utilizing the equipment;

(2) Name and address of a designated agent for service of process located in Tennessee for the ADAD operator;

(3) A surety bond executed by the ADAD operator from a surety company authorized to do business in this state for the sum of ten thousand dollars (\$10,000) to be maintained continuously in full force and effect. The authority may waive the bond requirement for any operator demonstrating financial responsibility by the submission of a letter of credit from an accredited financial institution or by other means as the authority by rule may prescribe.

(b) The authority shall promulgate rules and regulations to govern the issuance of and the revocation or suspension of permits for ADAD operators utilizing equipment to call telephone numbers located in Tennessee.

(c) Failure to obtain a permit from the authority prior to utilization of ADAD equipment to call numbers located in Tennessee, and failure to abide by authority rules governing ADAD operations is a violation of this part. [Acts 1990, ch. 874, § 3; 1995, ch. 305, § 104.]

**47-18-1504. Unlawful to connect ADAD equipment to telephone line without permit — Renewal of permit.** — (a) It is unlawful for any person to connect any ADAD equipment to any telephone line in this state for the purpose of making telephone calls to persons in this state through the use of ADAD equipment unless a permit has been issued for such ADAD equipment by the authority.

(b) Any person desiring to use ADAD equipment in this state shall make application for a permit to the authority on forms prescribed by the authority,

and shall pay a fee as prescribed by the authority for such permit. Permits shall be renewed biennially as prescribed by the authority and upon payment of a renewal fee. The fees charged shall cover the administrative cost for the issuance of such permits.

(c) Permits shall be subject to suspension or revocation by the authority for any violation of this part. [Acts 1990, ch. 874, § 4; 1995, ch. 305, § 104.]

**47-18-1505. Unlawful use of telephone access line.** — It is unlawful for any person making use of a telephone access line to use, to employ or direct another person to use, or to contract for the use of ADAD equipment or the United States mail for the purpose of soliciting any person to call such telephone access line. [Acts 1990, ch. 874, § 5.]

**47-18-1506. Telephone companies and cooperatives — Withdrawal of access to a telephone access line.** — No telephone company or cooperative shall provide access to a telephone access line to any person who solicits calls to such number through the use of ADAD equipment or through the use of the United States mail. A telephone company or cooperative shall, upon the order of the authority, withdraw access to a telephone access line from any person if calls to such number are solicited by ADAD equipment or through the use of the United States mail. [Acts 1990, ch. 874, § 6; 1995, ch. 305, § 104.]

**47-18-1507. Permissible use of ADAD equipment.** — Nothing in this part shall prohibit the use of ADAD equipment to make calls with recorded messages when such calls:

- (1) Are made in response to calls initiated by the person to whom the automatic call or recorded message is directed;
- (2) Concern goods or services that have been previously ordered or purchased;
- (3) Relate to collection of lawful debts; or
- (4) Are made by a public school, kindergarten through grade twelve (K-12), as part of a program to regulate and control absenteeism of students. [Acts 1990, ch. 874, § 7.]

**47-18-1508. Penalty — Criminal.** — Any person who violates any provision of §§ 47-18-1502 — 47-18-1504 commits a Class A misdemeanor. [Acts 1990, ch. 874, § 8.]

**47-18-1509. Injunctive relief — Recovery of damages.** — (a) The district attorney general of the county in which or from which automated calls in violation of this part are made may seek injunctive relief to enforce this part and recover such statutory damages and attorney's fees as are set out in § 47-18-1510.

(b) Any individual or group of individuals receiving such automated calls may also seek injunctive relief to enforce this part on behalf of others similarly situated. [Acts 1990, ch. 874, § 9.]

**47-18-1510. Penalty — Civil.** — (a) If an individual or corporation is found to be in violation of this part in a civil action, a court shall assess a civil penalty against the offending party in the amount of one thousand dollars (\$1,000) for each call made in violation of this part.

(b) Any civil penalty collected pursuant to this section shall be paid into the general fund of the state. The prevailing party in the cause shall be entitled to necessary expenses and reasonable attorney's fees. [Acts 1990, ch. 874, § 10.]

**47-18-1511. Offense of using ADAD equipment to intentionally conceal or misrepresent telephone number of the equipment — Exceptions.** — (a) It is an offense for any person to utilize any ADAD equipment to intentionally:

(1) Dial telephone numbers with area codes within the state; and  
(2) Conceal or misrepresent the telephone number utilized by the ADAD equipment on the call recipient's telephone or other equipment that is technically capable of displaying the number by:

(A) Displaying a telephone number other than the telephone number utilized by the ADAD equipment;

(B) Not displaying the telephone number utilized by the ADAD equipment; or

(C) Displaying an "unknown number" message or similar message instead of the telephone number utilized by the ADAD equipment.

(b) A violation of this section is a Class A misdemeanor punishable only by a fine not to exceed two thousand five hundred dollars (\$2,500) for each violation. For purposes of criminal liability, a court shall deem each call made in violation of this section as a separate offense.

(c) It shall not be a violation of this section to display a phone number, different from the phone number being utilized by the ADAD equipment, on behalf of a person if:

(1) The phone number displayed on behalf of the person has a Tennessee area code or is a toll-free number;

(2) The phone number displayed on behalf of the person is answered during regular business hours by a designated representative of such person; and

(3) The person's name is displayed along with the phone number described in subdivisions (c)(1) and (2).

(d) The offenses described in this section shall not apply to a telecommunications, broadband, or voice-over-internet services provider acting solely as an intermediary for a transmission of telephone service between a caller and a recipient. [Acts 2010, ch. 684, § 1.]

**47-18-1512 — 47-18-1525. [Reserved.]**

**47-18-1526. Telephone solicitations prohibited.** — (a) As used in this section, unless the context otherwise requires:

(1) "Consumer" means an actual or prospective purchaser, lessee or recipient of consumer goods or services;

(2) "Division" means the division of consumer affairs of the department of commerce and insurance;

(3) "Telephone solicitor" means any natural person, firm, organization, partnership, association or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices;

(4) "Telephonic sales call" means a call made by a telephone solicitor to a consumer, for the purpose of soliciting a sale of any consumer goods or services, or for the purpose of soliciting an extension of credit for consumer goods or services, or for the purpose of obtaining information that will or may be used by the solicitor or a third party for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes or in connection with prizes, gifts or awards presentations; and

(5) "Unsolicited telephonic sales call" means a telephonic sales call other than a call made:

(A) In response to an express request of the person called;

(B) Primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call; or

(C) To any person with whom the telephone solicitor has a prior or existing business relationship.

(b) No telephone solicitor shall make or cause to be made any unsolicited telephonic sales call to any residential, mobile or telephonic paging device telephone number unless such person or entity has instituted procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of that person or entity, in compliance with 47 CFR 64 or 16 CFR 310.

(c)(1) No telephonic sales calls shall be made by a telephone solicitor to a consumer from a telephone if the telephone number of the caller is unlisted, or if the telephone solicitor is using telephone equipment which blocks the caller ID function on the telephone or telephone equipment of the number dialed so that the telephone number of the caller is not displayed on the telephone or telephone equipment which is technically capable of displaying the telephone number of the caller.

(2)(A) In addition to any other penalty provided by this section, it is an offense for a person owning or directing the use of telephones or telephone equipment in violation of subdivision (c)(1) to use or intentionally employ or direct a telephone solicitor to use, or to contract for the use of, telephones or telephone equipment to make telephonic sales calls in violation of subdivision (c)(1).

(B) A violation of this subdivision (2) is a Class A misdemeanor, punishable only by a fine not to exceed two thousand five hundred dollars (\$2,500) for each violation.

(d) The division shall investigate any complaints received concerning violations of this section pursuant to § 47-18-106. The civil penalty shall not exceed one thousand dollars (\$1,000) per violation. This civil penalty may be recovered in any action brought under this part by the division, or the division may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The division or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid

actual damages to the consumers who have been injured by the violation. It shall be an affirmative defense in any action brought under this subsection that the defendant has established and implemented reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations established in this section. [Acts 1996, ch. 948, § 1; 1998, ch. 734, § 1.]

**47-18-1527. Credit card charges by telephone solicitation permitted — Unauthorized charges — Refund.** — (a) Credit card companies may offer services charged to a credit card to a cardholder by telephone solicitation and such cardholder may elect to authorize or refuse such services.

(b) If the cardholder does not authorize such services, the cardholder shall notify the credit card company of any unauthorized charges that appear on such cardholder's credit card statement within three (3) months of initial billing for such services.

(c) If the cardholder notifies the credit card company during the three-month period that such consumer did not authorize the services and the credit card company cannot provide proof of authorization by such consumer, the credit card company shall refund an amount equal to a minimum of three (3) months charges for services.

(d) If the cardholder notifies the credit card company during the three-month period that such consumer did not authorize the services and the credit card company is able to prove authorization by such cardholder, no refund shall be issued by the credit card company. [Acts 1998, ch. 859, § 1.]

#### PART 16—UNSOLICITED TELEFACSIMILE ADVERTISING [REPEALED]

#### **47-18-1601 — 47-18-1604. [Repealed.]**

**Compiler's Notes.** Former part 16, §§ 47-18-1601 — 47-18-1604 (Acts 1990, ch. 877, §§ 1-4; 2000, ch. 670, §§ 1-3), concerning unsolicited telefacsimilies and electronic mail, was repealed by Acts 2003, ch. 15, § 8, effective July 1, 2003. Former § 47-18-1603 was previously repealed by Acts 2000, ch. 670, § 2.

#### PART 17—EMPLOYMENT AGENCIES

**47-18-1701. Short title.** — This part shall be known as and may be cited as the "Tennessee Employment Agency Act." [Acts 1996, ch. 731, § 2.]

**47-18-1702. Definitions** — As used in this part, unless the context otherwise requires:

- (1) "Candidate" means any person, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the services of an employment agency;
- (2) "Director" means the director of the consumer affairs division;
- (3) "Division" means the consumer affairs division;
- (4) "Employer" means any person who engages or seeks to engage candidates for employment;
- (5) "Employment agency" means any person who, for a fee paid by a

candidate or other compensation provided by a candidate:

(A) Places or attempts to place candidates seeking employment where the fee is not paid by the employer;

(B) Recruits or attempts to recruit employees for employers seeking candidates where the fee is not paid by the employer; or

(C) Purports to have access to job leads or compiles and provides lists or information about available jobs, if no fee is charged to the majority of potential employers for inclusion in the listings, and if an office is maintained for the purpose of marketing job information to the public and providing customers with access to that information;

(6) "Fee" means anything of value paid or directed to be paid for the services of an employment agency; and

(7) "Person" means any individual, company, corporation, partnership, association or firm, including any officer, director or employee of a corporation. [Acts 1996, ch. 731, § 3.]

**47-18-1703. Prohibited acts.** — No employment agency, or employer thereof, shall:

(1) Impose any fee on candidates except for furnishing of employment directly or indirectly through the efforts of such employment agency;

(2) Impose any fee on any candidate prior to the time at which that candidate has secured a job;

(3) Engage or attempt to engage in the splitting or sharing of fees with an employer, or an employee of an employer, to whom employment agency services have been furnished;

(4) Impose any fee for employing or training a person as a personnel consultant with such employment agency;

(5) Make, give or cause to be made or given to any candidate any false promise, misrepresentation, or inaccurate or misleading statement or information;

(6) Procure or attempt to procure the discharge of any person from such person's employment;

(7) Induce or attempt to induce any employee placed by the employment agency to leave such employment, except upon request made and initiated by such employee;

(8) Knowingly refer any candidate to employment which is prohibited by law, or deleterious to health or morals;

(9) Refer any candidate for an interview without having first obtained, either orally or in writing, a bona fide job order or recruiting assignment from an employer for an interview;

(10) Make or cause to be made or use any name, sign or advertising device bearing a name which may be reasonably confused with the name of a government agency;

(11) Knowingly publish or cause to be published any false, fraudulent, deceptive or misleading information, representation, permission, notice or advertisement;

(12) Require any candidate to contract with a specified lending agency to pay employment agency service charges; or

(13) Knowingly and willfully violate any law of this state or the United States. [Acts 1996, ch. 731, § 4.]

**47-18-1704. Refund of fees paid in event of termination.** — If a candidate accepts candidate-paid fee employment and is terminated by the employer through no cause of the candidate within four (4) weeks after beginning work, the employment agency shall, within thirty (30) days, refund any fee paid by the candidate. During such thirty (30) days, the employment agency shall, if requested, attempt to place the candidate in similar employment. [Acts 1996, ch. 731, § 5.]

**47-18-1705. Exemptions.** — The provisions of this part do not apply to:

(1) Employee trade associations engaged in the procurement of employment for public school teachers and administrators;

(2) Employment services established and operated by this state, any political subdivision of this state or the United States;

(3) Labor union organizations;

(4) Musician booking agencies;

(5) Employee trade associations engaged in the procurement of employment for nurses;

(6) Any health care provider who provides health care services and who is licensed pursuant to title 63 or title 68, chapter 11; or

(7) Any public or private college or university in the state; provided, that no recruiting fee is exacted from the salary or wages of the employee for services rendered. [Acts 1996, ch. 731, § 6.]

**47-18-1706. Investigators.** — Whenever the division has reason to believe that a person is engaging in, has engaged in, or may be about to engage in a violation of this part or has reason to believe it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, or has engaged in, or is about to engage in such act or practice, the division may conduct an investigation in accordance with the provisions of § 47-18-106. [Acts 1996, ch. 731, § 7.]

**47-18-1707. Enforcement actions.** — (a) Whenever it appears to the director that a person has engaged in or is about to engage in any act or practice constituting a violation of this part or any rule or order hereunder, the director may, in the director's discretion, bring an action in the chancery court of any county in this state to enjoin the acts or practices and to enforce compliance with this part or any rule or order hereunder.

(b) Upon a proper showing, a permanent or temporary injunction, restraining order, writ of mandamus, discouragement or other proper equitable relief shall be granted.

(c) The court shall not require the director to post a bond. [Acts 1996, ch. 731, § 8.]

**47-18-1708. Violations — Penalties.** — (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce and subject to the penalties and remedies as provided by such act. [Acts 1996, ch. 731, § 9.]

#### PART 18—FOREIGN FOODS DISCLOSURE

**47-18-1801. Short title.** — This part shall be known and may be cited as the “Foreign Foods Disclosure Act of 1997.” [Acts 1997, ch. 244, § 1.]

**47-18-1802. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Director” means the director of the division of consumer affairs;

(2) “Food” means any nourishing substance intended to be eaten by human beings;

(3) “Manufacturer” means any person who manufactures, assembles or packages articles containing food of foreign origin. “Manufacturer” does not include wholesalers that repack fresh produce into smaller containers for sale to retail stores or retailers that repack fresh produce into tray-ready packs for sale to consumers; and

(4) “Person” means a natural person, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized. [Acts 1997, ch. 244, § 2.]

**47-18-1803. Administration.** — The consumer affairs division of the department of commerce and insurance shall administer the provisions of this part. [Acts 1997, ch. 244, § 3.]

**47-18-1804. Labeling requirements.** — It is unlawful for any manufacturer to sell any article containing food of foreign origin to a retail or wholesale establishment in Tennessee or for distribution in Tennessee if such article is not marked in accordance with the requirements of 19 U.S.C. § 1304. [Acts 1997, ch. 244, § 4.]

**47-18-1805. Injunctive relief.** — In addition to any other remedies, the director is authorized to apply to the chancery court of Davidson County, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this part, irrespective of whether or not there exists an adequate remedy at law, without the necessity of posting a bond. [Acts 1997, ch. 244, § 5.]

**47-18-1806. Civil penalties.** — The director may seek and the court may impose a maximum civil penalty for a violation of this part of not more than ten thousand dollars (\$10,000). For purposes of this section, each unmarked or improperly marked article constitutes a separate violation of this part. [Acts 1997, ch. 244, § 6.]

**47-18-1807. Civil actions — Damages — Declaratory judgments — Costs.** — (a) Any person who manufactures, assembles or packages articles containing food who has suffered or will suffer an ascertainable loss as a result of a violation of this part may commence a civil action against any manufacturer who is alleged to have violated or to be in violation of the provisions of this part.

(b) The action may be brought in a court of competent jurisdiction in the county where any alleged sale took place, is taking place, or is about to take place, or in the county in which the alleged violator resides, has its principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(c) If the court finds that the violation was a willful or knowing violation, the court shall award three (3) times the actual damages sustained and provide such other relief as it considers necessary and proper.

(d) A person commencing a civil action under this section shall serve a copy of the action on the director. In any action under this section, the director, if not a party, may intervene as a matter of right at any time in the proceeding.

(e) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the part or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed or shall not be continued if the director has commenced or intervened in a proceeding pursuant to § 47-18-1805.

(f) The court, in issuing any final order in any action brought pursuant to this section, shall award costs of litigation (including reasonable attorney fees) to the prevailing party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Tennessee Rules of Civil Procedure. [Acts 1997, ch. 244, § 7.]

**47-18-1808. Statute of limitations.** — Any action commenced pursuant to this part shall be brought within one (1) year from discovery of the alleged sale of an improperly marked article. [Acts 1997, ch. 244, § 8.]

**47-18-1809. Construction with federal law.** — (a) The provisions of this part shall be construed in accordance with 19 U.S.C § 1304 and the regulations promulgated and rulings and decision made thereunder.

(b) Nothing in this part shall alter or amend the applicability to a wholesale or retail grocer of 19 U.S.C. § 1304 and any regulations promulgated thereunder. [Acts 1997, ch. 244, §§ 9, 11.]

## PART 19—WIRELESS TELECOMMUNICATION DEVICES

**47-18-1901. Minimum service periods — Disclosure required.** — In any circumstance in which a written contract for a wireless telecommunications device and service is required by the provider thereof, such contract shall have a separate acknowledgment, either by a separate signature line or by initialing, of any minimum service period. [Acts 1997, ch. 276, § 2.]

**47-18-1902. Penalties.** — The penalties provided in part 1 of this chapter shall be applicable to a violation of this part. [Acts 1997, ch. 276, § 3.]

**47-18-1903. Applicability to regulated utilities.** — This part shall not apply to any device or service sold, leased, or offered for sale or lease by any telephone cooperative or by any public utility that is subject to the jurisdiction of, or to regulation by, the Tennessee regulatory authority. [Acts 1997, ch. 276, § 4.]

**47-18-1904. Applicability to personal, family and household uses.** — The remedies provided under this chapter with respect to a violation of the provisions of this part shall be available with respect to goods or services purchased by an individual primarily for personal, family or household use or purposes. [Acts 1997, ch. 276, § 6.]

**47-18-1905. Applicability to contracts executed after effective date.** — This part shall apply to contracts executed after January 1, 1998, and shall not apply to contracts executed prior to that date. [Acts 1997, ch. 276, § 5.]

## PART 20—CIGARETTES

**47-18-2001. Short title.** — This part shall be known and may be cited as the “Tennessee Minimum Cigarette Pack Size Act of 1999.” [Acts 1999, ch. 111, § 2.]

**47-18-2002. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Cigarette retailer” means each and every cigarette vending machine, place, store, booth, concession, truck, vehicle or person that in any way sells or makes available cigarettes or cigarette products directly or indirectly to the ultimate consumer;

(2) “Tobacco product manufacturer” means an entity that, after May 4, 1999, directly (and not exclusively through any affiliate):

(A) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer as that term is defined in the master settlement agreement) that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the master settlement agreement

and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States;

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(C) Becomes a successor of an entity described in subdivision (2)(A) or (B); and

(3) "Tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within subdivision (2)(A), (B) or (C). [Acts 1999, ch. 111, § 3.]

**47-18-2003. Minimum package contents.** — No tobacco product manufacturer or cigarette retailer may directly or indirectly, manufacture, sell or distribute in Tennessee any pack or other container of cigarettes containing fewer than twenty (20) cigarettes or, in the case of roll-your-own tobacco, any package of roll-your-own tobacco, containing less than zero point six zero (0.60) ounces of tobacco. [Acts 1999, ch. 111, § 4.]

**47-18-2004. Purpose — Liberal construction.** — (a) The purpose of this part is to prevent tobacco manufacturers or retailers from manufacturing, selling or distributing cigarettes in packs or containers containing fewer than twenty (20) cigarettes. This measure is designed to deter minors from smoking cigarettes.

(b) The provisions of this part shall be liberally construed to promote such purpose. [Acts 1999, ch. 111, § 5.]

**47-18-2005. Violation of Consumer Protection Act.** — Any violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter. For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct, trade or commerce and subject to all sanctions, penalties and remedies provided in that act, including attorneys' fees and costs. [Acts 1999, ch. 111, § 6.]

**47-18-2006. Institution of proceedings — Costs of actions.** — (a) The attorney general and reporter may bring any appropriate action or proceeding in any court of competent jurisdiction pursuant to the provisions of this part against any cigarette manufacturer or cigarette retailer to seek redress, including injunctive relief, for violations of this part.

(b) No costs shall be taxed against the attorney general and reporter or the state in actions commenced under the provisions of this part. [Acts 1999, ch. 111, §§ 6, 7.]

## PART 21—IDENTITY THEFT DETERRENCE

**47-18-2101. Short title.** — This part shall be known and may be cited as the “Tennessee Identity Theft Deterrence Act of 1999.” [Acts 1999, ch. 201, § 2.]

**47-18-2102. Definitions** — As used in this part and in the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, unless the context otherwise requires:

(1) “Ascertainable loss” means an identifiable deprivation, detriment or injury arising from the identity theft or from any unfair, misleading or deceptive act or practice even when the precise amount of the loss is not known. Whenever a violation of this part has occurred, an ascertainable loss shall be presumed to exist;

(2) “Attorney general” means the office of the Tennessee attorney general and reporter;

(3) “Consumer report” has the meaning ascribed to that term by 15 U.S.C. § 1681a(d);

(4) “Consumer reporting agency” has the meaning ascribed to that term by 15 U.S.C. § 1681a(f);

(5) “Division” means the division of consumer affairs of the department of commerce and insurance;

(6) “Financial document” means any credit card, debit card, check or checking account information or number, savings deposit slip or savings account information or number, or similar financial account or account number, including but not limited to, a money market account, certificate of deposit, or other type of interest generating account with a bank, savings and loan or credit union account, or any other financial institution, mutual fund account, 401K account, individual retirement account, retirement account, or other stock account information, savings bond or other bond, credit line, equity line or other line of credit which the possessor of the account has the right to draw against;

(7) “Identification documents” means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be a driver license, nondriver identification cards, birth certificates, marriage certificates, divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, health care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services;

(8) “Identity theft” means:

(A) Obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one or more identification documents or personal identification numbers of another person; or

(B) Otherwise obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one (1) or more financial documents of another person;

(9) “Person” means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(10) “Personal identification number” means any number that is assigned by the government to identify a particular person, including, but not limited to, social security number, federal tax payer identification number, Medicaid, Medicare or TennCare number which identifies a particular person eligible for benefits, any number assigned to a person as part of a licensure or registration process, such as a board of professional responsibility number, driver license number and passport number and any number assigned by an insurance company, health maintenance organization, managed care organization or other health benefit organization, for the purposes of identifying a particular person eligible for services; and

(11) “Tennessee Consumer Protection Act” means the Tennessee Consumer Protection Act of 1977, as amended, as compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include but are not limited to: the Prize and Promotion Act, § 47-18-120; Health Club Act, as compiled in part 3 of this chapter; Buyer’s Clubs Act, as compiled in part 5 of this chapter; Home Solicitations Sales Act of 1974, as compiled in part 7 of this chapter; Tennessee Credit Services Businesses Act, as compiled in part 10 of this chapter; Consumer Telemarketing Protection Act of 1990, as compiled in part 15 of this chapter; Unsolicited Telefacsimile Advertising Act, as compiled in part 16 of this chapter; Tennessee Employment Agency Act, as compiled in part 17 of this chapter; and Membership Camping Act, as compiled in title 66, chapter 32, part 3. [Acts 1999, ch. 201, § 3; 2007, ch. 170, § 2.]

**47-18-2103. Prohibited practices.** — It is unlawful for any person to directly or indirectly:

- (1) Engage in identity theft; or
- (2) Engage in any unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft. [Acts 1999, ch. 201, § 4.]

**47-18-2104. Private rights of action.** — (a) Any party commencing a private action pursuant to this part must provide a copy of the complaint and all other initial pleadings to the division of consumer affairs and upon entry of any judgment, order or decree of the action, shall mail a copy of such judgment, order or decree to the division of consumer affairs within five (5) days of entry of the judgment, order or decree.

(b) A copy of any notice of appeal shall be served by the appellant upon the director of the division, who in the public interest may intervene.

(c) A private action to enforce any liability created under this part may be brought within two (2) years from the date the liability arises, except that where a defendant has concealed the liability to that person, under this part, the action may be brought within two (2) years after discovery by the person of

the liability. No action brought by the division shall be subject to the limitation of actions contained herein.

(d) In any private action commenced under this part, if the private party establishes that identity theft was engaged in willfully or knowingly, the court may award three (3) times the actual damages and may provide such other relief as it considers necessary and proper.

(e) The action may be brought in a court of competent jurisdiction in the county where the identity theft or unfair, deceptive or misleading act or practice took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(f) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided, that such action shall not be filed once the division has commenced a proceeding pursuant to this part or the Tennessee Consumer Protection Act, as compiled in part 1 of this chapter.

(g) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorneys' fees and costs. [Acts 1999, ch. 201, § 5.]

**47-18-2105. Civil penalties and remedies.** — (a) Whenever the division has reason to believe that any person has engaged in, is engaging in, or based upon information received from another law enforcement agency, is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest, the attorney general and reporter, at the request of the division, may bring an action in the name of the state against such person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such act or practice. Additionally, the state may request an asset freeze or any other appropriate and necessary orders against such person.

(b) The action may be brought in the chancery or circuit court in Davidson County or in a court of competent jurisdiction where the alleged violation of this part, identity theft, unfair, misleading or deceptive act or practice took place or is about to take place or in the county in which the person resides, has the person's principal place of business, conducts, transacts or has transacted business or, if the person cannot be found, in any of the locations listed in this subsection (b), in the county in which the person can be found.

(c) The courts are authorized to issue orders and injunctions to restrain and prevent violations of this part or issue any other necessary or appropriate relief or orders. Such orders and injunctions shall be issued without bond to the state of Tennessee.

(d) Notwithstanding any other provision of law, a violation of this part shall be punishable by a civil penalty of whichever of the following is greater: ten thousand dollars (\$10,000), five thousand dollars (\$5,000) per day for each day

that a person's identity has been assumed or ten (10) times the amount obtained or attempted to be obtained by the person using the identity theft. This civil penalty is supplemental, cumulative and in addition to any other penalties and relief available under the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, or other laws, regulations or rules.

(e) In any successful action commenced under this part, any ascertainable loss that a person has incurred as a result of a violation of this part, including, but not limited to, the identity theft or misleading, deceptive or unfair practices used to engage in violations of this part shall be recovered as restitution for each such person. The person shall also be awarded statutory interest on that ascertainable loss.

(f) In any successful action commenced by the division under this part, the court shall also order reimbursement to the division of the reasonable attorneys' fees, costs and expenses of the investigation and prosecution under this part.

(g) No court costs, litigation costs, discretionary costs or attorneys' fees shall be taxed or awarded against the state in an action commenced under this part or under the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter.

(h) Any knowing or willful violation of the terms of an injunction or order issued pursuant to this part in an action commenced by the attorney general and reporter shall be punishable by a civil penalty of not more than five thousand dollars (\$5,000) for each and every violation of the order recoverable by the state, in addition to any other appropriate relief, including, but not limited to, contempt sanctions and the awarding of attorneys' fees and costs to the state for any filings relating to violations of any order under this part.

(i) An order or judgment issued as a result of an action commenced by the division shall in no way affect individual rights of action which may exist independent of the recovery of money or property received under such order or judgment. If a particular person receives restitution as a result of an action commenced by the attorney general and reporter, those funds shall act only as a set-off against any award of money received in the person's private right of action proceedings. [Acts 1999, ch. 201, § 6; 2007, ch. 170, §§ 7-9.]

**47-18-2106. Violation of Tennessee Consumer Protection Act.** — (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated any provision of this part, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter. [Acts 1999, ch. 201, § 7.]

**47-18-2107. Release of personal consumer information.** — (a) As used in this section, unless the context otherwise requires:

(1) “Breach of the security of the system” means unauthorized acquisition of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the information holder. Good faith acquisition of personal information by an employee or agent of the information holder for the purposes of the information holder is not a breach of the security of the system; provided, that the personal information is not used or subject to further unauthorized disclosure;

(2) “Information holder” means any person or business that conducts business in this state, or any agency of the state of Tennessee or any of its political subdivisions, that owns or licenses computerized data that includes personal information; and

(3)(A) “Personal information” means an individual’s first name or first initial and last name, in combination with any one (1) or more of the following data elements, when either the name or the data elements are not encrypted:

(i) Social security number;

(ii) Driver license number; or

(iii) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account; and

(B) “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(b) Any information holder shall disclose any breach of the security of the system, following discovery or notification of the breach in the security of the data, to any resident of Tennessee whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (d), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(c) Any information holder that maintains computerized data that includes personal information that the information holder does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(d) The notification required by this section may be delayed, if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(e) For purposes of this section, notice may be provided by one (1) of the following methods:

(1) Written notice;

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. § 7001; or

(3) Substitute notice, if the information holder demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds five hundred thousand (500,000), or the information holder does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice, when the information holder has an e-mail address for the subject persons;

(B) Conspicuous posting of the notice on the information holder's internet website page, if the information holder maintains such website page; and

(C) Notification to major statewide media.

(f) Notwithstanding subsection (e), an information holder that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the timing requirements of this section, shall be deemed to be in compliance with the notification requirements of this section, if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(g) In the event that a person discovers circumstances requiring notification pursuant to this section of more than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a, of the timing, distribution and content of the notices.

(h) Any customer of an information holder who is a person or business entity, but who is not an agency of the state or any political subdivision of the state, and who is injured by a violation of this section, may institute a civil action to recover damages and to enjoin the person or business entity from further action in violation of this section. The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

(i) The provisions of this section shall not apply to any person who is subject to the provisions of Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102. [Acts 2005, ch. 473, § 1.]

**47-18-2108. Security freeze at the request of the consumer.** — (a) A Tennessee consumer may place a security freeze on the consumer report of the Tennessee consumer by making a request in writing by certified mail. Beginning on January 31, 2009, a credit reporting agency shall make available an electronic method for requesting a security freeze. A security freeze shall prohibit the consumer reporting agency from releasing the requesting party's consumer report or credit score relating to the extension of credit without the express authorization of the Tennessee consumer. Nothing in this section shall prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a particular consumer report.

(b) A consumer reporting agency shall place a security freeze on a consumer report no later than three (3) business days after receiving the written or electronic request from the Tennessee consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the Tennessee consumer within ten (10) business days of

placing the security freeze on the consumer report, and shall provide the Tennessee consumer with a unique personal identification number or password, other than the Tennessee consumer's federal social security number, to be used by the Tennessee consumer when providing authorization for the release of the consumer report for a specific period of time or for permanently removing the security freeze.

(d) If the Tennessee consumer wishes to allow the consumer report to be accessed for a specific period of time while a freeze is in place, the Tennessee consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section; and

(3) The information requested by the consumer reporting agency about the period for which the consumer report is to be available.

(e) A consumer reporting agency shall develop procedures involving the use of telephone, the Internet, or other electronic method to receive and process a request from a Tennessee consumer to temporarily lift a freeze on a credit report pursuant to this section in an expedited manner. A consumer reporting agency may develop procedures involving the use of facsimile for this purpose.

(f) A consumer reporting agency shall comply with a request to temporarily lift a freeze previously placed on a consumer report no later than fifteen (15) minutes after receiving the request through an electronic contact method in accordance with this section and the request is received between 6:00 a.m. and 9:30 p.m., seven (7) days per week, eastern or central standard or daylight time as applicable to the consumer. In requesting a temporary removal of the security freeze, a Tennessee consumer shall provide both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section.

(g) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (f) if:

(1) The consumer fails to meet the requirements of subsection (d); or

(2) The consumer reporting agency's ability to temporarily lift the security freeze within fifteen (15) minutes is prevented by:

(A) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomenon;

(B) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

(C) Operational interruption including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;

(D) Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(E) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or

(F) Commercially reasonable maintenance of or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.

(h) If a third party requests access to a consumer report on which a security freeze is in effect and the Tennessee consumer does not allow the third party access to the consumer report, the third party may treat any applicable credit application made by the consumer as incomplete.

(i) If a Tennessee consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the Tennessee consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific period of time while the security freeze is in place.

(j) Except as provided in subsections (d), (e), and (f), a security freeze shall remain in place until the Tennessee consumer requests that the security freeze be removed permanently. A consumer reporting agency shall permanently remove a security freeze no later than two (2) business days from the receipt of a request by the agency when a Tennessee consumer makes the request by means involving the use of telephone, the Internet, or other electronic media as provided by the consumer reporting agency. In making the request, the Tennessee consumer shall provide both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section.

(k) If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer not later than thirty (30) days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

(l) A consumer reporting agency may charge a Tennessee consumer a reasonable fee, not to exceed seven dollars and fifty cents (\$7.50), for the placement of a security freeze. A consumer reporting agency may not charge a Tennessee consumer to temporarily lift a security freeze. A consumer reporting agency may charge a consumer a reasonable fee, not to exceed five dollars (\$5.00), to permanently remove a security freeze, or to replace a personal identification number or password. A consumer reporting agency may not charge a Tennessee consumer to place or permanently remove a security freeze if that Tennessee consumer is a victim of identity theft as defined in § 47-18-2102 or other Tennessee law or federal law regarding identity theft and presents to the consumer reporting agency, at the time the request is made, a police report or other official document acceptable to the consumer reporting agency detailing the theft. Beginning on January 1, 2010, and on January 1 of each subsequent year, a consumer reporting agency may increase the fees set forth in this section based proportionally on changes to the consumer price index of all urban consumers, as determined by the United States department of labor, with fractional changes rounded to the nearest twenty-five cents (25¢).

(m) This section, including the security freeze, does not apply to the use of a consumer report by the following:

(1) A person, or that person's subsidiary, affiliate, agent or assignee, if the Tennessee consumer has an account, contract, or debtor-creditor relationship with that person, for the purposes of reviewing the account, collecting the financial obligation of the consumer, fraud control or extending additional credit to the Tennessee consumer. For purposes of this subdivision (m)(1), "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent or assignee of a party or parties for whom a security freeze has been temporarily lifted pursuant to this section for the purpose of facilitating the extension of credit or other permissible use;

(3) Any person, including, but not limited to, a law enforcement entity, collections officer or private collection agency, acting pursuant to a court order, warrant or subpoena authorizing the use of the consumer report, or acting pursuant to a civil investigative demand or request for consumer protection information;

(4) Any department or division of the state that is acting to investigate a child support case, medicaid or TennCare fraud, delinquent taxes or assessments, unpaid court orders or settlements of any sort or type, or to fulfill of any of their statutory or other duties;

(5) For the purposes of prescreening as provided by the federal Fair Credit Reporting Act, compiled in 15 U.S.C. § 1681;

(6) Any person for the purpose of providing a credit file monitoring subscription service to which the Tennessee consumer has subscribed;

(7) A consumer reporting agency for the sole purpose of providing a Tennessee consumer with a copy of the consumer report upon the Tennessee consumer's request;

(8) Any person or entity for the purpose of setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

(9) A pension plan acting to determine the Tennessee consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud;

(10) Any law enforcement entity or its agent acting to investigate a crime or civil law violation, conduct a criminal background check, conduct a presentence investigation in a criminal matter or use the information for supervision of a paroled offender;

(11) A licensed hospital with which the Tennessee consumer has or had a contract or a debtor-creditor relationship for the purpose of reviewing the account or collecting the financial obligation owing for the contract, account, or debt; or

(12) An attorney at law duly licensed in Tennessee representing any person, subsidiary, affiliate, agent, assignee, department, division, or other entity to whom the provisions of this section do not apply.

(n) The following entities are not subject to the requirements of this section; provided, however, that each such entity shall be subject to any security freeze placed on a consumer report by a consumer reporting agency from which it obtains information:

(1) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database

of another consumer reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced; however, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;

(2) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

(3) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a Tennessee consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; and

(4) A consumer reporting agency's database or file that consists of information concerning, and used for, one (1) or more of the following: criminal record information, fraud prevention or detection, personal loss history information, and employment, tenant, or individual background screening.

(o) Exclusive of all other private and nongovernmental remedies that may be imposed, any person who fails to comply with any requirement imposed under this section with respect to any Tennessee consumer is liable to that Tennessee consumer in an amount equal to the sum of:

(1)(A) Any ascertainable losses sustained by the Tennessee consumer as a result of the failure, or damages of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), whichever is greater, in addition to any other governmental remedies available at law; or

(B) In the case of liability of a natural person for obtaining a consumer report under false pretenses without a permissible purpose, ascertainable losses sustained by the consumer as a result of the failure or one thousand dollars (\$1,000), whichever is greater, in addition to any other governmental remedies available at law;

(2) An amount of punitive damages that the court may allow in a private right of action or other nongovernmental action; and

(3) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

(p) Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for ascertainable losses sustained by the consumer reporting agency or one thousand dollars (\$1,000), whichever is greater, in addition to any other governmental remedies available at law.

(q) In addition to any other governmental remedies available at law, any person who is negligent in failing to comply with any requirement imposed under this section with respect to any Tennessee consumer is liable to that Tennessee consumer in an amount equal to the sum of:

(1) Any ascertainable losses sustained by the Tennessee consumer as a

result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

(r) Upon a finding by the court that an unsuccessful, nongovernmental pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorneys' fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(s) Notwithstanding any other provision of this section, the sole power to enforce violations of subsection (f) shall be with the attorney general and reporter. [Acts 2007, ch. 170, § 4; 2008, ch. 633, §§ 1, 2; 2008, ch. 1120, § 8.]

**47-18-2109. Notice to consumer regarding security freeze.** — At any time that a Tennessee consumer is required to receive a summary of rights required by 15 U.S.C. § 1681g(d) of the federal Fair Credit Reporting Act, the Tennessee consumer shall also be provided with the following prominent, clear and conspicuous notice in at least twelve (12) point type:

**TENNESSEE CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE**

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail or by electronic means as provided by a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. If you are actively seeking a new credit, loan, utility, or telephone account, you should understand that the procedures involved in lifting a security freeze may slow your applications for credit. You should plan ahead and lift a freeze in advance of actually applying for new credit. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

- (1) The personal identification number or password;
- (2) Proper identification to verify your identity; and
- (3) The proper information regarding the period of time for which the report shall be available.

A consumer reporting agency must authorize the release of your credit report no later than fifteen (15) minutes after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of fraud control, or reviewing or collecting the account. Reviewing the account includes activities related to account maintenance.

You should consider filing a complaint regarding your identity theft situation with the federal trade commission and the Tennessee department of commerce and insurance, division of consumer affairs, either in writing or via their websites.

You have a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, misuses file data, or fails to correct inaccurate file data.

Unless you are a victim of identity theft with a police report, or other official document acceptable to a consumer reporting agency to verify the crimes, a consumer reporting agency has the right to charge you up to seven dollars and fifty cents (\$7.50) to place a freeze on your credit report, but may not charge you to temporarily lift a freeze on your credit report. A consumer reporting agency may charge a consumer a reasonable fee not to exceed five dollars (\$5.00) to permanently remove a security freeze, or to replace a personal identification number or password. A consumer reporting agency may increase these fees annually based on changes to a common measure of consumer prices. A consumer reporting agency may not charge a Tennessee consumer to place or permanently remove a security freeze if that Tennessee consumer is a victim of identity theft as defined in Tennessee law or federal law regarding identity theft and presents to the consumer reporting agency, at the time the request is made, a police report or other official document acceptable to the consumer reporting agency detailing the theft.

[Acts 2007, ch. 170, § 5.]

**47-18-2110. Protecting social security numbers from disclosure. —**

(a) On and after January 1, 2008, any person, nonprofit or for profit business entity in this state, including, but not limited to, any sole proprietorship, partnership, limited liability company, or corporation, engaged in any business, including, but not limited to, health care, that has obtained a federal social security number for a legitimate business or governmental purpose shall make reasonable efforts to protect that social security number from disclosure to the public. Social security numbers shall not:

- (1) Be posted or displayed in public;
- (2) Be required to be transmitted over the Internet, unless the Internet connection used is secure or the social security number is encrypted;
- (3) Be required to log onto or access an Internet website, unless used in combination with a password or other authentication device;
- (4) Be printed on any materials mailed to a consumer, unless the disclosure is required by law, or the document is a form or application; or
- (5) Be printed on any card, identification or badge that the consumer must display or present in order to receive a benefit, good, service or other thing of value to which the consumer is entitled based upon the consumer's contract or other agreement with the entity issuing the card, identification or badge.

(b) The requirements established pursuant to subsection (a) do not apply to the disclosure of a federal social security number by an entity so long as the disclosure is for a legitimate business or governmental purpose and occurs pursuant to the terms of a business or governmental contract or other lawful legal obligation.

(c) On and after January 1, 2009, a violation of subsection (a) is a Class B misdemeanor. Each violation of subsection (a) shall constitute a separate offense.

(d) In addition to the criminal offense created pursuant to subsections (a) and (b), on and after January 1, 2009, it is also a civil violation of this part, subject to the penalty provided in this part, for any person, any nonprofit or for profit business entity in this state, including, but not limited to, any sole proprietorship, partnership, limited liability company, or corporation, engaged in any business, including, but not limited to, health care, to violate any of the prohibitions of subsection (a).

(e) Any state agency or nonprofit or for profit business entity engaged in the provision of health care services under Title XIX, including determining eligibility for Title XIX services, shall be exempted from the requirements of subsections (a) and (b). [Acts 2007, ch. 170, § 6; 2009, ch. 269, § 1.]

#### PART 22—VIDEO CONSUMER PRIVACY

**47-18-2201. Short title.** — This part shall be known and may be cited as the “Video Consumer Privacy Act.” [Acts 1999, ch. 342, § 2.]

**47-18-2202. Legislature finding and intent.** — (a) The general assembly finds and declares that the viewing of rented video tapes and movies in the home is a popular and widespread leisure pastime. Innumerable retail establishments in this state commonly record, often by computer, data containing the identities of consumers who have rented video tapes and movies and the titles of the videos rented.

(b) It is the intent of the general assembly by enactment of this part to protect the personal privacy of individuals and their families who rent video cassette tapes and movies and similar audio visual materials, without unreasonably restricting the ability of video tape service providers to collect and use information as is necessary to conducting their business. [Acts 1999, ch. 342, § 3.]

**47-18-2203. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Consumer” means any renter, purchaser, or subscriber of goods or services from a video tape service provider or video tape seller;

(2) “Informed, written consent of the consumer” means that the video tape service provider, prior to furnishing any video tape services, shall offer the consumer an opportunity to elect not to have personally identifiable information disclosed. Such notice shall be in writing in at least ten point (10 pt.) bold face type, affixed to any membership, subscriber or rental agreement between the consumer and the video tape service provider, and shall be posted on a sign in full and clear view of the consumer at the point of rental transaction, and shall read as follows:

“This video tape service provider from time to time provides to marketers of goods and services, the names and addresses of customers and a description or subject matter of materials rented by video customers.

You have the right to elect not to have your name, address or the description or subject matter of any material rented included in such description or subject matter of any material rented included in such lists.

This election may be changed by you, in writing, at any time.”;

(3) “Ordinary course of business” means only debt collection activities, order fulfillment, request processing, and the transfer of ownership;

(4) “Personally identifiable information” means any information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider or video tape seller;

(5) “Video tape seller” means any person engaged in the business of selling prerecorded video cassette tapes or similar audio visual materials; and

(6) “Video tape service provider” means any person engaged in the business of rental of prerecorded video cassette tapes or similar audio visual materials. [Acts 1999, ch. 342, § 4.]

**47-18-2204. Disclosure by seller or service provider of personally identifiable information concerning consumers.** — (a) A video tape seller or service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in § 47-18-2205.

(b)(1) A video tape seller or service provider shall disclose personally identifiable information concerning any consumer:

(A) To a grand jury pursuant to a grand jury subpoena;

(B) Pursuant to a court order, in a civil proceeding upon a showing of compelling need for the information that cannot be accommodated by any other means, or in a criminal proceeding upon a showing of legitimate need for the information that cannot be accommodated by any other means, if:

(i) The consumer is given reasonable notice, by the person seeking the disclosure, of the court proceeding relevant to the issuance of the court order;

(ii) The consumer is afforded the opportunity to appear and contest the claim of the person seeking the disclosure; and

(iii) The court imposes appropriate safeguards against unauthorized disclosure;

(C) To a law enforcement agency pursuant to a warrant lawfully obtained under the laws of this state or the United States; or

(D) To a court pursuant to a civil action commenced by the video tape seller or service provider or to enforce collection of fines for overdue or unreturned video tapes, and then only to the extent necessary to establish the fact of the rental. Notwithstanding the foregoing, a court shall impose appropriate safeguards against unauthorized disclosure.

(2) In addition, if the consumer is a minor under eighteen (18) years of age, a video tape seller or service provider shall disclose to the minor’s parent or legal guardian personally identifiable information concerning the minor upon receiving a request from the parent or legal guardian for such information.

(c) A video tape service seller or provider may disclose personally identifiable information concerning any consumer to:

(1) The consumer;

(2) Any person with the informed, written consent of the consumer; or

(3) Any person if the disclosure is incidental to the ordinary course of business of the video tape service provider or seller; and

(4) Any person if the disclosure is for the exclusive use of marketing goods and services directly to the consumer, and the video tape service seller or provider has provided the consumer with the opportunity, in a clear and conspicuous manner, to prohibit such disclosure.

(d) Personally identifiable information obtained in any manner other than as provided in this section shall not be received in evidence in any trial, hearing, arbitration, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the state or any political subdivision thereof.

(e) A person subject to this section shall destroy personally identifiable information as soon as practicable, but no later than one (1) year from the date the information is no longer necessary for the purpose for which it was collected unless a request or order for access to such information under this part is pending. [Acts 1999, ch. 342, § 5.]

**47-18-2205. Liability for damages.** — Any person found to be in violation of this part shall be liable to the aggrieved consumer for all actual damages sustained by such consumer as a result of the violation. [Acts 1999, ch. 342, § 6.]

PART 23—YEAR 2000 CITIZENS' PROTECTION ACT [REPEALED]

**47-18-2301 — 47-18-2304. [Repealed.]**

**Compiler's Notes.** Former §§ 47-18-2301 through 47-18-2304 (Acts 1999, ch. 378, §§ 2-5), concerning the Year 2000 Citizen's Protection Act, were repealed by Acts 1999, ch. 378, § 7, effective December 31, 2001.

PART 24—UNSOLICITED LOANS

**47-18-2401. Notice requirements for unsolicited loans.** — Unless otherwise agreed, where unsolicited mail that resembles a check is, upon endorsement by the payee, a loan, the payee is under no duty to repay such loan unless such unsolicited mail has upon its face in boldface letters at least one-half inch ( $\frac{1}{2}$ " in height the following:

**THIS IS A LOAN.** [Acts 1999, ch. 395, § 2.]

**47-18-2402. Failure to provide notice a defense to collection action.** — In any action for the collection of the balance due on an unsolicited loan received by mail that resembles a check, it shall be a complete defense that such unsolicited loan was not actually requested by the defendant and such mail did not have upon its face the language required by § 47-18-2401. [Acts 1999, ch. 395, § 3.]

**47-18-2403. Violation of part constituting unfair or deceptive trade practice.** — A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter. For the purposes of the application of the Tennessee Consumer Protection Act, any violation of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and shall be subject to the penalties and remedies as provided in that act. [Acts 1999, ch. 395, § 4.]

**47-18-2404. Notices and obligations — Application — Damages.** — (a)(1) Any solicitation to lend money to a person for the consolidation or payment of other indebtedness which will result in that person's owner-occupied residence becoming collateral or security for the loan or payment of money shall clearly state, in bold face type at least as large as any used in the solicitation otherwise, or by a separate clearly stated written notice, in bold face type at least ten (10) points, the following:

(A) Failure to make timely payments or to repay the loan will result in the borrower's home being subject to foreclosure; and

(B) Additional information on debt consolidation loans is available from the department of commerce and insurance, division of consumer affairs at 1-800-342-8385.

(2) Such solicitation shall, in like manner, state either one (1) of the following, as appropriate:

(A) It is the obligation of the lender to make payments to prior lenders; or

(B) It is the obligation of the borrower to make payments to prior lenders.

(b) The provisions of this section shall apply to all solicitations, whether made through the mails, in person, by telephone, fax, or electronically, or through any other agency or medium to a resident of the state. If the solicitation is made in person or by telephone, then the person making the solicitation shall clearly express the notices and obligations required to be given under the provisions of subdivisions (a)(1) and (2).

(c) Failure to comply with the provisions of this section shall subject the lender to damages up to three (3) times the amount of actual damages pursuant to § 47-18-109.

(d) The notices and obligations described in subsection (a) shall be clearly expressed in any debt consolidation contract or loan agreement consolidating such loans, in bold face type of at least ten (10) points, in immediate proximity to the space reserved for the signature of the borrower.

(e) The provisions of this section shall not apply to any state or national bank, credit union, savings and loan, or to any subsidiary or affiliate of any such state or national bank, credit union, savings and loan or any person or entity licensed by or subject to regulation by the department of financial institutions. [Acts 2000, ch. 963, § 1.]

#### PART 25—UNSOLICITED ADVERTISING BY ELECTRONIC MEANS

**47-18-2501. Regulation of unsolicited electronic advertising — Falsification of electronic mail transmission information prohibited — Institution of actions and damages.** — (a) No person or entity conducting business in this state shall send by e-mail or cause to be e-mailed, documents

consisting of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit unless that person or entity shall establish a toll-free telephone number or return e-mail address that a recipient of the unsolicited e-mailed documents may call to notify the sender not to e-mail the recipient any further unsolicited documents.

(b) [Deleted by 2003 amendment.]

(c) Upon notification by a recipient of the recipient's request not to receive any further unsolicited e-mailed documents, no person or entity conducting business in this state shall e-mail or cause to be e-mailed, any unsolicited documents to that recipient.

(d) A person or entity sending an unsolicited email shall establish a toll-free telephone number or valid sender operated return e-mail address that the recipient of the unsolicited documents may call or e-mail to notify the sender not to e-mail any further unsolicited documents.

(e) If e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer or other disposition of any realty, goods, services or extension of credit, the subject line of each and every message shall include "ADV:" as the first four (4) characters. If these messages contain information that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen (18) years of age or older, the subject line of each and every message shall include "ADV:ADLT" as the first eight (8) characters.

(f) In the case of unsolicited bulk e-mail, this section shall apply when the unsolicited e-mailed documents are delivered to a Tennessee resident via an electronic mail service provider's service or equipment located in this state. For these purposes, "electronic mail service provider" means any business or organization qualified to do business in this state that provides individuals, corporations, or other entities the ability to send or receive electronic mail through equipment located in this state and that is an intermediary in sending or receiving electronic mail.

(g) It is unlawful for any person to sell, give or otherwise distribute or possess with the intent to sell, give or distribute software which:

(1) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

(2) Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

(3) Is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(h) As used in this section, "e-mail" or "cause to be e-mailed" does not include or refer to the transmission of any documents by the telecommunications utility or Internet service provider to the extent that the telecommunications utility or Internet service provider merely carries that transmission over its network.

(i)(1) Any person whose property or person is injured by reason of a violation of any provision of this section may sue therefor and recover for any damages sustained, and the costs of such suit. Without limiting the generality of the term, “damages” includes loss of profits.

(2) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys’ fees and costs, and may elect, in lieu of actual damages, to recover the lesser of ten dollars (\$10.00) for each and every unsolicited bulk electronic mail message transmitted in violation of this section, or five thousand dollars (\$5,000) per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmitted the unsolicited bulk electronic mail over its computer network.

(3) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorneys’ fees and costs, and may elect, in lieu of actual damages, to recover the greater of ten dollars (\$10.00) for each and every unsolicited bulk electronic mail message transmitted in violation of this section, or five thousand dollars (\$5,000) per day.

(4) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party.

(5) The provisions of this subsection shall not be construed to limit any person’s right to pursue any additional civil remedy otherwise allowed by law.

(j) The provisions of this section shall not be construed to restrict or apply to constitutionally protected communications to and from citizens and their elected representatives.

(k) This section, or any part of this section, shall become inoperative on and after the date that federal law is enacted that prohibits or otherwise regulates the transmission of unsolicited advertising by electronic mail (e-mail). [Acts 1999, ch. 475, § 2; 2003, ch. 15, §§ 2-7.]

**47-18-2502. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Computer network” means a set of related, remotely connected devices and any communications facilities, including more than one (1) computer with the capability to transmit data among them through the communications facilities; and

(2) “Without authority” means a person using the computer network of an electronic mail service provider to transmit unsolicited bulk electronic mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of electronic mail from an organization to its members shall not be deemed to be unsolicited bulk electronic mail. [Acts 1999, ch. 475, § 3.]

## PART 26—STRUCTURED SETTLEMENT PROTECTION

**47-18-2601. Short title.** — This part shall be known and may be cited as the “Structured Settlement Protection Act.” [Acts 2000, ch. 758, § 2.]

**47-18-2602. Definitions** — As used in this part, unless the context otherwise requires:

(1) “Annuity insurer” means an insurer that has issued an insurance policy or annuity contract used to fund periodic payments under a structured settlement;

(2) “Applicable law” means state or federal statutes of the United States;

(3) “Dependents” includes a payee’s spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) “Discounted present value” means the present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the internal revenue service, and the present value of the payments to be transferred by the payee using the actual discount rate applied to the transfer, stated as an annual percentage rate;

(5) “Independent professional advice” means advice of an attorney, certified public accountant, actuary or other licensed professional adviser;

(6) “Interested parties” means, with respect to any structured settlement, the payee, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(7) “Payee” means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(8) “Qualified assignment agreement” means an agreement providing for a qualified assignment within the meaning of 26 U.S.C. § 130, as amended from time to time;

(9) “Responsible administrative authority” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(10) “Settled claim” means the original tort claim;

(11) “Structured settlement” means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;

(12) “Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(13) “Structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(14) “Structured settlement payment rights” means rights to receive periodic payments (including lump sum payments) under a structured settlement,

whether from the settlement obligor or the annuity issuer where:

(A) The payee is domiciled in this state;

(B) The structured settlement agreement was approved by a court or responsible administrative authority in this state; or

(C) The structured settlement agreement is governed by the laws of this state;

(15) "Terms of the structured settlement" includes, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement;

(16) "Transfer" means any sale, assignment, pledge, hypothecation, commutation, advance or other form of alienation or encumbrance made by a payee for consideration; and

(17) "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee. [Acts 2000, ch. 758, § 3.]

**47-18-2603. Transfer agreement — Requirements.** — No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority, and complies with all of the following:

(1) The transfer complies with the requirements of this part and will not contravene other applicable law;

(2) Not less than ten (10) days prior to the date on which the payee executes the transfer agreement, the transferee has provided to the payee a disclosure statement in bold type, no smaller than fourteen (14) points, setting forth:

(A) The amounts and due dates of the structured settlement payments to be transferred;

(B) The aggregate amount of such payments;

(C) The discounted present value of such payments, together with the discount rate used in determining such discounted present value;

(D) The gross amount payable to the payee in exchange for such payments;

(E) An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other commissions, fees, costs, expenses and charges, and a good faith estimate of all legal fees and court costs payable by the payee or deductible from the gross amount otherwise payable to the payee;

(F) The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in subdivision (2)(E); and

(G) The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The payee has established that the transfer is fair and reasonable and in

the best interest of the payee;

(4) The payee has been advised by the transferee, in writing, to seek independent professional advice regarding the financial, legal and tax implications of the transfer; and

(5) The transferee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority. [Acts 2000, ch. 758, § 4.]

**47-18-2604. Circuit court jurisdiction — Requirements for notice — Best interest standard — Fees.** — (a) The circuit court shall have nonexclusive jurisdiction over any application for authorization under § 47-18-2603 of a transfer of structured settlement payment rights.

(b) Not less than twenty (20) days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under § 47-18-2603, the transferee shall file with the court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, and on all interested parties, a notice of the proposed transfer and the application for its authorization, including in such notice:

- (1) A copy of the transferee's application;
- (2) A copy of the transfer agreement;
- (3) A copy of the disclosure statement required under § 47-18-2603(2);

(4) Notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than fifteen (15) days after service of the transferee's notice) in order to be considered by the court or responsible administrative authority.

(c) In determining whether the transfer is in the payee's best interest under § 47-18-2603(3), the court should consider:

- (1) The terms of the transfer;
- (2) Whether the payee has other sources of income, other than the structured settlement payment rights to be transferred;

(3) The effect of the transfer, if any, on the payee's dependents and whether the transfer would be likely to result in financial hardship for such dependents; and

(4) If a payee is currently required by a court order, judgment, or decree to pay child support or alimony, the effect of the transfer on the payee's ability to continue to pay such support or alimony.

(d) The structured settlement obligor and annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments.

(e) The transferee and any assignee shall be liable to the structured settlement obligor and the annuity issuer for any and all taxes and other costs

and liabilities, other than costs incurred in opposing the transfer, incurred as a result of complying with the court order approving the transfer.

(f) Neither the annuity issuer nor the structured settlement obligor may be required to divide any structured settlement payment between the payee and any transferee or assignee or between two (2) or more transferees or assignees.

(g) If any party acting in bad faith withholds consent to the transfer, the court may, in its discretion, award the prevailing party reasonable attorney fees and costs. [Acts 2000, ch. 758, § 5.]

**47-18-2605. Waiver — Failure to satisfy conditions.** — (a) The provisions of this part may not be waived.

(b) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of § 47-18-2603. [Acts 2000, ch. 758, § 6.]

**47-18-2606. Other statutory provisions remain valid.** — Nothing contained in this part shall be construed to authorize any transfer of structured settlement payment rights in contravention of applicable law or to give effect to any transfer of structured settlement payment rights that is invalid under applicable law. [Acts 2000, ch. 758, § 7.]

**47-18-2607. Applicability.** — This part shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after June 23, 2000; provided, that nothing contained herein shall imply that any transfer under a transfer agreement reached prior to June 23, 2000 is ineffective. [Acts 2000, ch. 758, § 8.]

#### PART 27—HEALTH-RELATED CASH DISCOUNTS

**47-18-2701. Prohibited activities.** — It shall be unlawful and a violation of this part for any person to sell, market, promote, advertise or otherwise distribute any card or other purchasing mechanism or device, which is not insurance, that purports to offer discounts or access to discounts from health care providers in health-related purchases where:

(1) Such card or other purchasing mechanism or device does not expressly provide in bold and prominent type that the discounts are not insurance;

(2) Such discounts are not specifically authorized in a contract with each health care provider listed in conjunction with the card or other purchasing mechanism or device; or

(3) The discounts or access to discounts offered or the range of discounts or access to the range of discounts offered are misleading, deceptive or fraudulent, regardless of the literal wording used. [Acts 2001, ch. 173, § 1.]

**47-18-2702. Jurisdiction.** — (a) Any person subject to liability under this part shall be deemed, as a matter of law, to have purposefully availed themselves of the privileges of conducting activities within Tennessee, suffi-

cient to subject the person to the personal jurisdiction of the circuit or chancery court hearing an action brought pursuant to this part.

(b) An action for violation of this part may be brought:

(1) In the county where the plaintiff resides;

(2) In the county where the plaintiff conducts business; or

(3) In the county where the card or other purchasing mechanism or device was sold, marketed, promoted, advertised or otherwise distributed.

(c)(1) If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this part, it shall enjoin the defendant from a continuance thereof.

(2) In addition to injunctive relief, the plaintiff in the action shall be entitled to recover from the defendant one hundred dollars (\$100) per card or other purchasing mechanism or device sold, marketed, promoted, advertised or otherwise distributed within Tennessee, or ten thousand dollars (\$10,000), whichever is greater.

(d) The remedies prescribed in this section are cumulative and in addition to the remedies prescribed in title 47, chapter 18, part 1, and any other applicable criminal, civil or administrative penalties. [Acts 2001, ch. 173, § 2.]

**47-18-2703. Application.** — Nothing in this part shall be construed to apply to:

(1) Eye or vision care services, glasses or contact lenses provided by an optometrist or ophthalmologist; or

(2) Discount cards provided to members of a nonprofit association as an incidental benefit to membership in the association, provided that membership in such association entitles members to apply for insurance that is available only to members of the association. [Acts 2001, ch. 173, § 3.]

**47-18-2704. Compliance by issuers.** — Any person subject to liability under this part shall be required to issue cards complying with the provisions of this section on July 1, 2001, or upon the issuance of a renewed card before July 1, 2002, whichever is later. [Acts 2001, ch. 173, § 4.]

PART 28—PRICE-GOUGING OF VACCINES AND INOCULATIONS  
DURING MEDICAL EMERGENCIES

**47-18-2801. Public policy.** — Price gouging of vaccines and inoculations during a medical emergency is contrary to the public policy of the state of Tennessee. [Acts 2005, ch. 164, § 1.]

**47-18-2802. Prohibited acts during medical emergency — Defenses.** — (a) Upon the proclamation of a medical emergency by the commissioner of health and continuing until such emergency is terminated, it is unlawful, for any person, including, but not limited to, a distributor, supplier, hospital, clinic, pharmacy or other health care provider, to charge any other person a price for a vaccine or inoculation that is grossly in excess of the price generally charged for the same or similar vaccine or inoculation in the usual course of business in the year prior to the year of the proclaimed medical emergency.

(b) It is an affirmative defense to prosecution under this part, which must be proven by a preponderance of the evidence, that such price increase was directly attributable to:

(1) Additional costs for labor or materials used to produce or provide the vaccine or inoculation; or

(2) Additional costs imposed on a hospital, clinic, pharmacy or other health care provider by a manufacturer, distributor or supplier of the vaccine.

(c) A medical emergency shall be terminated by proclamation of the commissioner of health when, in the discretion of the commissioner, the medical emergency has ended. [Acts 2005, ch. 164, § 1.]

**47-18-2803. Violations.** — A violation of this part, or any rules and regulations promulgated under this part, constitutes an unfair or deceptive act or practice under § 47-18-104(a). A civil action for violation of this part may be brought under part 1 of this chapter. [Acts 2005, ch. 164, § 1.]

**47-18-2804. Provisions of part supplemental.** — The provisions of this part are intended to be in addition to and supplemental to the provisions of part 51 of this chapter. [Acts 2005, ch. 164, § 1.]

**47-18-2805. Rules and regulations.** — The commissioner of health is authorized to promulgate rules and regulations to effectuate the provisions of this part. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. [Acts 2005, ch. 164, § 2.]

#### PART 29—PROTECTION OF CONFIDENTIAL INFORMATION

**47-18-2901. Safeguards and procedures for ensuring that confidential information protected on laptop computers and other removable storage devices — Claim for damages.** — (a) Each state agency shall create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by the state agency.

(b) All municipalities and counties shall create safeguards and procedures for ensuring that confidential information regarding citizens is securely protected on all laptop computers and other removable storage devices used by the municipality or county.

(c) Notwithstanding any other law to the contrary, failure to comply with this section shall create a cause of action or claim for damages against the state, municipality, or county if a citizen of this state proves by clear and convincing evidence that the citizen was a victim of identity theft due to a failure to provide safeguards and procedures regarding that citizen's confidential information. [Acts 2008, ch. 688, § 1.]

## PARTS 30–49—[RESERVED]

## PART 50—CONSUMER AFFAIRS DIVISION

**47-18-5001. Creation — Director.** — (a) There is hereby created in the department of commerce and insurance the division of consumer affairs.

(b) This division shall be headed by a director of consumer affairs who shall be appointed by, and serve at the pleasure of, the commissioner of commerce and insurance. [Acts 1973, ch. 83, § 1; T.C.A., §§ 43-114, 43-1-202.]

**47-18-5002. Powers and duties.** — The division of consumer affairs has the power to employ such personnel as may be approved by the commissioners of commerce and insurance and finance and administration, and shall:

(1) Enforce the provisions of part 1 of this chapter and this section throughout the state of Tennessee;

(2) Employ within budgetary limitations the necessary professional, investigative, and clerical staff needed to effectuate the provisions of part 1 of this chapter and this section;

(3) Promulgate reasonable procedural rules and regulations needed to carry out the provisions of part 1 of this chapter and this section. These rules shall be adopted in accordance with the provisions of the Uniform Administrative Procedure Act, compiled in title 4, chapter 5. Prior to the promulgation of any rule or regulation having the force or effect of law, such rule or regulation must be submitted to the commerce, labor and agricultural committee of the senate and to the commerce committee of the house for their concurrence. Any rule or regulation which is not acted upon by such committees within thirty (30) days after notice of the filing thereof is given to the chairs of the committees shall become effective notwithstanding subsequent action by the committees;

(4) Conduct investigations and research, hold public hearings, or conduct and publish studies relating to the distribution or furnishing of goods or services to or for the use of consumers when the division or the attorney general and reporter has reason to believe that there are or have been persistent or consistent violations of part 1 of this chapter and this section; provided, that the provisions of § 47-18-106 shall not be applicable to this subdivision;

(5) Serve as the central coordinating agency and clearinghouse for receiving complaints by Tennessee consumers of illegal, fraudulent, deceptive or dangerous practices;

(6) Report annually to the general assembly on the activities of the division. The report shall include, but not be limited to, a statement of the investigatory and enforcement procedures and policies of the division, as well as a statement of the number of complaints filed and of investigations or enforcement proceedings instituted and of their disposition. The report shall not identify any person who has not been otherwise publicly identified in enforcement proceedings unless such person consents to identification. The report may include recommendations for proposed legislation designed to remedy specific unfair or deceptive acts or practices;

(7) Lend assistance to any district attorney general who elects to criminally prosecute any person for any criminal act or practice directed against the

consuming public; and

(8) Promote consumer education and inform the public of policies, decisions, and legislation affecting consumers. [Acts 1973, ch. 83, § 2; 1977, ch. 438, § 5; T.C.A., §§ 43-115, 43-1-203.]

#### PART 51—TENNESSEE PRICE-GOUGING ACT OF 2002

**47-18-5101. Legislative intent.** — The general assembly finds and declares that:

(1) The threats of terrorism are real and could impose horrific social and economic damage on Tennessee;

(2) Terrorist attacks can dismantle the stability of markets and free trade;

(3) Pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, but when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of consumer goods and services should be discouraged;

(4) Because of the September 11, 2001, terrorist attacks that took place in New York and Arlington, Virginia, some businesses across Tennessee engaged in the economic practice commonly known as price-gouging;

(5) Protecting the public from price-gouging is a vital function of state government in providing for the health, safety, and welfare of consumers;

(6) The intent of the general assembly in enacting this part is to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital or necessary for the consumer. Further, it is the intent of the general assembly that this part be liberally construed so that its beneficial purposes may be served. [Acts 2002, ch. 807, § 2.]

**47-18-5102. Part definitions** — As used in this part, unless the context otherwise requires:

(1) “Building materials” means lumber, construction tools, windows, and anything else used in the building or rebuilding of property;

(2) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal;

(3) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soap, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers;

(4) “Gasoline” means any fuel used to power any motor vehicle or power tool;

(5) “Goods” has the same meaning as provided in § 47-18-103;

(6) “Housing” means any rental housing leased on a month-to-month term;

(7) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products;

(8) “Person” has the same meaning as provided in § 47-18-103;

(9) “Repair or reconstruction services” means services performed by any person for repairs to residential or commercial property of any type that is damaged as a result of a disaster or terrorist attack;

(10) “Services” has the same meaning as provided in § 47-18-103;

(11) “State of emergency” means a natural or man-made disaster or emergency resulting from terrorist attack, war, strike, civil disturbance, tornado, earthquake, fire, flood, or any other natural disaster declared by the president of the United States or by the governor pursuant to title 58, chapter 2, part 1; and

(12) “Transportation, freight, and storage services” means any service that is performed by any company that contracts to move, store, or transport personal or business property or rents equipment for those purposes. [Acts 2002, ch. 807, § 2.]

**47-18-5103. Prohibited acts during state of emergency.** — Upon the proclamation of a state of emergency and continuing until the state of emergency is terminated, it is unlawful, in any county or municipality covered by the state of emergency, for any person to charge any other person a price for any consumer food item; repair or construction services; emergency supplies; medical supplies; building materials; gasoline; transportation, freight, and storage services; or housing, that is grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business immediately prior to the events giving rise to the state of emergency. An otherwise grossly excessive price increase shall not be unlawful if the person charging such higher price establishes by prima facie evidence that the increase was directly attributable to additional costs imposed on it by the supplier of the goods or services, or was directly attributable to additional costs for labor or materials used to provide the goods or services. [Acts 2002, ch. 807, § 2.]

**47-18-5104. Violation — Unfair or deceptive act or practice — Penalties cumulative.** — (a) Violation of any provision of this part, or any rules and regulations promulgated hereunder, constitutes an unfair or deceptive act or practice under § 47-18-104(a); provided, that no criminal penalty shall be incurred for violation of this part. A civil action for violation of this part may be brought under part 1 of this chapter.

(b) The remedies and penalties provided in this section are cumulative. Nothing in this part shall preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited in this part. [Acts 2002, ch. 807, § 2.]

#### PART 52—ANTI-PHISHING ACT OF 2006

**47-18-5201. Short title.** — This part shall be known and may be cited as the “Anti-Phishing Act of 2006.” [Acts 2006, ch. 566, § 2.]

**47-18-5202. Part definitions** — As used in this part, unless the context otherwise requires:

(1) “Ascertainable loss” means an identifiable deprivation, detriment or injury arising from the identity theft or from any unfair, misleading or deceptive act or practice, even when the precise amount of the loss is not known. Whenever a violation of this part has occurred, an ascertainable loss

shall be presumed to exist;

(2) “Division” means the division of consumer affairs of the department of commerce and insurance;

(3) “Electronic mail message” means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox, commonly referred to as the “local part,” and a reference to an internet domain, commonly referred to as the “domain part,” whether or not displayed, to which an electronic message can be sent or delivered;

(4) “Identification documents” means any card, certificate or document that identifies, or purports to identify, the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be driver licenses, nondriver identification cards, birth certificates, marriage certificates, divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, health care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services;

(5) “Identifying information” means, with respect to an individual, any of the following:

- (A) Social security number;
- (B) Driver license number;
- (C) Bank account number;
- (D) Credit card or debit card number;
- (E) Personal identification number (PIN);
- (F) Biometric data;
- (G) Private medical information (PMI);
- (H) Fingerprints;
- (I) Account password; or

(J) Any other piece of information that can be used to access an individual’s financial accounts or obtain identification, act as identification, or obtain goods or services;

(6) “Internet” means the global information system that is logically linked together by a globally unique address space based on the internet protocol (IP), or its subsequent extensions, and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on communications and related infrastructure;

(7) “Person” means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(8) “Tennessee Consumer Protection Act” means the Tennessee Consumer Protection Act of 1977, as compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this subdivision (8), related statutes include, but are not limited to, the Membership Camping Act, compiled in title 66, chapter 32, part 3; and

(9) “Web page” means a location that has a single uniform resource locator or other single location with respect to the Internet. [Acts 2006, ch. 566, § 3.]

**47-18-5203. Violation of part.** — (a) It shall be unlawful for any person to represent oneself, either directly or by implication, to be another person, without the authorization or permission of such other person, through the use of the Internet, electronic mail messages or any other electronic means, including wireless communication, and to solicit, request, or take any action to induce a resident of this state to provide identifying information or identification documents.

(b) It shall be unlawful for any person without the authorization or permission of the person who is the subject of the identifying information, with the intent to defraud, for such person’s own use or the use of a third person, or to sell or distribute the information to another, to:

(1) Fraudulently obtain, record or access identifying information that would assist in accessing financial resources, obtaining identification documents, or obtaining benefits of such other person;

(2) Obtain goods or services through the use of identifying information of such other person; or

(3) Obtain identification documents in such other person’s name.

(c) It shall be unlawful for any person with the intent to defraud and without the authorization or permission of the person who is the owner or licensee of a web page or web site to:

(1) Knowingly duplicate or mimic all or any portion of the web site or web page;

(2) Direct or redirect an electronic mail message from the IP address of a person to any other IP address;

(3) Use any trademark, logo, name, or copyright of another person on a web page; or

(4) Create an apparent but false link to a web page of a person that is directed or redirected to a web page or IP address other than that of the person represented.

(d) It shall be unlawful for any person to attempt to commit any of the offenses enumerated in this section. [Acts 2006, ch. 566, § 4.]

**47-18-5204. Persons allowed to bring an action for damages.** — (a) The following persons may bring an action against a person who violates or is in violation of § 47-18-5203:

(1)(A) A person who:

(i) Is engaged in the business of providing internet access service to the public, owns a web page, or owns a trademark; and

(ii) Suffers ascertainable loss by a violation of § 47-18-5203.

(B) An action brought under subdivision (a)(1)(A) may seek to recover the greater of actual damages or five hundred thousand dollars (\$500,000); or

(2)(A) An individual who suffers an ascertainable loss by a violation of § 47-18-5203 may bring an action, but only against a person who has directly violated § 47-18-5203.

(B) An action brought under subdivision (a)(2)(A) may seek to enjoin further violations of § 47-18-5203 and to recover the greater of three (3)

times the amount of actual damages or five thousand dollars (\$5,000), per violation.

(b) The attorney general and reporter or a district attorney general may bring an action against a person who violates or is in violation of § 47-18-5203 to enjoin further violations of § 47-18-5203 and to recover a civil penalty of up to two thousand five hundred dollars (\$2,500), per violation.

(c) In an action pursuant to this part, a court may, in addition, do either or both of the following:

(1) Increase the recoverable damages to an amount up to three (3) times the damages otherwise recoverable under subdivision (a) in cases in which the defendant has established a pattern and practice of violating § 47-18-5203; or

(2) Award costs of the suit and reasonable attorney's fees to a prevailing plaintiff.

(d) The remedies provided in this part do not preclude the seeking of remedies, including criminal remedies, under any other applicable provision of the law.

(e) For purposes of subdivision (a)(1), multiple violations of § 47-18-5203 resulting from any single action or conduct shall constitute one (1) violation.

(f) No provider of an interactive computer service may be held liable under this part or any other provision of state law for identifying, removing, or disabling access to content that resides on an Internet web page or other online location that such provider believes in good faith is used to engage in a violation of this part. [Acts 2006, ch. 566, § 5.]

**47-18-5205. Violation of part constituting violation of the Tennessee Consumer Protection Act — Application and construction.** — (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in such act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated any provision of this part, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter. [Acts 2006, ch. 566, § 6.]

#### PART 53—TENNESSEE TRUTH IN MUSIC ADVERTISING ACT

**47-18-5301. Short title.** — This part shall be known and may be cited as the “Tennessee Truth in Music Advertising Act.” [Acts 2007, ch. 277, § 1.]

**47-18-5302. Part definitions** — As used in this part, unless the context otherwise requires:

(1) “Performing group” means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name;

(2) “Recording group” means a vocal or instrumental group at least one (1) of whose members has previously released a commercial sound recording under that group’s name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group; and

(3) “Sound recording” means a work that results from the fixation on a material object of a series of musical, spoken or other sounds regardless of the nature of the material object, such as a disc, tape, or other phono-record, in which the sounds are embodied. [Acts 2007, ch. 277, § 1.]

**47-18-5303. Prohibited musical performance or production.** — No person shall advertise or conduct a live musical performance or production in this state through the use of a false, deceptive, or misleading affiliation, connection, or association, between a performing group and a recording group. The prohibition contained in this section does not apply if:

(1) The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States patent and trademark office;

(2) At least one (1) member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

(3) The live musical performance or production is identified in all advertising and promotion as a salute or tribute, and the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public;

(4) The advertising does not relate to a live musical performance or production taking place in this state; or

(5) The performance or production is expressly authorized by the performing group. [Acts 2007, ch. 277, § 1.]

**47-18-5304. Violations — Application and construction.** — (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act, compiled in part 1 of this chapter.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce and subject to the penalties and remedies as provided by that act. The division of consumer affairs in the department of commerce and insurance may assess a civil penalty of not less than five thousand dollars (\$5,000) nor more than fifteen thousand dollars (\$15,000) for a violation of this part. For purposes of this part, each performance in violation of this part constitutes a separate violation of this part. The civil penalties recoverable by this state under this part are supplemental and cumulative to any other available civil or criminal penalties and relief available under other laws, regulations and rules, including, but not limited to, those available pursuant to § 47-18-108. [Acts 2007, ch. 277, § 1.]

## PART 54—FORECLOSURE-RELATED RESCUE SERVICES

**47-18-5401. Part definitions** — As used in this part, unless the context otherwise requires:

(1) “Foreclosure-related rescue services” means any service related to or promising assistance in connection with:

(A) Stopping, avoiding or delaying foreclosure proceedings concerning residential real property; or

(B) Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation;

(2) “Foreclosure-rescue consultant” means a person who directly or indirectly makes a solicitation, representation or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services; provided, that a foreclosure-rescue consultant shall not include:

(A) A person acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide foreclosure-related rescue services; provided, that the person does not solicit, charge, receive or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services except as expressly authorized by federal law, regulation or rule;

(B) A charitable, not-for-profit agency or organization, as determined by the United States internal revenue service under § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3), that offers counseling or advice to an owner of residential real property in foreclosure or loan default if the agency or organization does not contract for foreclosure-related rescue services with a for-profit lender or person facilitating or engaging in foreclosure-rescue transactions, and does not solicit, charge, receive or attempt to collect or secure payment, directly or indirectly, for foreclosure-related services;

(C) A person who holds or is owed an obligation secured by a lien on any residential real property in foreclosure if the person performs foreclosure-related rescue services in connection with this obligation or lien and the obligation or lien was not the result of or part of a proposed foreclosure reconveyance or foreclosure-rescue transaction;

(D) A state or national bank or its subsidiary, a state or federal savings institution or its subsidiary, a state or federal credit union, an industrial loan and thrift company or a licensed mortgage loan broker or originator; or

(E) An attorney licensed or otherwise authorized to practice law in this state who is providing legal services to a client;

(3) “Foreclosure-rescue transaction” means a transaction that is designed or intended by the parties to stop, avoid or delay foreclosure proceedings against a homeowner’s residential real property;

(4) “Homeowner” means any record title owner of residential real property that is the subject of foreclosure proceedings; and

(5) “Residential real property” means improved real property used or occupied or intended to be used or occupied for residential purposes by the owner. [Acts 2009, ch. 198, § 1.]

**47-18-5402. Marketing of foreclosure-related rescue services — Agreements and cancellation rights.** — (a) In the course of offering or providing foreclosure-related rescue services, no foreclosure-rescue consultant shall:

(1) Engage in any unfair, misleading, or deceptive acts or practices during the course of advertising, marketing, offering, selling or contracting for foreclosure-related services;

(2) Engage in or initiate foreclosure-related rescue services without first executing a written agreement with the homeowner for foreclosure-related rescue services;

(3) Solicit, charge, receive or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before completing or performing all services contained in the agreement for foreclosure-related rescue services;

(4) Induce or attempt to induce any consumer to enter into a contract or agreement that does not fully comply in all respects with this part; or

(5) Fail to accept and honor a consumer's request to cancel and provide any related refunds within ten (10) business days.

(b) The written agreement for foreclosure-related rescue services required by subdivision (a)(1) shall be printed in at least 12-point uppercase type and shall be signed by both parties. The agreement shall include the name, physical address, telephone number and electronic mail address of the person providing foreclosure-related rescue services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the homeowner for the services and the date of the agreement. The date of the agreement shall not be earlier than the date the homeowner signed the agreement. The foreclosure-rescue consultant shall give the homeowner a copy of the agreement to review not less than one (1) business day before the homeowner is to sign the agreement.

(c) The homeowner has the right to cancel the written agreement without any penalty or obligation if the homeowner cancels the agreement within three (3) business days after signing the written agreement. The right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure-rescue consultant. If the homeowner cancels the agreement, any payments that have been given to the foreclosure-rescue consultant shall be returned to the homeowner within ten (10) business days after receipt of the notice of cancellation.

(d) An agreement for foreclosure-related rescue services shall contain, immediately above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

#### HOMEOWNER'S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU. THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR

OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE. TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO \_\_\_\_\_ (NAME) AT \_\_\_\_\_ (PHYSICAL ADDRESS) \_\_\_\_\_ OR \_\_\_\_\_ (E-MAIL ADDRESS) \_\_\_\_\_ NO LATER THAN MIDNIGHT OF \_\_\_\_\_ (DATE). IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

(e) The inclusion of the statement in subsection (d) does not prohibit the foreclosure-rescue consultant from giving the homeowner more time in which to cancel the agreement than is set forth in the statement; provided, that all other requirements of this section are met.

(f) The foreclosure-rescue consultant shall give the homeowner a copy of the signed agreement within three (3) hours after the homeowner signs the agreement.

(g) Any contract or agreement for foreclosure-related services that does not contain the provisions set forth in this section shall be void and unenforceable as a matter of law and public policy.

[Acts 2009, ch. 198, § 1.]

#### PART 55—UNIFORM DEBT-MANAGEMENT SERVICES ACT

**47-18-5501. Short title.** — This part shall be known and may be cited as the “Uniform Debt-Management Services Act.” [Acts 2009, ch. 469, § 1.]

**47-18-5502. Part definitions** — In this part:

- (1) “Administrator” means the commissioner of commerce and insurance;
- (2) “Affiliate”:
  - (A) With respect to an individual, means:
    - (i) The spouse of the individual;
    - (ii) A sibling of the individual or the spouse of a sibling;
    - (iii) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual’s spouse;
    - (iv) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or
    - (v) Any other individual occupying the residence of the individual; and
  - (B) With respect to an entity, means:
    - (i) A person that directly or indirectly controls, is controlled by or is under common control with the entity;

(ii) An officer of, or an individual performing similar functions with respect to, the entity;

(iii) A director of, or an individual performing similar functions with respect to, the entity;

(iv) Subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), a person that receives or received more than twenty-five thousand dollars (\$25,000) from the entity in either the current year or the preceding year or a person that owns more than ten percent (10%) of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars (\$25,000) from the entity in either the current year or the preceding year;

(v) An officer or director of, or an individual performing similar functions with respect to, a person described in this subdivision (2)(B);

(vi) The spouse of, or an individual occupying the residence of, an individual described in subdivisions (2)(B)(i)-(v); or

(vii) An individual who has the relationship specified in subdivision (2)(A)(iv) to an individual or the spouse of an individual described in subdivisions (2)(B)(i)-(v);

(3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services;

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority;

(5) "Business address" means the physical location of a business, including the name and number of a street;

(6) "Certified counselor" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services in which an agreement contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency;

(7) "Certified debt specialist" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services in which an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed;

(8) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor;

(9) "Day" means calendar day;

(10) "Debt-management services" means services as an intermediary between an individual and one (1) or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(A) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;

(B) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state; or

(C) Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the administrator, by rule, determines are:

- (i) Licensed by this state;
- (ii) Subject to a disciplinary mechanism;
- (iii) Subject to a code of professional responsibility; and
- (iv) Subject to a continuing-education requirement;

(11) "Entity" means a person other than an individual;

(12) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing;

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any other legal or commercial entity. The term does not include a public corporation, government or governmental subdivision, agency or instrumentality;

(14) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and that includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual;

(15) "Principal amount of the debt" means the amount of a debt at the time of an agreement;

(16) "Provider" means a person that provides, offers to provide or agrees to provide debt-management services directly or through others;

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(18) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt;

(19) "Sign" means, with present intent to authenticate or adopt a record:

- (A) To execute or adopt a tangible symbol; or
- (B) To attach to or logically associate with the record an electronic sound, symbol or process;

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

(21) "Trust account" means an account held by a provider that is:

- (A) Established in an insured bank;
- (B) Separate from other accounts of the provider or its designee;
- (C) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and

(D) Used to hold money of one (1) or more individuals for disbursement to creditors of the individuals. [Acts 2009, ch. 469, § 1.]

**47-18-5503. Exempt agreements and persons.** — This part does not apply to:

(1) An agreement with an individual whom the provider has no reason to know resides in this state at the time of the agreement;

(2) A provider to the extent that the provider:

(A) Provides or agrees to provide debt-management, educational or counseling services to an individual whom the provider has no reason to know resides in this state at the time the provider agrees to provide the services;

or

(B) Receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors; or

(3) The following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(A) A judicial officer, a person acting under an order of a court or an administrative agency or an assignee for the benefit of creditors;

(B) A bank;

(C) An affiliate, as defined in § 47-18-5502, of a bank if the affiliate is regulated by a federal or state banking regulatory authority;

(D) Any person who is engaged in the credit services business as defined in § 47-18-1002(a) but is not engaged in the business of debt counseling, debt management or debt settlement as defined by this part; provided, that the person is registered as a credit services business with the administrator;

or

(E) A title insurer, escrow company or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services. [Acts 2009, ch. 469, § 1.]

**47-18-5504. Registration required — Maintenance and publication of list of registered providers.** — (a) Except as otherwise provided in subsection (b), a provider may not provide debt-management services to an individual whom the provider reasonably should know resides in this state at the time the provider agrees to provide the services, unless the provider is registered under this part.

(b) If a provider is registered under this part, subsection (a) does not apply to an employee or agent of the provider.

(c) The administrator shall maintain and publicize a list of the names of all registered providers. [Acts 2009, ch. 469, § 1.]

**47-18-5505. Application for registration — Form, fee, and accompanying documents.** — (a) An application for registration as a provider must be in a form prescribed by the administrator.

(b) Subject to adjustment of dollar amounts pursuant to § 47-18-5532(f), an application for registration as a provider must be accompanied by:

(1) The fee established by the administrator;

(2) The bond required by § 47-18-5513;

(3) Identification of all trust accounts required by § 47-18-5522 and an irrevocable consent authorizing the administrator to review and examine the

trust accounts;

(4) Evidence of insurance in the amount of two hundred fifty thousand dollars (\$250,000):

(A) Against the risks of dishonesty, fraud, theft and other misconduct on the part of the applicant or a director, employee or agent of the applicant;

(B) Issued by an insurance company authorized to do business in this state and rated at least "A" or equivalent by a nationally recognized rating organization approved by the administrator;

(C) With a deductible not exceeding five thousand dollars (\$5,000);

(D) Payable for the benefit of the applicant, this state and individuals who are residents of this state, as their interests may appear; and

(E) Not subject to cancellation by the applicant or the insurer until sixty (60) days after written notice has been given to the administrator;

(5) A record consenting to the jurisdiction of this state containing:

(A) The name, business address and other contact information of its registered agent in this state for purposes of service of process; or

(B) The appointment of the administrator as agent of the provider for purposes of service of process; and

(6) If the applicant is exempt from taxation under the Internal Revenue Code, 26 U.S.C. § 501, evidence of that status. [Acts 2009, ch. 469, § 1.]

**47-18-5506. Application for registration — Required information.**

— An application for registration must be signed under oath and include:

(1) The applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses and Internet web site addresses;

(2) All names under which the applicant conducts business;

(3) The address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(4) The name and home address of each officer and director of the applicant and each person that owns at least ten percent (10%) of the applicant;

(5) Identification of every jurisdiction in which, during the five (5) years immediately preceding the application:

(A) The applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(B) Individuals have resided when they received debt-management services from the applicant;

(6) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by § 47-18-5522;

(7) The applicant's financial statements, reviewed by a licensed accountant, for each of the two (2) years immediately preceding the application or, if it has not been in operation for the two (2) years preceding the application, for the period of its existence. If the applicant claims nonprofit or tax exempt status,

or if the applicant's business practices involve holding, accessing or directing the funds of an individual, the financial statements required by this part shall be audited by a licensed accountant;

(8) Evidence of accreditation by an independent accrediting organization approved by the administrator;

(9) Evidence that, within twelve (12) months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist;

(10) A description of the three (3) most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(11) A description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;

(12) A copy of each form of agreement that the applicant will use with individuals who reside in this state;

(13) The schedule of fees and charges that the applicant will use with individuals who reside in this state;

(14) At the applicant's expense, the results of a criminal records check, including fingerprints, conducted within the immediately preceding twelve (12) months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by § 47-18-5522;

(15) The names and addresses of all employers of each director during the ten (10) years immediately preceding the application;

(16) A description of any ownership interest of at least ten percent (10%) by a director, owner or employee of the applicant in:

(A) Any affiliate of the applicant; or

(B) Any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(17) If an applicant claims nonprofit or tax exempt status, or if an applicant's business practices involve holding, accessing or directing the funds of an individual, a statement of the amount of compensation of the applicant's five (5) most highly compensated employees for each of the three (3) years immediately preceding the application or, if the applicant has not been in operation for the three (3) years preceding the application, for the period of the applicant's existence;

(18) The identity of each director who is an affiliate, as defined in § 47-18-5502(2)(A) or (2)(B)(i), (ii), (iv), (v), (vi) or (vii), of the applicant; and

(19) Any other information that the administrator reasonably requires to perform the administrator's duties under § 47-18-5509. [Acts 2009, ch. 469, § 1.]

**47-18-5507. Obligation to update information in application for registration.** — An applicant or registered provider shall notify the administrator within ten (10) days after a change in the information specified in § 47-18-5505(b)(4) or (b)(6) or § 47-18-5506(1), (3), (6), (12) or (13). [Acts 2009,

ch. 469, § 1.]

**47-18-5508. Public information in application for registration.**

— Except for the information required by § 47-18-5506(7), (14), and (17), and the addresses required by § 47-18-5506(4), the administrator shall make the information in an application for registration as a provider available to the public. [Acts 2009, ch. 469, § 1.]

**47-18-5509. Issuance or denial of certificat of registration.** — (a)

Except as otherwise provided in subsections (c) and (d), the administrator shall issue a certificate of registration as a provider to a person that complies with §§ 47-18-5505 and 47-18-5506.

(b) If an applicant has otherwise complied with §§ 47-18-5505 and 47-18-5506, including a timely effort to obtain the information required by § 47-18-5506(14), but the information has not been received, the administrator may issue a temporary certificate of registration. The temporary certificate shall expire no later than one hundred eighty (180) days after issuance.

(c) The administrator may deny registration if:

(1) The application contains information that is materially erroneous or incomplete;

(2) An officer, director or owner of the applicant has been convicted of a crime or suffered a civil judgment involving dishonesty or the violation of state or federal securities laws;

(3) The applicant or any of its officers, directors or owners has defaulted in the payment of money collected for others;

(4) The application is not accompanied by the fee established by the administrator; or

(5) The administrator finds that the financial responsibility, experience, character or general fitness of the applicant or its owners, directors, employees or agents does not warrant belief that the business will be operated in compliance with this part.

(d) The administrator shall deny registration if, with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. § 501, the applicant's board of directors is not independent of the applicant's employees and agents.

(e) Subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), a board of directors is not independent for purposes of subsection (d) if more than one fourth ( $\frac{1}{4}$ ) of its members:

(1) Are affiliates of the applicant, as defined in § 47-18-5502(2)(A) or (2)(B)(i), (ii), (iv), (v), (vi) or (vii); or

(2) After the date ten (10) years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than twenty-five thousand dollars (\$25,000) in either the current year or the preceding year. [Acts 2009, ch. 469, § 1.]

**47-18-5510. Timing of certificat of registration.** — (a) The administrator shall approve or deny an initial registration as a provider within one hundred twenty (120) days after an application is filed. In connection with a

request pursuant to § 47-18-5506(19) for additional information, the administrator may extend the one hundred twenty-day period for not more than sixty (60) days. Within seven (7) days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a), the applicant may appeal and request a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(c) Subject to §§ 47-18-5511(d) and 47-18-5534, a registration as a provider is valid for one (1) year. [Acts 2009, ch. 469, § 1.]

**47-18-5511. Renewal of registration.** — (a) A provider must obtain a renewal of its registration annually.

(b) An application for renewal of registration as a provider must be in a form prescribed by the administrator, signed under oath; and:

(1) Be filed no fewer than thirty (30) and no more than sixty (60) days before the registration expires;

(2) Be accompanied by the fee established by the administrator and the bond required by § 47-18-5513;

(3) Contain the matter required for initial registration as a provider by § 47-18-5506(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(4) Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable. If an application is otherwise complete and the applicant has made a timely effort to obtain the information required by § 47-18-5506(14), but the information has not been received, the administrator may issue a temporary renewal of registration. The temporary renewal shall expire no later than one hundred eighty (180) days after issuance;

(5) Supply evidence of insurance in an amount equal to the larger of two hundred fifty thousand dollars (\$250,000) or the highest daily balance in the trust account required by § 47-18-5522 during the six-month period immediately preceding the application:

(A) Against risks of dishonesty, fraud, theft and other misconduct on the part of the applicant or a director, employee or agent of the applicant;

(B) Issued by an insurance company authorized to do business in this state and rated at least "A" or equivalent by a nationally recognized rating organization approved by the administrator;

(C) With a deductible not exceeding five thousand dollars (\$5,000);

(D) Payable for the benefit of the applicant, this state and individuals who are residents of this state, as their interests may appear; and

(E) Not subject to cancellation by the applicant or the insurer until sixty (60) days after written notice has been given to the administrator;

(6) Disclose the total amount of money received by the applicant pursuant to plans during the preceding twelve (12) months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(7) Disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding twelve (12) months pursuant to plans by or on behalf of individuals who reside in this state and with whom the applicant has agreements; and

(8) Provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(c) Except for the information required by § 47-18-5506(7), (14) and (17) and the addresses required by § 47-18-5506(4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(d) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(e) If the administrator denies an application for renewal of registration as a provider, the applicant, within thirty (30) days after receiving notice of the denial, may appeal and request a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. Subject to § 47-18-5534, while the appeal is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and § 47-18-5534, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control. [Acts 2009, ch. 469, § 1.]

**47-18-5512. Registration in another state.** — If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by § 47-18-5505(a), § 47-18-5506 or § 47-18-5511(b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(1) The application in the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this state;

(2) The applicant provides the information required by § 47-18-5506(1), (3), (10), (12) and (13); and

(3) The applicant, under oath, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current. [Acts 2009, ch. 469, § 1.]

**47-18-5513. Bond requirement.** — (a) Except as otherwise provided in § 47-18-5514, a provider that is required to be registered under this part shall file a surety bond with the administrator, which must:

(1) Be in effect during the period of registration and for two (2) years after the provider ceases providing debt-management services to individuals in this

state; and

(2) Run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) Subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), a surety bond filed pursuant to subsection (a) must:

(1) Be in the amount of fifty thousand dollars (\$50,000) or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals and any other factor the administrator considers appropriate;

(2) Be issued by a bonding, surety or insurance company authorized to do business in this state and rated at least "A" by a nationally recognized rating organization; and

(3) Have payment conditioned upon noncompliance of the provider or its agent with this part.

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the administrator and, within thirty (30) days after notice by the administrator, file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond must be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of fifty thousand dollars (\$50,000) or other amount determined pursuant to subsection (b).

(d) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) The administrator assesses expenses under § 47-18-5532(b)(1), issues a final order under § 47-18-5533(a)(2) or recovers a final judgment under § 47-18-5533(a)(4), (a)(5) or (d); or

(2) An individual recovers a final judgment pursuant to § 47-18-5535(a), (b), (c)(1), (c)(2) or (c)(4).

(e) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments and claims, distribute the proceeds in the following order:

(1) To satisfaction of a final order or judgment under § 47-18-5533(a)(2), (a)(4), (a)(5) or (d);

(2) To final judgments recovered by individuals pursuant to § 47-18-5535(a), (b), (c)(1), (c)(2) or (c)(4), pro rata;

(3) To claims of individuals established to the satisfaction of the administrator, pro rata; and

(4) If a final order or judgment is issued under § 47-18-5533(a), to the expenses charged pursuant to § 47-18-5532(b)(1). [Acts 2009, ch. 469, § 1.]

**47-18-5514. Substitute for bond requirement.** — (a) Instead of the surety bond required by § 47-18-5513, a provider may deliver to the administrator, in the amount required by § 47-18-5513(b), and, except as otherwise provided in subdivision (a)(2)(A), payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this part:

(1) A certificate of insurance:

(A) Issued by an insurance company authorized to do business in this state and rated at least “A” or equivalent by a nationally recognized rating organization approved by the administrator; and

(B) With no deductible, or if the provider supplies a bond in the amount of five thousand dollars (\$5,000), a deductible not exceeding five thousand dollars (\$5,000); or

(2) With the approval of the administrator:

(A) An irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this part; or

(B) Bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be deposited and maintained with a bank approved by the administrator for this purpose.

(b) If a provider furnishes a substitute pursuant to subsection (a), then § 47-18-5513(a), (c), (d) and (e) apply to the substitute. [Acts 2009, ch. 469, § 1.]

**47-18-5515. Requirement of good faith.** — A provider shall act in good faith in all matters under this part. [Acts 2009, ch. 469, § 1.]

**47-18-5516. Customer service.** — A provider that is required to be registered under this part shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, certified debt specialist or customer-service representative, as appropriate, during ordinary business hours. [Acts 2009, ch. 469, § 1.]

**47-18-5517. Prerequisites for providing debt-management services.** — (a) Before providing debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement and describe the goods and services the provider offers:

(1) Free of additional charge if the individual enters into an agreement;

(2) For a charge if the individual does not enter into an agreement; and

(3) For a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee	_____	Dollar amount of fee
Monthly service fee	_____	Dollar amount of fee or method of determining amount
Settlement fee	_____	Dollar amount of fee or method of determining amount
Goods and services in addition to those provided in connection with a plan:		
_____	_____	Dollar amount of fee or method of determining amount
(item)	_____	Dollar amount of fee or method of determining amount
_____	_____	Dollar amount of fee or method of determining amount
(item)	_____	Dollar amount of fee or method of determining amount

(b) A provider may not furnish debt-management services unless the provider, through the services of a certified counselor or certified debt specialist:

- (1) Provides the individual with reasonable education about the management of personal finance;
- (2) Has prepared a financial analysis; and
- (3) If the individual is to make regular, periodic payments to a creditor or provider:

(A) Has prepared a plan for the individual;

(B) Has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(C) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) Provide the individual with a copy of the analysis and plan required by subsection (b) in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) Inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b); and

(3) If a plan contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency, or if the provider's business practices involve holding, accessing or directing the funds of an individual, with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(A) Creditors that the provider expects to participate in the plan and grant concessions;

(B) Creditors that the provider expects to participate in the plan but not grant concessions;

(C) Creditors that the provider expects not to participate in the plan; and

(D) All other creditors.

(d) Before an individual assents to an agreement, the provider shall inform the individual, in a separate record that the individual may keep whether or not the individual assents to the agreement:

- (1) Of the name and business address of the provider;
- (2) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;
- (3) That establishment of a plan may adversely affect the individual's credit rating or credit scores;
- (4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;
- (5) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and
- (6) That, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default or delinquency, the provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

**IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
- (2) Using a debt-management plan may make it harder for you to obtain credit.
- (3) We may receive compensation for our services from your creditors.

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Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default or delinquency, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

**IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
- (2) Using a debt-management plan may make it harder for you to obtain credit.

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Name and business address of provider

(g) If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

**IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
- (2) Nonpayment of your debts under our program may:
  - (A) Hurt your credit rating or credit scores;
  - (B) Lead your creditors to increase finance and other charges; and
  - (C) Lead your creditors to undertake activity, including lawsuits, to collect the debts.
- (3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

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Name and business address of provider  
[Acts 2009, ch. 469, § 1.]

**47-18-5518. Communication by electronic or other means.** — (a) In this section:

(1) “Consumer” means an individual who seeks or obtains goods or services that are used primarily for personal, family or household purposes; and

(2) “Federal act” means the electronic signatures in the Global and National Commerce Act, 15 U.S.C. § 7001, et seq.

(b) A provider may satisfy the requirements of § 47-18-5517, § 47-18-5519, or § 47-18-5527 by means of the Internet or other electronic means if the provider obtains a consumer’s consent in the manner provided by 15 U.S.C. § 7001(c)(1).

(c) The disclosures and materials required by §§ 47-18-5517, 47-18-5519 and 47-18-5520 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an Internet web site, the disclosure of the information required by § 47-18-5517(d) must appear on one (1) or more screens that:

- (1) Contain no other information; and
- (2) The individual must see before proceeding to assent to formation of an agreement.

(e) At the time of providing the materials and agreement required by §§ 47-18-5517(c) and (d), 47-18-5519 and 47-18-5527, a provider shall inform the individual that upon electronic, telephonic or written request, it will send the individual a written copy of the materials and shall comply with a request as provided in subsection (f).

(f) If a provider is requested, before the expiration of ninety (90) days after an agreement is completed or terminated, to send a written copy of the materials required by § 47-18-5517(c) and (d), § 47-18-5519, or § 47-18-5527, the provider shall send them at no charge within three (3) business days after the request is received; but the provider need not comply with a request more

than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety (90) days after an agreement is completed or terminated, the provider shall send, within a reasonable time, a written copy of the materials requested.

(g) A provider that maintains an Internet web site shall disclose on the home page of its web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

- (1) Its name and all names under which it does business;
- (2) Its principal business address, telephone number and electronic-mail address, if any; and
- (3) The names of its principal officers.

(h) Subject to subsection (i), if a consumer who has consented to electronic communication in the manner provided by 15 U.S.C. § 7001 withdraws consent as provided in 15 U.S.C. § 7001, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h), it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty (30) days after receiving the notification, consents to electronic communication in the manner provided in 15 U.S.C. § 7001(c). If the consumer consents, the provider may terminate the agreement only as permitted by § 47-18-5519(a)(6)(G). [Acts 2009, ch. 469, § 1.]

**47-18-5519. Form and contents of agreement.** — (a) An agreement must:

- (1) Be in a record;
- (2) Be dated and signed by the provider and the individual;
- (3) Include the name of the individual and the address where the individual resides;
- (4) Include the name, business address and telephone number of the provider;
- (5) Be delivered to the individual immediately upon formation of the agreement; and
- (6) Disclose:
  - (A) The services to be provided;
  - (B) The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual;
  - (C) The schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due and an estimate of the date of the final payment;
  - (D) If a plan provides for regular periodic payments to creditors:
    - (i) Each creditor of the individual to which payment will be made, the amount owed to each creditor and any concessions the provider reasonably believes each creditor will offer; and
    - (ii) The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;
  - (E) Each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(F) How the provider will comply with its obligations under § 47-18-5527(a);

(G) That the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(H) That the individual may cancel the agreement as provided in § 47-18-5520;

(I) That the individual may contact the administrator with any questions or complaints regarding the provider; and

(J) The address, telephone number, and Internet address or web site of the administrator.

(b) For purposes of subdivision (a)(5), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save and print it and the individual is notified that it is available.

(c) If the administrator supplies the provider with any information required under subdivision (a)(6)(J), the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(d) An agreement must provide that:

(1) The individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;

(B) With respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund sixty-five percent (65%) of any portion of the set-up fee that has not been credited against the settlement fee; and

(C) All powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(3) The provider will notify the individual within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan and that this notice will include:

(A) The identity of the creditor; and

(B) The right of the individual to modify or terminate the agreement.

(e) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than fifty percent (50%) of the outstanding amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than fifty percent (50%) of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than fifty percent (50%) of the outstanding amount of the debt.

(f) An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this state;

(2) Except as permitted by title 29, chapter 5, part 3, or by § 2 of the Federal Arbitration Act, codified in 9 U.S.C. § 2, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this part;

(3) Contain a provision that restricts the individual's remedies under this part or law other than this part; or

(4) Contain a provision that:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this part; or

(B) Indemnifies any person for liability arising under the agreement or this part.

(g) All rights and obligations specified in subsection (d) and § 47-18-5520 exist even if not provided in the agreement. A provision in an agreement that violates subsection (d), (e) or (f) is void. [Acts 2009, ch. 469, § 1.]

**47-18-5520. Cancellation of agreement — Waiver.** — (a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) or § 47-18-5519 or § 47-18-5528, in which event the individual may cancel the agreement within thirty (30) days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement must be accompanied by a form that contains in boldface type, surrounded by bold black lines:

**\*\*Notice of Right to Cancel**

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to \_\_\_\_\_  
 \_\_\_\_\_ E-mail address of provider  
 or mail or deliver a signed, dated copy of this notice, or any other written notice  
 to \_\_\_\_\_ at \_\_\_\_\_  
 \_\_\_\_\_ Name of provider \_\_\_\_\_ Address of provider  
 before midnight on \_\_\_\_\_. If you cancel this agreement within the  
 \_\_\_\_\_ Date  
 three-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we may not be required to refund fees you have paid us.

I cancel this agreement,

\_\_\_\_\_  
 Print your name

---

Signature

---

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one (1) or more of the individual's creditors before the expiration of three (3) days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard-form record is void. [Acts 2009, ch. 469, § 1.]

**47-18-5521. Required language.** — Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this part must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this part. [Acts 2009, ch. 469, § 1.]

**47-18-5522. Trust account.** — (a) All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. Within two (2) business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) Maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(A) The provider may delay payment to the extent that a payment by the individual is not final; and

(B) If a plan provides for regular periodic payments to creditors, the disbursement must comply with the due dates established by each creditor; and

(3) Promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account must at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a), the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one (1) trust account, each trust account must be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five (5) days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual that has not been paid to creditors, less fees that are payable to the provider under § 47-18-5523.

(i) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank. [Acts 2009, ch. 469, § 1.]

**47-18-5523. Fees and other charges.** — (a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with §§ 47-18-5519 and 47-18-5528.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection (c) and § 47-18-5528(d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) Subject to adjustment of dollar amounts pursuant to § 47-18-5532(f), the following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency, the provider may charge:

(A) A fee not exceeding fifty dollars (\$50.00) for consultation, obtaining a credit report, setting up an account, and the like; and

(B) A monthly service fee, not to exceed ten dollars (\$10.00) times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars (\$50.00) in any month;

(2) If an individual assents to an agreement that contemplates that creditors will settle debts for less than the principal amount of the debt, a provider

may charge:

(A) Subject to § 47-18-5519(d), a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding the lesser of four hundred dollars (\$400) or four percent (4%) of the debt in the plan at the inception of the plan; and

(B) A monthly service fee, not to exceed ten dollars (\$10.00) times the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars (\$50.00) in any month;

(3) A provider may not impose or receive fees under both subdivisions (d)(1) and (2); and

(4) Except as otherwise provided in § 47-18-5528(d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding one hundred dollars (\$100) or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than one hundred dollars (\$100) if the nature and extent of the educational and counseling services warrant the larger fee.

(e) If, before the expiration of ninety (90) days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to subdivision (d)(4).

(f) Except as otherwise provided in subsections (c) and (d), if an agreement contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling a debt may not exceed the applicable settlement fee limits in subdivisions (f)(1) and (2), the terms of which shall be clearly disclosed in the agreement.

(1) With respect to an agreement that provides for a flat settlement fee based on the overall amount of included debt, the total aggregate amount of fees charged to any individual under this part, including fees charged under subdivisions (d)(2)(A) and (B), may not exceed seventeen percent (17%) of the principal amount of debt included in the agreement at the inception of the agreement. The flat settlement fee authorized under this subdivision (f)(1) shall be assessed in equal monthly payments over at least half the length of the plan, as estimated at the plan's inception, unless the payment of fees is voluntarily accelerated by the individual in a separate record and at least half of the overall amount of outstanding debt covered by the agreement has been settled.

(2) With respect to agreements in which fees are calculated as a percentage of the amount saved by an individual, a settlement fee may not exceed thirty percent (30%) of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as calculated at the time of settlement. Settlement fees authorized under this subdivision (f)(2) shall become billable only as debts are settled, and the total aggregate amount of fees charged to any individual under this part, including fees charged under subdivisions (d)(2)(A) and (B), may not exceed twenty percent (20%) of the principal amount of debt included in the agreement at the agreement's inception.

(3) A provider may not impose or receive fees under both subdivisions (f)(1) and (2).

(g) Subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), if a payment to a provider by an individual under this part is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars (\$25.00) and the amount permitted by law other than this part. [Acts 2009, ch. 469, § 1.]

**47-18-5524. Voluntary contributions.** — A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until thirty (30) days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under § 47-18-5523. [Acts 2009, ch. 469, § 1.]

**47-18-5525. Voidable agreements.** — (a) If a provider imposes a fee or other charge or receives money or other payments not authorized by § 47-18-5523 or § 47-18-5524, the individual may void the agreement and recover as provided in § 47-18-5535.

(b) If a provider is not registered as required by this part when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b), the provider does not have a claim against the individual for breach of contract or for restitution. [Acts 2009, ch. 469, § 1.]

**47-18-5526. Termination of agreements.** — (a) If an individual who has entered into an agreement fails for sixty (60) days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) Any money of the individual held in trust for the benefit of the individual; and

(2) Sixty-five percent (65%) of any portion of the set-up fee received pursuant to § 47-18-5523(d)(2) that has not been credited against settlement fees. [Acts 2009, ch. 469, § 1.]

**47-18-5527. Periodic reports and retention of records.** — (a) A provider shall provide the accounting required by subsection (b):

(1) Upon cancellation or termination of an agreement; and

(2) Before cancellation or termination of any agreement:

(A) At least once each month; and

(B) Within five (5) business days after a request by an individual, but the provider need not comply with more than one (1) request in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) The amount of money received from the individual since the last report;

(2) The amounts and dates of disbursements made on the individual's behalf, or by the individual upon the direction of the provider, since the last

report to each creditor listed in the plan;

(3) The amounts deducted from the amount received from the individual;

(4) The amount held in reserve; and

(5) If, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) The total amount and terms of the settlement;

(B) The amount of the debt when the individual assented to the plan;

(C) The amount of the debt when the creditor agreed to the settlement;

and

(D) The calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for five (5) years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records. [Acts 2009, ch. 469, § 1.]

**47-18-5528. Prohibited acts and practices.** — (a) A provider may not, directly or indirectly:

(1) Misappropriate or misapply money held in trust;

(2) Settle a debt on behalf of an individual for more than fifty percent (50%) of the outstanding amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

(3) Take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than fifty percent (50%) of the outstanding amount of the debt owed a creditor;

(4) Exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(5) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) A return of money to the individual; or

(B) Before termination of an agreement, properly authorized by the agreement and this part, and for:

(i) Payment to one (1) or more creditors pursuant to an agreement; or

(ii) Payment of a fee;

(6) Offer a gift or bonus, premium, reward or other compensation to an individual for executing an agreement;

(7) Offer, pay or give a gift or bonus, premium, reward or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(8) Receive a bonus, commission or other benefit for referring an individual to a person;

(9) Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of

the principal amount of the debt;

(10) Compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(11) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion, will lead to full settlement of the debt;

(12) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments;

(B) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction or loss of employment;

(13) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(14) Represent in its agreements, disclosures required by this part, advertisements or Internet web site that it is:

(A) A not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed; or

(B) A tax-exempt entity unless it has received certification of tax-exempt status from the internal revenue service and is properly operating as a not-for-profit entity under the law of the state in which it was formed;

(15) Take a confession of judgment or power of attorney to confess judgment against an individual; or

(16) Employ an unfair, unconscionable or deceptive act or practice, including the knowing omission of any material information.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) Purchase a debt or obligation of the individual;

(2) Receive from or on behalf of the individual:

(A) A promissory note or other negotiable instrument other than a check or a demand draft; or

(B) A post-dated check or demand draft;

(3) Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The administrator, upon proper demand;

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) The extent necessary to administer the plan;

(6) Except as otherwise provided in § 47-18-5523(f), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance except to the extent such services are expressly authorized by the administrator; or

(8) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(c) This part does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward or other compensation, directly or indirectly, for advising, arranging or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

- (1) Owns more than ten percent (10%) of the person; or
- (2) Is an employee or affiliate of the person. [Acts 2009, ch. 469, § 1.]

**47-18-5529. Notice of litigation.** — No later than thirty (30) days after a provider has been served with notice of a civil action for violation of this part by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued. [Acts 2009, ch. 469, § 1.]

**47-18-5530. Advertising.** — (a) If the agreements of a provider contemplate that creditors will reduce finance charges or fees for late payment, default or delinquency and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, that using a debt-management plan may make it harder for the individual to obtain credit.

(b) If the agreements of a provider contemplate that creditors will settle for less than the full principal amount of debt and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, the information specified in § 47-18-5517(d)(3) and (4). [Acts 2009, ch. 469, § 1.]

**47-18-5531. Liability for the conduct of other persons.** — If a provider delegates any of its duties or obligations under an agreement or this part to another person, including an independent contractor, the provider is liable for conduct of the person that, if done by the provider, would violate the agreement or this part. [Acts 2009, ch. 469, § 1.]

**47-18-5532. Powers of administrator.** — (a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this part, refer cases to the

attorney general and reporter, or a district attorney general or other appropriate law enforcement official, and seek or provide remedies as provided in this part.

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this part, to determine compliance with this part. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(1) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(3) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by § 47-18-5522, any or all money, books, records, accounts and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may promulgate rules to administer this part. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this part.

(f) The administrator, by rule, shall adopt dollar amounts instead of those specified in §§ 47-18-5502, 47-18-5505, 47-18-5509, 47-18-5513, 47-18-5523, 47-18-5533 and 47-18-5535 to reflect inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers or, if that index is not available, another index adopted by rule by the administrator. The administrator shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least ten percent (10%). The dollar amount must be rounded to the nearest one hundred dollars (\$100), except that the amounts in § 47-18-5523 must be rounded to the nearest dollar.

(g) The administrator shall notify registered providers of any change in dollar amounts made pursuant to subsection (f) and make that information available to the public.

(h) The administrator shall prescribe fees and penalties under this part such that all fees collectively shall sustain the requirements of this part pursuant to the requirements of § 4-29-121. [Acts 2009, ch. 469, § 1.]

**47-18-5533. Administrative remedies.** — (a) The administrator may enforce this part and rules adopted under this part by taking one (1) or more of the following actions:

(1) Ordering a provider or a director, employee or other agent of a provider to cease and desist from any violations;

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) Subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation;

(4) Prosecuting a civil action to:

(A) Enforce an order;

(B) Obtain restitution or an injunction or other equitable relief, or both; or

(5) Intervening in an action brought under § 47-18-5535.

(b) Subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), if a person violates or knowingly authorizes, directs or aids in the violation of a final order issued under subdivision (a)(1) or (a)(2), the administrator may impose a civil penalty not exceeding twenty thousand dollars (\$20,000) for each violation.

(c) The administrator may maintain an action to enforce this part in any county.

(d) The administrator may recover the reasonable costs of enforcing this part under subsections (a)-(c), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public and any other factor the administrator considers relevant to the determination of the civil penalty. [Acts 2009, ch. 469, § 1.]

**47-18-5534. Suspension, revocation or nonrenewal of registration. —**

(a) In this section, "insolvent" means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good faith dispute;

(2) Being unable to pay debts as they become due; or

(3) Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. § 101 et seq.

(b) The administrator may suspend, revoke or deny renewal of a provider's registration if:

(1) A fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(2) The provider has committed a material violation of this part or a rule or order of the administrator under this part;

(3) The provider is insolvent;

(4) The provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this part, failed to comply with § 47-18-5532(b)(2) within fifteen (15) days after request or made a material misrepresentation or omission in complying with § 47-18-

5532(b)(2); or

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(c) If a provider does not comply with § 47-18-5522(f) or if the administrator otherwise finds that the public health or safety or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by § 47-18-5522, books, records, accounts and other property of the provider that are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. [Acts 2009, ch. 469, § 1.]

**47-18-5535. Private enforcement.** — (a) If an individual voids an agreement pursuant to § 47-18-5525(b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under subdivisions (c)(3) and (4).

(b) If an individual voids an agreement pursuant to § 47-18-5525(a), the individual may recover in a civil action three (3) times the total amount of the fees, charges, money and payments made by the individual to the provider, in addition to the recovery under subdivision (c)(4).

(c) Subject to subsection (d), an individual with respect to whom a provider violates this part may recover in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) Except as otherwise provided in subsection (d) and subject to adjustment of the dollar amount pursuant to § 47-18-5532(f), with respect to a violation of § 47-18-5517, § 47-18-5519, § 47-18-5520, § 47-18-5521, § 47-18-5522, § 47-18-5523, § 47-18-5524, § 47-18-5527 or § 47-18-5528(a), (b), or (d), the greater of the amount recoverable under subdivision (c)(1) or five thousand dollars (\$5,000);

(3) Punitive damages; and

(4) Reasonable attorney's fees and costs.

(d) In a class action, except for a violation of § 47-18-5528(a)(5), the minimum damages provided in subdivision (c)(2) do not apply.

(e) In addition to the remedy available under subsection (c), if a provider violates an individual's rights under § 47-18-5520, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this part if the provider proves that the violation was not intentional and resulted from a good faith error notwithstanding the maintenance of procedures reasonably

adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this part is not a good faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this part, the defense provided by this subsection (f) is not available unless the provider refunds the excess within two (2) business days of learning of the violation.

(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under § 47-18-5513 or § 47-18-5514. [Acts 2009, ch. 469, § 1.]

**47-18-5536. Violation of Consumer Protection Act.** — If an act or practice of a provider violates both this part and the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter, an individual may not recover under both for the same act or practice. [Acts 2009, ch. 469, § 1.]

**47-18-5537. Statute of limitations.** — (a) An action or proceeding brought pursuant to § 47-18-5533(a), (b) or (c) must be commenced within four (4) years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to § 47-18-5535 must be commenced within two (2) years after the latest of:

- (1) The individual's last transmission of money to a provider;
- (2) The individual's last transmission of money to a creditor at the direction of the provider;
- (3) The provider's last disbursement to a creditor of the individual;
- (4) The provider's last accounting to the individual pursuant to § 47-18-5527(a);
- (5) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or
- (6) Termination of actions or proceedings by the administrator with respect to a violation of the part.

(c) The period prescribed in subdivision (b)(5) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this part to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this part. [Acts 2009, ch. 469, § 1.]

**47-18-5538. Uniformity of application and construction.** — In applying and construing this part, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [Acts 2009, ch. 469, § 1.]

**47-18-5539. Relation to Electronic Signatures in Global And National Commerce Act.** — This part modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede § 101(c) of that act, codified in 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, codified in 15 U.S.C. § 7003(b). [Acts

2009, ch. 469, § 1.]

**47-18-5540. Transitional provisions — Application to existing transactions.** — Transactions entered into before this part takes effect and the rights, duties and interests resulting from them may be completed, terminated or enforced as required or permitted by a law amended, repealed or modified by this part as though the amendment, repeal or modification had not occurred. [Acts 2009, ch. 469, § 1.]

**47-18-5541. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable. [Acts 2009, ch. 469, § 1.]

## CHAPTER 25

### TRADE PRACTICES

#### PART 1—Trusts—Unlawful Restraint of Trade and Discrimination

##### SECTION.

47-25-101. Trusts, etc., lessening competition  
or controlling prices unlawful  
and void.

#### PART 1—TRUSTS—UNLAWFUL RESTRAINT OF TRADE AND DISCRIMINATION

**47-25-101. Trusts, etc., lessening competition or controlling prices unlawful and void.** — All arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts, or combinations between persons or corporations designed, or which tend, to advance, reduce, or control the price or the cost to the producer or the consumer of any such product or article, are declared to be against public policy, unlawful, and void. [Acts 1891, ch. 218, § 1; 1903, ch. 140, § 1; Shan., § 3185; Code 1932, § 5880; T.C.A. (orig. ed.), § 69-101.]

## CHAPTER 50

### MISCELLANEOUS PROVISIONS

##### SECTION.

47-50-117. Reimbursement of costs associated  
with clothing anti-theft security  
tags.

##### SECTION.

47-50-118. Refund on purchase price of ticket  
for cancelled performance or  
event.

**47-50-117. Reimbursement of costs associated with clothing anti-theft security tags.** — (a) When clothing is purchased that contains an anti-theft security tag and the tag is not removed at the time of purchase, and the customer resides more than a fifteen (15) minute commute from the retailer, the retailer shall reimburse the customer for mailing costs incurred by the customer in returning the item of clothing for removal of the tag. Upon showing proof of purchase of the item and proof of mailing costs, the retailer shall reimburse the customer for such costs.

(b) It is deemed to be an unfair business practice under the Consumer Protection Act, chapter 18 of this title, if a retailer fails to reimburse the customer in accordance with subsection (a). [Acts 1998, ch. 1001, § 1.]

**47-50-118. Refund on purchase price of ticket for cancelled performance or event.** — (a) Upon cancellation of any performance or event for which a ticket for admission is sold, the ticketing service company that contracts to sell tickets for such event or performance at retail ticket outlets shall refund to all ticket purchasers the purchase price of the ticket plus any service fees or charges paid by the purchaser for such ticket.

(b) It is deemed to be an unfair business practice under the Consumer Protection Act, chapter 18 of this title, if a ticketing service company fails to refund the purchase price in accordance with subsection (a).

(c) Notwithstanding any provision of law to the contrary, upon cancellation of any performance or event performed or arranged by a nonprofit corporation with an annual payroll of more than one hundred thousand dollars (\$100,000) due to an earthquake, tornado, or other such natural disaster, such nonprofit corporation shall offer refunds to all ticket purchasers to such performance or event. After one hundred eighty (180) days after the cancellation of a performance or event due to an earthquake, tornado or other natural disaster, the nonprofit organization shall be entitled to the purchase price of all unclaimed tickets. It is the clear and unequivocal intent of the general assembly that this subsection has retroactive application to January 1, 1998. [Acts 1998, ch. 1001, § 2; 1999, ch. 214, § 1.]



wholesale distributor on authority of any manufacturer, to the effect that the manufacturer or wholesale distributor will discontinue to sell, or will terminate a contract to sell motor vehicles to the dealer unless the dealer finances the purchase or sale of motor vehicles only through a designated finance company or finance agency or class of persons, the threat so made shall be prima facie evidence of the fact that the manufacturer or wholesale distributor has sold, or intends to sell, motor vehicles, on the condition or with the agreement prohibited in § 55-13-102. [Acts 1937, ch. 244, § 3; C. Supp. 1950, § 6770.27 (Williams, § 6770.16); T.C.A. (orig. ed.), § 59-1303.]

**55-13-104. Subsidization or discrimination prohibited.** — (a) It is unlawful for any manufacturer or wholesale distributor to pay or give a subsidy to any finance company or finance agency or class of persons, or to discriminate against or in favor of any finance company or finance agency or class of persons.

(b) It is unlawful for any finance company or finance agency or class of persons to accept any such subsidy or the benefit of any such discrimination. [Acts 1937, ch. 244, § 4; C. Supp. 1950, § 6770.28 (Williams, § 6770.17); T.C.A. (orig. ed.), § 59-1304.]

**55-13-105. Injunction and quo warranto—Proceedings to restrain violations.** — (a) The chancery courts have jurisdiction to grant injunctions restraining violations of this chapter upon proceedings brought by the attorney general and reporter, the district attorney general or any party in interest.

(b) For repeated violations of this chapter, the court may enjoin a finance company, finance agency, or any person or persons from thereafter engaging in the business of financing the purchase or sale of motor vehicles in this state.

(c) Where the violator is a corporation, domestic or foreign, the charter rights, franchises or privileges of the corporation or the privilege of doing business in this state may be revoked in a quo warranto proceeding brought by the attorney general and reporter or the district attorney general for the proper district. In this proceeding, the court shall enter an order or decree as it deems reasonable and proper to carry into effect this chapter and to prevent unfair competition and prohibit monopolies. [Acts 1937, ch. 244, § 5; C. Supp. 1950, § 6770.29 (Williams, § 6770.18); modified; T.C.A. (orig. ed.), § 59-1305.]

**55-13-106. Penalty for violations.** — Any person, or any employee, agent or officer of any person who violates this chapter commits a Class B misdemeanor. [Acts 1937, ch. 244, § 6; C. Supp. 1950, § 6770.30 (Williams, § 6770.19); T.C.A. (orig. ed.), § 59-1306; Acts 1989, ch. 591, § 112.]

**55-13-107. Suit for damages sustained.** — In addition to the other penalties provided in this chapter, any person who is injured in the person's business or property, by any violation of this chapter, may proceed against the violator by suit to recover the damages so sustained and the costs of the suit. [Acts 1937, ch. 244, § 7; C. Supp. 1950, § 6770.31 (Williams, § 6770.20); T.C.A. (orig. ed.), § 59-1307.]

CHAPTER 24  
MOTOR VEHICLE WARRANTIES

## SECTION.

- 55-24-101. Chapter definitions.  
 55-24-102. Nonconforming vehicles — Reports — Repairs.  
 55-24-103. Replacement or repair of vehicles — Refunds — Refinancing agreements — Defenses.  
 55-24-104. Leased vehicles — Refunds.  
 55-24-105. Presumptions — Term of protection — Notice to manufacturer.  
 55-24-106. Informal dispute settlement procedure.

## SECTION.

- 55-24-107. Statute of limitations.  
 55-24-108. Recovery of costs and expenses — Attorneys' fees.  
 55-24-109. Copy of repair order to consumer.  
 55-24-110. Election of remedies.  
 55-24-111. Commencing actions against sellers or lessors.  
 55-24-112. Manufacturer's warranty — Disclosure to purchaser.

**55-24-101. Chapter definitions** — As used in this chapter, unless the context otherwise requires:

(1) "Consumer" means the purchaser, other than for purposes of resale, or the lessee of a motor vehicle, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty. "Consumer" does not include any governmental entity or any business or commercial entity that registers three (3) or more vehicles;

(2) "Lessee" means any consumer who leases a motor vehicle pursuant to a written lease agreement by which a manufacturer's warranty was issued as a condition of sale or which provides that the lessee is responsible for repairs to the motor vehicle;

(3) "Manufacturer" means any person who manufactures or assembles new or unused motor vehicles or, in the case of motor vehicles not manufactured in the United States, the importer of the motor vehicle;

(4) "Motor vehicle" means a motor vehicle as defined in § 55-1-103, that is sold and subject to the registration and certificate of title provisions in chapters 1-6 of this title in this state, or subject to similar registration and certificate of title provisions in another state, and classified as a Class B vehicle according to § 55-4-111. "Motor vehicle" shall include a motorcycle, as defined in § 55-1-103, that is sold and subject to the registration and certificate of title provisions in chapters 1-6 of this title in this state, or subject to similar registration and certificate of title provisions in another state, and classified as a Class A vehicle according to § 55-4-111. "Motor vehicle" does not include motorized bicycles as defined in § 55-8-101, "motor homes" as defined in § 55-1-104, lawnmowers or garden tractors, recreational vehicles or off-road vehicles and vehicles over ten thousand pounds (10,000 lbs.) gross vehicle weight;

(5) "Person" means every natural person, partnership, corporation, association, trust, estate or other legal entity;

(6) "Substantially impair" means to render a motor vehicle unreliable or unsafe for normal operation or to reduce its resale market value below the average resale value for comparable motor vehicles; and

(7) “Term of protection” means the term of applicable express warranties or the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever comes first; or, in the case of a replacement vehicle provided by a manufacturer to a consumer under this chapter, one (1) year from the date of delivery to the consumer of the replacement vehicle. [Acts 1986, ch. 857, § 1; 2003, ch. 22, §§ 1-3; T.C.A. § 55-24-201; Acts 2010, ch. 635, § 1.]

**55-24-102. Nonconforming vehicles — Reports — Repairs.** — If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity, defect or condition to the manufacturer, its agent or its authorized dealer during the term of protection, the manufacturer, its agent or its authorized dealer shall correct the nonconformity, defect or condition at no charge to the consumer, notwithstanding the fact that the repairs are made after the expiration of the term. Any corrections or attempted corrections undertaken by an authorized dealer under this section shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under warranty is billed. [Acts 1986, ch. 857, § 2; T.C.A. § 55-24-202.]

**55-24-103. Replacement or repair of vehicles — Refunds — Refinancing agreements — Defenses.** — (a) The manufacturer must replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price if:

(1) The nonconformity, defect or condition substantially impairs the motor vehicle; and

(2) The manufacturer, its agent or authorized dealer is unable to conform the motor vehicle to any applicable express warranty after a reasonable number of attempts.

(b) For purposes of this section:

(1) “Collateral charges” means manufacturer-installed or agent-installed items or service charges, credit life and disability insurance charges, sales taxes, title charges, license fees, registration fees, any similar governmental charges and other reasonable expenses incurred for the purchase of the motor vehicle;

(2) “Comparable motor vehicle” means a new motor vehicle of comparable worth to the same make and model with all options and accessories, with appropriate adjustments being allowed for any model year differences;

(3) “Full purchase price” means the actual cost paid by the consumer, including all collateral charges, less a reasonable allowance for use; and

(4)(A) “Reasonable allowance for use” means that amount directly attributable to use by a consumer prior to the consumer’s first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair, plus a reasonable amount for any damage not attributable to normal wear.

(B) A reasonable allowance for use shall not exceed one half (½) of the amount allowed per mile by the internal revenue service, as provided by regulation, revenue procedure or revenue ruling promulgated pursuant to

§ 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes, plus an amount to account for any loss to the fair market value of the vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from nonconformity to an express warranty.

(c) Refunds shall be made to the consumer, and lienholder, if any, as their interests appear. The provisions of this section shall not affect the interests of a lienholder; unless the lienholder consents to the replacement of the lien with a corresponding lien on the vehicle accepted by the consumer in exchange for the vehicle having a nonconformity, the lienholder shall be paid in full the amount due on the lien, including interest and other charges, before an exchange of automobiles or a refund to the consumer is made.

(d) In instances where a vehicle that was financed by the manufacturer or its subsidiary or agent is replaced under the provisions of this section, the manufacturer, subsidiary or agent shall not require the consumer to enter into any refinancing agreement that would create any financial obligations upon the consumer beyond those imposed by the original financing agreement.

(e) It shall be an affirmative defense to any claim under this chapter that:

(1) An alleged nonconformity does not substantially impair a motor vehicle; or

(2) A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by a consumer.

(f) Funds held by a manufacturer or manufacturer's distributor that are necessary to perform the manufacturer's or manufacturer's distributor's obligations to consumers under this section are trust funds held in trust by the manufacturer or manufacturer's distributor for the benefit of any consumer who is entitled to the protections and rights afforded under this section. [Acts 1986, ch. 857, § 3; T.C.A. § 55-24-203; Acts 2009, ch. 322, § 1.]

**55-24-104. Leased vehicles — Refunds.** — (a) In the case of a leased vehicle, refunds will be made to the lessor and lessee as follows: The lessee will receive the lessee cost and the lessor will receive the lease price less the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle.

(b) For purposes of this section:

(1) "Lease price" means the aggregate of:

(A) Lessor's actual purchase cost;

(B) Freight, if applicable;

(C) Accessories, if applicable;

(D) Any fee paid to another to obtain the lease; and

(E) An amount equal to five percent (5%) of subdivision (b)(1);

(2) "Lessee cost" means the aggregate deposit and rental payments previously paid to the lessor for the leased vehicle less service fees; and

(3) "Service fees" means the portion of a lease payment attributable to:

(A) An amount for earned interest calculated on the rental payments previously paid to the lessor for the leased vehicle at an annual rate equal to two (2) points above the prime rate in effect on the date of the execution of the lease; and

(B) Any insurance or other costs expended by the lessor for the benefit of the lessee. [Acts 1986, ch. 857, § 4; T.C.A. § 55-24-204.]

**55-24-105. Presumptions — Term of protection — Notice to manufacturer.** — (a) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:

(1) The same nonconformity has been subject to repair three (3) or more times by the manufacturer or its agents or authorized dealers during the term of protection, but the nonconformity continues to exist; or

(2) The vehicle is out of service by reason of repair for a cumulative total of thirty (30) or more calendar days during the term of protection.

(b) The term of protection and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

(c) It shall be the responsibility of the consumer, or the representative of the consumer, prior to proceeding under § 55-24-103, to give written notification by certified mail directly to the manufacturer of the need for the correction or repair of the nonconformity. If the address of the manufacturer is not readily available to the consumer in the owner's manual or manufacturer's warranty received by the consumer at the time of purchase of the motor vehicle, the written notification shall be mailed to an authorized dealer. The authorized dealer shall upon receipt forward the notification to the manufacturer. If, at the time the notice is given, either of the conditions set forth in subsection (a) already exists, the manufacturer shall be given an additional opportunity after receipt of the notification, not to exceed ten (10) days, to correct or repair the nonconformity. [Acts 1986, ch. 857, § 5; 2003, ch. 22, § 4; T.C.A. § 55-24-205.]

**55-24-106. Informal dispute settlement procedure.** — (a) If a manufacturer has established or participates in an informal dispute settlement procedure that complies with the provisions of 16 CFR part 703, as those provisions read on November 3, 1983, and of this chapter, and causes the consumer to be notified of the procedure, the provisions of § 55-24-103 concerning refunds or replacement shall not apply to any consumer who has not first resorted to the procedure. The attorney general and reporter shall, upon application, issue a determination whether an informal dispute resolution mechanism qualifies under this section.

(b)(1) The informal dispute settlement panel shall determine whether the motor vehicle does or does not conform to all applicable express warranties.

(2) If the motor vehicle does not conform to all applicable express warranties, the informal dispute settlement panel shall then determine whether the nonconformity substantially impairs the motor vehicle.

(3) If the nonconformity does substantially impair the motor vehicle, the informal dispute settlement panel shall then determine, in accordance with this chapter, whether a reasonable number of attempts have been made to correct the nonconformity.

(4) If a reasonable number of attempts have been made to correct the nonconformity, the informal dispute settlement panel shall determine whether the manufacturer has been given an opportunity to repair the motor vehicle as provided in § 55-24-102.

(5) If the manufacturer has been given an opportunity to repair the motor vehicle as provided in § 55-24-102, the panel shall find that the consumer is entitled to refund or replacement as provided in § 55-24-103(a).

(6) The informal dispute settlement panel shall determine the amount of collateral charges, where appropriate. [Acts 1986, ch. 857, § 6; T.C.A. § 55-24-206.]

**55-24-107. Statute of limitations.** — (a) Any action brought under this chapter shall be commenced within six (6) months following:

(1) Expiration of the express warranty term; or

(2) One (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the later date.

(b) The statute of limitations shall be tolled for the period beginning on the date when the consumer submits a dispute to an informal dispute settlement procedure as provided in § 55-24-106 and ending on the date of its decision or the date before which the manufacturer, its agent or its authorized dealer is required by the decision to fulfill its terms, whichever comes later. [Acts 1986, ch. 857, § 7; T.C.A. § 55-24-207.]

**55-24-108. Recovery of costs and expenses — Attorneys' fees.** — If a consumer finally prevails in any action brought under this chapter, the consumer may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorneys' fees based on actual time expended, determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of the action. [Acts 1986, ch. 857, § 8; T.C.A. § 55-24-208.]

**55-24-109. Copy of repair order to consumer.** — A manufacturer, its agent or authorized dealer shall provide to the consumer, each time the consumer's vehicle is returned from being serviced or repaired, a copy of the repair order indicating all work performed on the vehicle, including, but not limited to, parts and labor provided without cost or at reduced cost because of shop or manufacturer's warranty, the date the vehicle was submitted for repair, the date it was returned to the consumer, and the odometer reading. [Acts 1986, ch. 857, § 9; T.C.A. § 55-24-209.]

**55-24-110. Election of remedies.** — (a) Nothing in this chapter shall in any way limit the rights or remedies that are otherwise available to a consumer under any other law.

(b) In no event shall a consumer who has resorted to an informal dispute settlement procedure be precluded from seeking the rights or remedies available by law. However, if the consumer elects to pursue any other remedy in state or federal court, the remedy available under this chapter shall not be available insofar as it would result in recovery in excess of the recovery authorized by § 55-24-103 without proof of fault resulting in damages in excess of the recovery.

(c) Any agreement entered into by a consumer for, or in connection with, the purchase or lease of a new motor vehicle that waives, limits or disclaims the

rights set forth in this chapter shall be void as contrary to public policy. These rights shall inure to a subsequent transferee of the motor vehicle. [Acts 1986, ch. 857, § 10; T.C.A. § 55-24-210.]

**55-24-111. Commencing actions against sellers or lessors.** — No action shall be commenced or maintained under this chapter against the seller or lessor of a motor vehicle unless the seller or lessor is also the manufacturer, or unless the manufacturer of the motor vehicle is not subject to service of process in this state, or service cannot be secured by this state's long-arm statutes, or unless the manufacturer has been judicially declared insolvent. [Acts 1986, ch. 857, § 12; T.C.A. § 55-24-211.]

**55-24-112. Manufacturer's warranty — Disclosure to purchaser.** — Any business entity that purchases a fleet of new motor vehicles, titles the motor vehicles in the business entity's name and sells the vehicles to an individual purchaser shall disclose in writing any remaining manufacturer's warranty on the motor vehicles to the purchaser. [Acts 1994, ch. 672, § 1; T.C.A. § 55-24-212.]

**TITLE 56**  
**INSURANCE**  
**CHAPTER 5**

**RATES AND RATING ORGANIZATIONS**

PART 4—Restrictions on Use of Credit Scores

SECTION.

56-5-403. Notice to consumer of adverse action.

PART 4—RESTRICTIONS ON USE OF CREDIT SCORES

**56-5-403. Notice to consumer of adverse action.** — If an insurer takes an adverse action based on factors that include credit information, the insurer must provide notice to the consumer that an adverse action has been taken. That notice must contain the reason or reasons for the adverse action, described in sufficiently clear and specific language so that a person can identify the basis for the insurer’s decision to take an adverse action. The notice must include a description of up to four (4) factors that were the primary influences of the adverse action. The use of generalized terms such as “poor credit history,” “poor credit rating,” or “poor insurance score” does not meet the explanation requirements of this section. Standardized credit explanations provided by consumer reporting agencies or other third party vendors are deemed to comply with this section. [Acts 2004, ch. 527, § 4.]

**TITLE 62**  
**PROFESSIONS, BUSINESSES AND TRADES**  
**CHAPTER 5**  
**FUNERAL DIRECTORS AND EMBALMERS**

PART 4—Tennessee Prepaid Funeral Benefits Act

consolidation, conversion, merger or other transformation — Pre-need funeral consumer protection account — Pre-need funeral consumer protection fee.

SECTION.

62-5-414. Appointment of receiver — Jurisdiction of court — Other legal remedies — Plan for reorganization,

PART 4—TENNESSEE PREPAID FUNERAL BENEFITS ACT

**62-5-414. Appointment of receiver — Jurisdiction of court — Other legal remedies — Plan for reorganization, consolidation, conversion, merger or other transformation — Pre-need funeral consumer protection account — Pre-need funeral consumer protection fee.** — (a) The Davidson County chancery court, upon the petition of the commissioner, may appoint the commissioner as receiver to take charge of, control and manage a pre-need seller upon one (1) or more of the following grounds:

- (1) The pre-need seller has not maintained trust funds received from contracts in the manner required by this part;
- (2) The pre-need seller has allowed its registration to lapse, or the registration has been revoked;
- (3) The pre-need seller is impaired or insolvent;
- (4) The pre-need seller has refused to submit its books, records, accounts, or affairs to examination by the commissioner;
- (5) There is reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplication or use of trust funds or fraud affecting the ability of the pre-need seller to perform its obligations under pre-need funeral contracts sold or assumed by the pre-need seller;
- (6) The pre-need seller has failed to file its annual report; or
- (7) The pre-need seller cannot or will not be able to meet all of its contractual obligations when they come due.

(b) For the purpose of this section, Davidson County chancery court shall have exclusive jurisdiction over matters brought under this section, and that court is authorized to make all necessary or appropriate orders to carry out the purposes of this part.

(c) Receivership proceedings instituted pursuant to this part shall constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a pre-need seller, and no court shall entertain a petition for the commencement of the proceedings unless the petition has been filed in the name of the state on the relation of the commissioner.

(1) The commissioner shall commence any such proceeding by application to the court for an order directing the pre-need seller to show cause why the

commissioner should not have the relief prayed for in the application.

(2) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the prepaid contract purchaser, contract beneficiaries, or the public may require.

(d) The commissioner may appoint one (1) or more special deputies, who have all the powers and responsibilities of the receiver granted under this section and the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants, and all expenses of taking possession of the pre-need seller and of conducting the proceedings, shall be fixed by the commissioner, with the approval of the Davidson County chancery court, and shall be paid out of the funds or assets of the pre-need seller. The persons appointed under this subsection (d) shall serve at the pleasure of the commissioner.

(e) The receiver may take such action as the receiver deems necessary or appropriate to reform and revitalize the pre-need seller. The receiver has all the powers of the owners and directors, whose authority shall be suspended, except as they are redelegated by the receiver. The receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the pre-need seller.

(f) If it appears to the receiver that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the pre-need seller by any owner, officer, director or other person, the receiver may pursue all appropriate legal remedies on behalf of the pre-need seller.

(g) If the receiver determines that reorganization, consolidation, conversion, merger or other transformation of the pre-need seller is appropriate, the receiver shall prepare a plan to effect those changes. Upon application of the receiver for approval of the plan, and after such notice and hearings as the Davidson County chancery court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the receiver shall carry out the plan.

(h)(1) There is established within the general fund a pre-need funeral consumer protection account, referred to as the "pre-need funeral account" in this section. Funds received by the commissioner under this section, up to two million five hundred thousand dollars (\$2,500,000) or a higher amount as determined by the commissioner by rule, shall be deposited into the pre-need funeral account and held solely for the purposes related to the pre-need registration program and any receivership action initiated by the commissioner against a pre-need seller pursuant to this section.

(2) Once the balance in the account exceeds two million five hundred thousand dollars (\$2,500,000) or a higher amount as determined by the commissioner by rule, an indigent fund shall be established within the general fund to be administered by the commissioner. Any funds received under this section by the commissioner which are in excess of such amount shall be deposited into the indigent fund. If the balance of the pre-need funeral account is reduced below such amount, no funds shall be deposited into the indigent

fund until the pre-need funeral account balance is restored to such amount.

(3)(A)(i) An indigent burial fund shall be established for the purpose of reimbursing funeral homes that provide funeral services to Tennessee residents who are indigent.

(ii) Funds shall only be expended for a person who was receiving state financial assistance on the date such indigent person died.

(iii) All funds in excess of two million five hundred thousand dollars (\$2,500,000) shall not revert to the general fund of the state, but shall remain available to be allocated and used solely for such indigent funerals provided by funeral homes.

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

(v) Moneys in the fund shall be invested in accordance with § 9-4-603.

(vi) The amount of reimbursement shall be based on available funds in the indigent burial fund at the time a request for reimbursement is filed by a funeral home.

(B) A funeral home which provides funeral services to those Tennessee residents who are indigent may file an application with the commissioner, in a manner established by the commissioner, requesting reimbursement from the indigent burial fund for amounts expended by the funeral home in providing such services. The funeral home shall be required to file documentation verifying that the expenses were for providing such services and for no other purposes.

(C) In accordance with the commissioner's rule-making authority pursuant to § 62-5-413(b), the commissioner shall promulgate rules defining indigency for purposes of eligibility for reimbursement, setting a maximum amount for reimbursement per burial, the manner in which claims shall be submitted and paid, and any other rules necessary for the proper administration of this program.

(i) Moneys within the pre-need funeral account shall be invested by the state treasurer in accordance with § 9-4-603 for the sole benefit of the pre-need funeral account.

(j) No pre-need registration renewal shall be issued unless the applicant pays, in addition to the renewal fee, a pre-need funeral consumer protection fee of twenty dollars (\$20.00) for every pre-need funeral sales contract entered into during the preceding renewal period.

(k) The funds received pursuant to this section shall be used to fund the pre-need registration program and any receivership action initiated by the commissioner against a pre-need seller to the extent the funds or assets of the pre-need seller are not adequate to fund the receivership.

(l) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the commissioner or the department or its employees or agents for any action taken by them in the performance of their power and duties under this section. [Acts 2007, ch. 592, § 15; 2010, ch. 933, § 1.]

**TITLE 66**

**PROPERTY**

**CHAPTER 19**

**LIENS ON VEHICLES AND CONVEYANCES**

PART 1—Miscellaneous Provisions

SECTION.

66-19-104. Duty to inform consumer of rights.

PART 1—MISCELLANEOUS PROVISIONS

**66-19-104. Duty to inform consumer of rights.** — (a) Before beginning any repair work on a motor vehicle, an automotive repair facility shall inform the consumer for whom the repairs are to be done of the following rights:

(1) That a consumer:

(A) May request a written estimate for repairs that cost in excess of two hundred fifty dollars (\$250); and

(B) May not be charged an amount over twenty-five percent (25%) in excess of the written estimate without the consumer's consent or good faith attempt to acquire the consent; and

(2) That repairs not originally authorized by the consumer may not be charged to the consumer without the consumer's consent unless a repair facility makes a good faith attempt to acquire the consent prior to providing additional repairs. A good faith attempt shall entail at least an attempted telephone call to the consumer.

(b) The consumer's rights provided in subsection (a) shall be:

(1) Displayed immediately before the space for the signature of the consumer conspicuously in easily readable type;

(2) Physically separated from the other terms of the form used for authorization of repairs; and

(3) Listed under the printed heading "Consumer's Rights."

(c) If any automotive repair facility informs a consumer orally of the consumer's rights, the facility shall record in writing:

(1) The name of the persons who were notified or whom the facility attempted to notify;

(2) The date and time of the notification or attempt; and

(3) The signature of the person who made the notification or attempted notification.

(d) Failure to comply with this section shall abrogate the repair facility's rights under § 66-19-103.

(e) Nothing in this section shall apply to any person or entity licensed under title 55, chapter 17. [Acts 2001, ch. 194, § 1-3.]

## CHAPTER 28

## UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

## PART 1—General Provisions

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## PART 1—GENERAL PROVISIONS

**66-28-101. Short title.** — This chapter shall be known and may be cited as the “Uniform Residential Landlord and Tenant Act.” [Acts 1975, ch. 245, § 1.101; T.C.A., § 64-2801.]

**66-28-102. Application.** — (a) This chapter applies only in counties having a population of more than sixty-eight thousand (68,000), according to the 1970 federal census or any subsequent federal census.

(b) This chapter applies to rental agreements entered into or extended or renewed after July 1, 1975. Transactions entered into before July 1, 1975, and not extended or renewed after that date, and the rights, duties and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the amendment or repeal has not occurred.

(c) Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(3) Transient occupancy in a hotel, or motel or lodgings subject to city, state, transient lodgings or room occupancy under the Excise Tax Act, compiled in title 67, chapter 4, part 20;

(4) Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

(5) Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes.

(d) [Deleted by 2008 amendment.] [Acts 1975, ch. 245, §§ 1.201, 1.202, 6.101, 6.102; T.C.A., §§ 64-2802, 64-2804, 64-2864; Acts 1992, ch. 995, §§ 1, 4-6; 2001, ch. 101, § 1; 2008, ch. 1067, §§ 1, 2.]

**66-28-103. Purposes — Rules of construction.** — (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this chapter are to:

(1) Simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) Encourage landlord and tenant to maintain and improve the quality of housing;

(3) Promote equal protection to all parties; and

(4) Make uniform the law in Tennessee.

(c) Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

(d) This chapter being a general chapter intended as a unified coverage of its subject matter, no part of it is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [Acts 1975, ch. 245, §§ 1.102 — 1.104; T.C.A., §§ 64-2861 — 64-2863.]

**66-28-104. Chapter definitions** — Subject to additional definitions contained in this chapter, which apply to specific portions of this chapter, and unless the context otherwise requires, in this chapter:

(1) "Action" means recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined, including an action for possession;

(2) "Building and housing codes" means any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling

unit;

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one (1) person who maintains a household or by two (2) or more persons who maintain a common household;

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned;

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by § 66-28-302;

(6) "Nuisance vehicle" means any vehicle that is incapable of operating under its own power and is detrimental to the health, welfare or safety of persons in the community;

(7) "Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two (2) or more persons having a joint or common interest, and any other legal or commercial entity;

(8)(A) "Owner" means one (1) or more persons, jointly or severally, in whom is vested:

(i) All or part of the legal title to property; or

(ii) All or part of the beneficial ownership and a right to the present use and enjoyment of the premises;

(B) "Owner" also means a mortgagee in possession;

(9) "Person" means an individual or organization;

(10) "Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant;

(11) "Rental agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 66-28-402 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises;

(12) "Rents" means all payments to be made to the landlord under the rental agreement;

(13)(A) "Security deposit" means an escrow payment made to the landlord under the rental agreement for the purpose of securing the landlord against financial loss due to damage to the premises occasioned by the tenant's occupancy other than ordinary wear and tear and any monetary damage due to the tenant's breach of the rental agreement;

(B) [Deleted by 2005 amendment.]

(C) "Security deposit" shall in no way infer that the landlord is providing any service for the personal protection or safety of the tenant beyond that prescribed by law;

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others;

(15) "Unauthorized vehicle" means a vehicle that is not registered to a tenant, an occupant or a tenant's known guest, and has remained for more than seven (7) consecutive days on real property leased or rented by a landlord for residential purposes; and

(16) "Vehicle" means any device for carrying passengers, livestock, goods or equipment that moves on wheels and/or runners. [Acts 1975, ch. 245, § 1.301;

T.C.A., § 64-2803; Acts 1999, ch. 284, § 2; 2001, ch. 153, §§ 1-3; 2005, ch. 156, § 1.]

**66-28-105. Jurisdiction and service of process.** — (a) The general sessions and circuit courts of this state shall exercise original jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter. In addition to any other method provided by rule or by statute, personal jurisdiction over the parties may be acquired in a civil action or proceeding instituted in law or equity by service of process in the manner provided by law.

(b) A landlord who is not a resident of this state or is a corporation not authorized to do business in this state and engages in a transaction subject to this chapter may designate an agent upon whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The designation shall be in writing, filed with the secretary of state, and must set forth the name and street address, including zip code, of the agent, the name and street address, including zip code, of the landlord and be accompanied by a ten dollar (\$10.00) filing fee. If no designation is made and filed or if process cannot be served in this state upon the designated agent, process may be served upon the secretary of state forthwith by mailing a copy of the process and pleading by registered or certified mail to the defendant or respondent at that party's last known address. The process must be accompanied by a ten dollar (\$10.00) fee and specify the address of the defendant. An affidavit of service shall be filed by the secretary of state with the clerk of the court on or before the return day of the process. [Acts 1975, ch. 245, § 1.203; T.C.A., § 64-2805; Acts 1991, ch. 297, § 1.]

**66-28-106. Notice.** — (a) Either party has notice of a fact if such person:

- (1) Has actual knowledge of it; or
- (2) Has been given written notice.

(b) All parties must give written notice to the last known or designated address contained in the lease agreement. [Acts 1975, ch. 245, § 1.304; T.C.A., § 64-2806.]

**66-28-107. Residential landlord registration.** — (a)(1) Each landlord of one (1) or more dwelling units is required to furnish the following information with the agency or department of local government that is responsible for enforcing building codes in the jurisdiction where the dwelling units are located:

(A) The landlord's name, address and telephone number, or the name, address and telephone number of the landlord's agent; and

(B) The street address and unit number, as appropriate, for each dwelling unit that the landlord owns, leases, or subleases or has the right to own, lease, or sublease.

(2) The information required under subdivision (a)(1) shall be furnished on a form provided by the agency or department responsible for enforcing building codes. The agency or department is authorized to collect from a landlord filing the form a fee not to exceed ten dollars (\$10.00) per year.

(b)(1) Any landlord who fails to register as required by this section shall be assessed a fine in the amount of fifty dollars (\$50.00) per week by the agency or department of local government that is responsible for enforcing building codes in the jurisdiction where the dwelling units are located.

(2) Prior to the assessment of the fine, the landlord shall be given an opportunity to appear and be heard at a hearing to be held concerning the landlord's failure to register. A written notice of the date, time and place of the hearing shall be mailed the landlord at least fifteen (15) days prior to the scheduled hearing.

(c) This section shall only apply to any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census. [Acts 2006, ch. 800, § 1.]

#### PART 2—RENTAL AGREEMENTS

**66-28-201. Terms and conditions.** — (a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties. A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under this chapter. The landlord or the landlord's agent shall advise in writing that the landlord is not responsible for, and will not provide, fire or casualty insurance for the tenant's personal property.

(b) In absence of a lease agreement, the tenant shall pay the reasonable value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand at the time and place agreed upon by the parties. Notice is specifically waived upon the nonpayment of rent by the tenant only if such a waiver is provided for in a written rental agreement. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each month. Upon agreement, rent shall be uniformly apportionable from day to day.

(d) There shall be a five-day grace period between the day the rent was due and the day a fee for the late payment of rent may be charged. If the last day of the five-day grace period occurs on a Saturday, Sunday or legal holiday, as defined in § 15-1-101, the landlord shall not impose any charge or fee for the late payment of rent, provided that the rent is paid on the next business day. Any charge or fee, however described, which is charged by the landlord for the late payment of rent shall not exceed ten percent (10%) of the amount of rent past due.

(e)(1) No charge or fee for the late payment of rent due from a tenant in a public housing project shall exceed five dollars (\$5.00) per month. No late charge or fee shall be assessed such tenant unless more than fifteen (15) days have elapsed since the rent was due.

(2) The provisions of this subsection (e) shall apply only to counties with a population between two hundred fifty thousand (250,000) and three hundred thousand (300,000) according to the 1980 federal census or any subsequent

federal census. [Acts 1975, ch. 245, § 1.401; T.C.A., § 64-2811; Acts 1984, ch. 876, § 1; 1986, ch. 747, § 1; 1989, ch. 503, § 1; 2000, ch. 666, § 1; 2001, ch. 154, § 1.]

**66-28-202. Effect of unsigned or undelivered agreement.** — (a) If the landlord does not sign a written rental agreement, acceptance of rent without reservation by the landlord binds the parties on a month to month tenancy.

(b) Any person or persons taking possession without payment and failing to sign a written rental agreement delivered to them by the landlord or who enter without oral agreement are deemed to be trespassers and will be evicted forthwith. [Acts 1975, ch. 245, § 1.402; T.C.A., § 64-2812.]

**66-28-203. Prohibited provisions.** — (a) No rental agreement may provide that the tenant:

(1) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(2) Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected with such liability.

(b) A provision prohibited by subsection (a) included in an agreement is unenforceable. Should a landlord willfully provide a rental agreement containing provisions known by the landlord to be prohibited by this chapter, the tenant may recover actual damages sustained. The tenant cannot agree to waive or forego rights or remedies under this chapter. [Acts 1975, ch. 245, § 1.403; T.C.A., § 64-2813.]

**66-28-204. Unconscionability.** — (a) If the court, as a matter of law, finds:

(1) A rental agreement or any provision thereof was unconscionable when made, the court shall enforce the remainder of the agreement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result; or

(2) A settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement was unconscionable at the time it was made, the court shall enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid the unconscionable result.

(b) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination. [Acts 1975, ch. 245, § 1.303; T.C.A., § 64-2814.]

#### PART 3—LANDLORD OBLIGATIONS

**66-28-301. Security deposits.** — (a) All landlords of residential property requiring security deposits prior to occupancy are required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the state of Tennessee or

any agency of the United States government. Prospective tenants shall be informed of the location of the separate account.

(b) Within ten (10) business days of the termination of occupancy, but prior to any repairs or cleanup of the premises:

(1) The landlord shall inspect the premises and compile a comprehensive listing of any damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The tenant shall then have the right to inspect the premises to ascertain the accuracy of the listing. The landlord and the tenant shall sign the listing, which signatures shall be conclusive evidence of the accuracy of the listing. If the tenant refuses to sign the listing, the tenant shall state specifically in writing the items on the list to which the tenant dissents, and shall sign the statement of dissent; or

(2) If the tenant has moved or is otherwise inaccessible to the landlord, and, if at least ten (10) days before the lease termination date, the landlord has given the tenant written notice of the tenant's right to schedule a mutual inspection of the subject premises with the landlord during normal business hours and the tenant has not contacted the landlord prior to vacating the premises or the tenant has waived in writing the right of inspection, the landlord shall then inspect the premises and compile a comprehensive listing of any damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The landlord shall then mail a copy of the listing of damages and estimated cost of repairs to the tenant at the tenant's last known mailing address. After mailing the copy of the listing of damages and estimated cost of repairs to the tenant, the landlord may begin to prepare the unit for occupancy.

(c) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in a separate account as required by subsection (a) and if the final damage listing required by subsection (b) is not provided.

(d) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (b) may bring an action in a circuit or general sessions court of competent jurisdiction of this state. The tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the listing or specifically dissented in accordance with subsection (b); otherwise the tenant shall not be entitled to recover any damages under this section.

(e) Should a tenant vacate the premises with unpaid rent or other amounts due and owing, the landlord may remove the deposit from the account and apply the moneys to the unpaid debt.

(f) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonable determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in the tenant's behalf.

(g) This section does not preclude the landlord or tenant from recovering other damages to which such landlord or tenant may be entitled under this chapter.

(h)(1) Notwithstanding the provisions of subsection (a), all landlords of residential property shall be required to notify their tenants at the time such persons sign the lease and submit the security deposit, of the location of the separate account required to be maintained pursuant to this section, but shall not be required to provide the account number to such persons, nor shall they be required to provide such information to a person who is a prospective tenant.

(2) [Deleted by 2008 amendment.] [Acts 1975, ch. 245, § 2.101; T.C.A., § 64-2821; Acts 1984, ch. 645, § 1; 1992, ch. 995, §§ 2, 4-6; 1997, ch. 397, §§ 1, 2; 2001, ch. 153, § 4; 2004, ch. 683, § 1; 2005, ch. 156, § 2; 2008, ch. 1067, § 3.]

**66-28-302. Address of landlord or agent.** — (a) The landlord or any person authorized to enter into a rental agreement on the landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(1) The agent authorized to manage the premises; and

(2) An owner of the premises or a person or agent authorized to act for and on behalf of the owner for the acceptance of service of process and for receipt of notices and demands.

(b) The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord, owner or manager.

(c) A person who fails to comply with subsection (a) becomes an agent of each person who is a landlord for the purpose of service of process and receiving and receipting for notices and demands. [Acts 1975, ch. 245, § 2.102; T.C.A., § 64-2822.]

**66-28-303. Possession of dwelling.** — At the commencement of the terms, the landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and § 66-28-304. The landlord may bring an action for possession against any person wrongfully in possession and may recover the damages provided in § 66-28-512(c). [Acts 1975, ch. 245, § 2.103; T.C.A., § 64-2823.]

**66-28-304. Maintenance by landlord.** — (a) The landlord shall:

(1) Comply with requirements of applicable building and housing codes materially affecting health and safety;

(2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(3) Keep all common areas of the premises in a clean and safe condition; and

(4) In multi-unit complexes of four (4) or more units, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste from common points of collection subject to § 66-28-401(3).

(b) If the duty imposed by subdivision (a)(1) is greater than any duty imposed by any other paragraph of subsection (a), the landlord's duty shall be determined by reference to subdivision (a)(1).

(c) The landlord and tenant may agree in writing that the tenant perform specified repairs, maintenance tasks, alterations, and remodeling, but only if

the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(d) The landlord may not treat performance of the separate agreement described in subsection (c) as a condition to any obligation or performance of any rental agreement. [Acts 1975, ch. 245, § 2.104; T.C.A., § 64-2824.]

**66-28-305. Limitation of landlord's liability.** — Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, landlord or agent, or both, is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance and transfer of the security deposit to the bona fide purchaser. [Acts 1975, ch. 245, § 2.105; T.C.A., § 64-2825; Acts 2005, ch. 156, § 3.]

#### PART 4—TENANT OBLIGATIONS

**66-28-401. General maintenance and conduct obligations.** — The tenant shall:

(1) Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(2) Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises when the tenant took possession;

(3) Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste to the designated collection areas and into receptacles;

(4) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so; and shall not engage in any illegal conduct on the premises; and

(5) Act and require other persons on the premises, with the tenant's or other occupants' consent, to act in a manner that will not disturb the neighbors' peaceful enjoyment of the premises. [Acts 1975, ch. 245, § 3.101; T.C.A., § 64-2831; Acts 2005, ch. 156, § 4.]

**66-28-402. Rules and regulations.** — (a) A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:

(1) Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) It is reasonably related to the purpose for which it is adopted;

(3) It applies to all tenants in the premises;

(4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(5) It is not for the purpose of evading the obligations of the landlord; and

(6) The tenant has notice of it at the time the tenant enters into the rental agreement.

(b) A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement. [Acts 1975, ch. 245, § 3.102; T.C.A., § 64-2832.]

**66-28-403. Access by landlord.** — (a) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

(b) The landlord may enter the dwelling unit without consent of the tenant in case of emergency. “Emergency” means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

(c) The landlord shall not abuse the right of access or use it to harass the tenant.

(d) The landlord has no right of access except:

- (1) By court order;
- (2) As permitted by §§ 66-28-506 and 66-28-507(b);
- (3) If the tenant has abandoned or surrendered the premises; or
- (4) If the tenant is deceased, incapacitated or incarcerated. [Acts 1975, ch. 245, § 3.103; T.C.A., § 64-2833.]

**66-28-404. Use and occupation by tenant.** — Unless otherwise agreed, the tenant shall occupy the dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of any anticipated extended absence from the premises in excess of seven (7) days. Notice shall be given on or before the first day of any extended absence. [Acts 1975, ch. 245, § 3.104; T.C.A., § 64-2834.]

**66-28-405. Abandonment.** — (a) The tenant’s unexplained or extended absence from the premises for thirty (30) days or more without payment of rent as due shall be prima facie evidence of abandonment. The landlord is then expressly authorized to reenter and take possession of the premises.

(b)(1) The tenant’s nonpayment of rent for fifteen (15) days past the rental due date, together with other reasonable factual circumstances indicating the tenant has permanently vacated the premises, including, but not limited to, the removal by the tenant of substantially all of the tenant’s possessions and personal effects from the premises, or the tenant’s voluntary termination of utility service to the premises, shall also be prima facie evidence of abandonment.

(2) In cases described in subdivision (b)(1), the landlord shall post notice at the rental premises and shall also send the notice to the tenant by regular mail, postage prepaid, at the rental premises address. The notice shall state that:

- (A) The landlord has reason to believe that the tenant has abandoned the premises;

(B) The landlord intends to reenter and take possession of the premises, unless the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice;

(C) If the tenant does not contact the landlord within the ten-day period, the landlord intends to remove any and all possessions and personal effects remaining in or on the premises and to rerent the dwelling unit; and

(D) If the tenant does not reclaim the possessions and personal effects within thirty (30) days of the landlord taking possession of the possessions and personal effects, the landlord intends to dispose of the tenant's possessions and personal effects as provided for in subsection (c).

(3) The notice shall also include a telephone number and a mailing address at which the landlord may be contacted.

(4) If the tenant fails to contact the landlord within ten (10) days of the posting and mailing of the notice, the landlord may reenter and take possession of the premises. If the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice and indicates the tenant's intention to remain in possession of the rental premises, the landlord shall comply with the provisions of this chapter relative to termination of tenancy and recovery of possession of the premises through judicial process.

(c) When proceeding under either subsection (a) or (b), the landlord shall remove the tenant's possessions and personal effects from the premises and store the personal possessions and personal effects for not less than thirty (30) days. The tenant may reclaim the possessions and personal effects from the landlord within the thirty-day period. If the tenant does not reclaim the possessions and personal effects within the thirty-day period, the landlord may sell or otherwise dispose of the tenant's possessions and personal effects and apply the proceeds of the sale to the unpaid rents, damages, storage fees, sale costs and attorney's fees. Any balances are to be held by the landlord for a period of six (6) months after the sale. [Acts 1975, ch. 245, § 3.105; T.C.A., § 64-2835; Acts 2005, ch. 156, § 5.]

#### PART 5—ENFORCEMENT AND REMEDIES

**66-28-501. Noncompliance with rental agreement by landlord.** — (a) Except as provided in this chapter, the tenant may recover damages, obtain injunctive relief and recover reasonable attorney's fees for any noncompliance by the landlord with the rental agreement or any section of this chapter upon giving fourteen (14) days' written notice.

(b) If the rental agreement is terminated for noncompliance after sufficient notice, the landlord shall return all prepaid rent and security deposits recoverable by the tenant under § 66-28-301. [Acts 1975, ch. 245, § 4.101; 1978, ch. 735, § 1; T.C.A., § 64-2841.]

**66-28-502. Failure to supply essential services.** — (a)(1) If the landlord deliberately or negligently fails to supply essential services, the tenant shall give written notice to the landlord specifying the breach and may do one (1) of the following:

(A) Procure essential services during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the rent;

(B) Recover damages based upon the diminution in the fair rental value of the dwelling unit, provided tenant continues to occupy premises; or

(C) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) In addition to the remedy provided in subdivision (a)(1)(C), the tenant may recover the actual and reasonable value of the substitute housing and in any case under this subsection (a), reasonable attorney's fees.

(3) "Essential services" means utility services, including gas, heat, electricity, and any other obligations imposed upon the landlord which materially affect the health and safety of the tenant.

(b) A tenant who proceeds under this section may not proceed under § 66-28-501 or § 66-28-503 as to that breach.

(c) The rights under this section do not arise until the tenant has given written notice to the landlord and has shown that the condition was not caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family, or other person on the premises with the tenant's consent. [Acts 1975, ch. 245, § 4.102; 1978, ch. 735, § 2; T.C.A., § 64-2842.]

**66-28-503. Fire or casualty damage.** — (a) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the use of the dwelling unit is substantially impaired, the tenant:

(1) May immediately vacate the premises; and

(2) Shall notify the landlord in writing within fourteen (14) days thereafter of the tenant's intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating.

(b) If the rental agreement is terminated, the landlord shall return all prepaid rent and security deposits recoverable under § 66-28-301. Accounting for rent in the event of termination or apportionment is to occur as of the date of the casualty. [Acts 1975, ch. 245, § 4.103; T.C.A., § 64-2843.]

**66-28-504. Unlawful ouster, exclusion, or diminution of service.** — If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting essential services as provided in the rental agreement to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover actual damages sustained by the tenant, and punitive damages when appropriate, plus a reasonable attorney's fee. If the rental agreement is terminated under this section, the landlord shall return all prepaid rent and security deposits. [Acts 1975, ch. 245, § 4.104; T.C.A., § 64-2844.]

**66-28-505. Noncompliance by tenant — Failure to pay rent.** — (a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with § 66-28-401 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach, and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice. If the breach is not remedied in fourteen

(14) days, the rental agreement shall terminate as provided in the notice, subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, 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) If rent is unpaid when due and the tenant fails to pay, written notice by the landlord of nonpayment is required unless otherwise specifically waived in a written rental agreement. The rental agreement is enforceable for collection of rent for the remaining term of the rental agreement.

(c) Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 66-28-401. The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.

(d) The landlord may recover punitive damages for willful destruction of property. [Acts 1975, ch. 245, § 4.201; T.C.A., § 64-2845.]

**66-28-506. Failure of tenant to maintain dwelling.** — If there is noncompliance by the tenant with § 66-28-401 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen (14) days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment. [Acts 1975, ch. 245, § 4.202; T.C.A., § 64-2846.]

**66-28-507. Absence, nonuse or abandonment by tenant.** — (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven (7) days as required in § 66-28-404 and the tenant willfully fails to do so, the landlord may recover actual damages from the tenant.

(b) During any absence of the tenant in excess of seven (7) days, the landlord may enter the dwelling unit at times reasonably necessary.

(c) If the tenant abandons the dwelling unit, the landlord shall use reasonable efforts to rerent the dwelling unit at a fair rental. If the landlord rents the dwelling unit for a term beginning prior to the expiration of the rental agreement, the rental agreement is terminated as of the date of the new tenancy. If the tenancy is from month-to-month, or week-to-week, the term of the rental agreement for this purpose shall be deemed to be a month or a week, as the case may be. [Acts 1975, ch. 245, § 4.203; T.C.A., § 64-2847.]

**66-28-508. Waiver of landlord's right to terminate.** — If the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach. [Acts 1975, ch. 245, § 4.204; T.C.A., § 64-2848.]

**66-28-509. Landlord liens.** — A contracted lien or security interest on behalf of the landlord in the tenant's household goods shall not be enforceable unless perfected by a Uniform Commercial Code filing with the secretary of state. All other liens are hereby expressly prohibited under this chapter. The landlord shall be responsible for releasing lien at expiration or termination of the lease. [Acts 1975, ch. 245, § 4.205; T.C.A., § 64-2849.]

**66-28-510. Landlord's remedy after termination.** — If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees. [Acts 1975, ch. 245, § 4.206; T.C.A., § 64-2850.]

**66-28-511. Recovery of possession by landlord limited.** — A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter. [Acts 1975, ch. 245, § 4.207; T.C.A., § 64-2851.]

**66-28-512. Termination of periodic tenancy — Holdover remedies.** — (a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten (10) days prior to the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the periodic rental date specified in the notice.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith, the landlord, in addition, may recover actual damages sustained by the landlord, plus reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, § 66-28-201(c) applies. [Acts 1975, ch. 245, § 4.301; T.C.A., § 64-2852.]

**66-28-513. Remedies for abuse of access.** — (a) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees.

(b) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant

may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney's fees. [Acts 1975, ch. 245, § 4.302; T.C.A., § 64-2853.]

**66-28-514. Retaliatory conduct prohibited.** — (a) Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession because the tenant:

- (1) Has complained to the landlord of a violation under § 66-28-301; or
- (2) Has made use of remedies provided under this chapter.

(b)(1) Notwithstanding subsection (a), a landlord may bring action for possession if:

- (A) The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in the tenant's household or upon the premises with the tenant's consent;
- (B) The tenant is in default in rent; or
- (C) Compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(2) The maintenance of the action does not release the landlord from liability under § 66-28-501(b). [Acts 1975, ch. 245, § 5.101; T.C.A., § 64-2854.]

**66-28-515. Administration of remedies — Enforcement.** — (a) The remedies provided by this chapter shall be so administered that the aggrieved party may recover lawful damages. The aggrieved party has an obligation and duty to mitigate damages.

(b) Any right or obligation declared by this chapter is enforceable by legal action unless the provision declaring it specifies a different and limited effect. [Acts 1975, ch. 245, § 1.105; T.C.A., § 64-2855.]

**66-28-516. Obligation of good faith.** — Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [Acts 1975, ch. 245, § 1.302; T.C.A., § 64-2856.]

**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 delivered to the tenant if 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 or persons on the premises.

(b) The notice required by this section shall specifically detail the violation which has been committed and shall be effective only from the date of receipt of the notice by the tenant.

(c) Upon receipt of such written notice, the tenant shall be entitled to immediate access to any court of competent jurisdiction for the purpose of obtaining a temporary or permanent injunction against such termination by the landlord.

(d) Nothing in this section shall be construed to allow a landlord to recover or take possession of the dwelling unit by action or otherwise including willful diminution of services to the tenant by interrupting or causing interruption of electric, gas or other essential service to the tenant except in the case of abandonment or surrender.

(e) If the landlord's action in terminating the lease under this provision is willful and not in good faith, the tenant may in addition recover actual damages sustained by the tenant plus reasonable attorney's fees.

(f) The failure to bring an action for or to obtain an injunction may not be used as evidence in any action to recover possession of the dwelling unit. [Acts 1983, ch. 271, § 1.]

**66-28-518. Towing of unauthorized vehicles.** — (a) A landlord may have an unauthorized vehicle towed or otherwise removed from real property leased or rented by such landlord for residential purposes, upon giving ten (10) days written notice by posting the same upon the subject vehicle.

(b) A landlord may have a tenant's, occupant's, tenant's guest's, or trespasser's vehicle immediately towed or otherwise removed from such real property, without notice, if and when such person fails to comply with the landlord's permit parking policy as defined in the landlord's posted signage.

(c) A landlord may have a tenant's, occupant's, tenant's guest's, or trespasser's vehicle immediately towed or otherwise removed from such real property, without notice, for such person's failure to comply with the landlord's posted signage relative to traffic and parking restrictions, including, but not limited to, traffic lanes, fire lanes, fire hydrants, handicapped areas, and/or the blocking of trash receptacles.

(d) The owner or lessee of a vehicle that has been removed pursuant to this section may make application to take possession of such vehicle and remove such vehicle from the place to which it has been removed or stored by paying the costs of removing such vehicle, plus the accrued towing and storage charges. [Acts 1999, ch. 284, § 1.]

**66-28-519. Towing of vehicles.** — A landlord may have the following vehicles towed or otherwise removed from real property leased or rented by such landlord for residential purposes, upon giving a ten-day written notice by posting the same upon the subject vehicle:

- (1) A vehicle with one (1) or more flat or missing tires;
- (2) A vehicle unable to operate under its own power;
- (3) A vehicle with a missing or broken windshield or more than one (1) broken or missing window;
- (4) A vehicle with one (1) or more missing fenders or bumpers; or
- (5) A motor vehicle that has not been in compliance with all applicable local or state laws relative to titling, licensing, operation, and registration for more than thirty (30) days. [Acts 1999, ch. 284, § 1.]

**66-28-520. Towing of nuisance vehicles.** — Any nuisance vehicle located on or about the premises of real property that has been leased or rented for residential purposes may be towed or otherwise removed from such premises by the landlord upon giving twenty-four (24) hours written notice by posting the same upon the subject vehicle. [Acts 1999, ch. 284, § 1.]

**66-28-521. Termination of utility services.** — If a written rental agreement requires the tenant to have utility services placed in the tenant's name and the tenant fails to do so within ten (10) days of occupancy of the rented premises, the landlord may have such utility services terminated if the existing utility service is in the name of the landlord. The provisions of this section shall not apply unless the landlord has exercised the right to terminate utility services within forty-five (45) days of occupancy by the tenant. [Acts 2003, ch. 318, § 1.]

## CHAPTER 32

### TIME-SHARE PROGRAMS AND VACATION CLUBS

#### PART 1—Time-Share Act of 1981

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## PART 1—TIME-SHARE ACT OF 1981

**66-32-101. Short title.** — This part shall be known and may be cited as the “Tennessee Time-Share Act of 1981.” [Acts 1981, ch. 372, §§ 1, 35; T.C.A., § 64-3201; Acts 1983, ch. 210, § 1.]

**66-32-102. Part definitions** — As used in this part and part 2 of this chapter, unless the context otherwise requires:

(1) “Acquisition agent” means a person who by means of telephone, mail, advertisement, inducement, solicitation or otherwise attempts directly to encourage any person to attend a sales presentation for a time-share program;

(2) “Advertise” or “advertisement” means any written, printed, verbal or visual offer by an individual or general solicitation;

(3) “Commission” means Tennessee real estate commission, which is an agency created under § 62-13-201;

(4) “Component site” means a specific geographic site at which certain time-share accommodations and facilities are located. If permitted under applicable law, separate phases that are operated as a single development in a particular geographic location and under common management shall be deemed a single component site;

(5) “Developer” means, in the case of any given property, any person or entity which is in the business of creating or which is in the business of selling its own time-share intervals in any time-share program. This definition does not include a person acting solely as a sales agent;

(6) “Development,” “project,” or “property” means all of the real property subject to a project instrument, and containing more than one (1) unit;

(7) “Exchange agent” means a person who exchanges or offers to exchange time-share intervals in an exchange program with other time-share intervals;

(8) “Managing agent” means a person who undertakes the duties, responsibilities, and obligations of the management of a time-sharing program;

(9) “Offering” means any offer to sell, solicitation, inducement or advertisement whether by radio, television, newspaper, magazine or by mail, whereby a person is given an opportunity to acquire a time-share interval within a project located either within or outside the state of Tennessee. Any offering of a time-share interval which is not located in this state shall not be an offering if the developer shall submit appropriate documentation satisfactory to the commission that the time-share program is in compliance with the law of the jurisdiction in which the time-share interval is located and such law is as

stringent as this part;

(10) "Person" means one (1) or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;

(11) "Project" — See "Development";

(12) "Project instrument" means one (1) or more recordable documents applicable to the whole project by whatever name denominated, containing restrictions or covenants regulating the use, occupancy or disposition of an entire project, including any amendments to the document, but excluding any law, ordinance, or governmental regulation;

(13) "Property" — See "Development";

(14) "Public offering statement" means that statement required by § 66-32-112;

(15) "Purchaser" means any person other than a developer or lender who acquires an interest in a time-share interval;

(16) "Reservation system" means the method, arrangement, or procedure by which the owners of vacation club interests are required to compete with other owners of vacation club interests in the same vacation club in order to reserve the use and occupancy of an accommodation of the vacation club for one or more use periods, regardless of whether such reservation system is operated and maintained by the vacation club managing entity, an exchange company, or any other person. In the event that mandatory use of an exchange program is an owner's principal means of obtaining the right to use and occupy a vacation club's accommodations, such arrangement shall be deemed a reservation system for purposes of this subdivision (16) and part 2 of this chapter;

(17) "Sales agent" means a person who sells or offers to sell "time-share intervals" in a "time-share program" to a purchaser. All such sales agents shall be licensed and subject to the provisions of title 62, chapter 13;

(18) "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;

(19) "Time-share instrument" means any document by whatever name denominated, creating or regulating time-share programs, but excluding any law, ordinance or governmental regulation;

(20) "Time-share interval" means a time-share estate or a time-share use;

(21) "Time-share program" means any arrangement for time-share intervals in a time-share project whereby use, occupancy or possession of real property has been made subject to either a time-share estate or time-share use whereby such use, occupancy or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year;

(22) "Time-share project" means any real property that is subject to a time-share program;

(23) "Time-share resale broker" means any person or entity who undertakes to list, advertise for sale, promote or sell by any means whatsoever more than five (5) time-share intervals per year in one (1) or more time-share projects on behalf of any number of purchasers. A time-share resale broker must be a licensed real estate broker, as defined in § 62-13-102. "Time-share resale broker" does not include:

(A) Any person who has acquired any number of time-share intervals in any number of time-share projects for personal use and occupancy;

(B) Any resale performed by a time-share resale broker affiliated with a duly registered time-share developer, involving time-share intervals under the control of the time-share developer in its project; provided, that the time-share developer is in compliance with § 66-32-137(d); or

(C) A publisher of a newspaper or periodical in general circulation, broadcaster or telecaster in connection with the advertising for resale or other promotion of one (1) or more time-share intervals, so long as the publisher, broadcaster or telecaster is not under common ownership or control with a person required to be licensed by this part or chapter 13 of this title or does not have as its primary purpose the solicitation of resales or other uses of time-share intervals;

(24) “Time-share use” means any contractual right of exclusive occupancy which does not fall within the definition of a “time-share estate” including, without limitation, a vacation license, prepaid hotel reservation, club membership, vacation club interest, limited partnership or vacation bond;

(25) “Unit” means the real property or real property improvement in a project which is divided into time-share intervals;

(26) “Vacation club” means any system or program with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations and facilities, if any, in more than one (1) component site through the mandatory use of a reservation system, whether or not the purchaser’s use and occupancy right is coupled with an interest in real property; and

(27) “Vacation club documents” means and includes the one (1) or more documents or instruments, by whatever name denominated, creating or governing a vacation club and the disposition of vacation club interests therein. “Vacation club documents” is intended to be broadly construed to incorporate all terms and conditions of the purchase of a vacation club interest, the incorporation of accommodations and facilities located at component sites into the vacation club, the management and operation of the vacation club’s component sites, and the management and operation of the reservation system, including, but not limited to, the reservation system’s rules and regulations. [Acts 1981, ch. 372, § 2; T.C.A., § 64-3202; Acts 1983, ch. 210, § 2; 1985, ch. 98, § 1; 1990, ch. 672, § 2; 1995, ch. 90, §§ 5, 7.]

**66-32-103. Nature of time-share estates — Recordation.** — (a) A “time-share estate” is an estate in real property and has the character and incidents of an estate in fee simple at common law or estate for years, if a leasehold, except as expressly modified by this part. This shall supersede any contrary rule at common law.

(b) Each time-share estate constitutes for purposes of title a separate estate or interest in property except for real property tax purposes.

(c) A document transferring or encumbering a time-share estate in real property may not be rejected for recordation because of the nature or duration of that estate or interest. [Acts 1981, ch. 372, §§ 3, 4; T.C.A., §§ 64-3203, 64-3204.]

**66-32-104. Applicability of local ordinances, regulations, and building codes.** — A zoning, subdivision, or other ordinance or regulation may not discriminate against the creation of time-share intervals or impose any requirement upon a time-share program which it would not impose upon a similar development under a different form of ownership. [Acts 1981, ch. 372, § 5; T.C.A., § 64-3205.]

**66-32-105. Time-share units.** — A time-share program may be created in any unit, unless expressly prohibited by the project instruments or local governing laws. [Acts 1981, ch. 372, § 6; T.C.A., § 64-3206.]

**66-32-106. Instruments for time-share estates.** — Project instruments and time-share instruments creating time-share estates must contain the following:

- (1) The name of the county in which the property is situated;
- (2) The legal description, street address or other description sufficient to identify the property;
- (3) Identification of time periods by letter, name, number, or combination thereof;
- (4) Identification of time-share estates and, where applicable, the method whereby additional time-share estates may be created;
- (5) The formula, fraction or percentage, of the common expenses and any voting rights assigned to each time-share estate and, where applicable, to each unit in a project that is not subject to the time-share program;
- (6) Any restrictions on the use, occupancy, alteration or alienation of time-share intervals;
- (7) The ownership interest, if any, in personal property and provisions for the care, maintenance and replacement of the commonly owned capital improvements and the commonly owned personal property belonging to the time-share estates. Specifically, an escrow or reserve account shall be established for the repair, replacement and maintenance of capital improvements and personal property; and
- (8) Any other matters the developer deems appropriate. [Acts 1981, ch. 372, § 7; T.C.A., § 64-3207; Acts 1989, ch. 65, § 1.]

**66-32-107. Time-share estate management.** — The time-share instruments for a time-share estate program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair and furnishing of units, which shall ordinarily include, but need not be limited to, provisions for the following:

- (1) Creation of an association of time-share estate owners;
- (2) Adoption of bylaws for organizing and operating the association;
- (3) Payment of costs and expenses of operating the time-share program and owning and maintaining the units;
- (4) Employment and termination of employment of the managing agent for the association;
- (5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-

share program;

(6) Adoption of standards and rules of conduct for the use and occupancy of units by owners;

(7)(A) Collection of assessments from owners to defray the expenses of management of the time-share program and maintenance of the units, which will include the maintenance of reserve and escrow accounts that will adequately provide for the maintenance and replacement of capital improvements to the commonly owned areas of the time-sharing program and for the timely maintenance and replacement of the personal property commonly owned by the time-share estates;

(B) The board of directors of the property owners association shall decide when maintenance or replacement of capital improvements shall be accomplished and shall set amounts of reserve. The board of directors of the property owners association and managing agent shall disclose to each interval owner, in a written annual report, the status of the required accounts. The report shall include the total funds deposited, the current balance, the interest earned, the purpose and amount of any payouts since the previous report. The report shall include the name and address of the person or persons in responsible charge of the accounts;

(8) Comprehensive general liability insurance for death, bodily injury and property damage arising out of, or in connection with, the use of units by owners, their guests and other users;

(9) Methods for providing compensation for use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation;

(10) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with provisions of the time-share instruments or the rules of the association with respect to the use of the units. Under these procedures an owner must be given notice and the opportunity to refute or explain the charges against such owner in person or in writing to the governing body of the association before a decision to impose discipline is rendered;

(11) Employment of attorneys, accountants and other professional persons as necessary to assist in the management of the time-share program and the units;

(12) The managing agent for the association shall be responsible for the maintenance of an escrow or reserve account, as set by the board of directors, which shall contain the assessments collected for the maintenance and replacement of the capital improvements to the commonly owned areas and for the maintenance and timely replacement of the personal property commonly owned by the time-share estates. Such escrow or reserve accounts shall be maintained in an institution insured by the federal deposit insurance corporation or federally insured agencies;

(13) Failure of the managing agent to properly maintain the escrow or reserve accounts, as set by the board of directors, for maintenance and replacement of capital improvements to the common area and the maintenance and timely replacement of the personal property shall constitute a felony and the managing agent shall be subject to the penalties as provided in

§ 66-32-118; and

(14) The managing agent shall be a licensed real estate firm or bonded agent. The principal broker/agent of the firm shall have control of the accounts required in subdivision (12), and shall enter into a tri-party agreement by and between the commission, the managing agent, and the depository institution, providing for the authority of the commission to access and inspect the account records at all times on behalf of the condominium homeowners association. [Acts 1981, ch. 372, § 8; T.C.A., § 64-3208; Acts 1989, ch. 65, §§ 2, 3.]

**66-32-108. Developer control.** — (a) The time-share instruments for a time-share estate program may provide for a “developer control period,” during which the developer or a managing agent selected by the developer may manage the time-share program and the units in the time-share program.

(b) If the time-share instruments for a time-share estate program provide for the establishment of a developer control period, they shall ordinarily include provisions for the following:

(1) Termination of the developer control period by action of the association;

(2) Termination of contracts for goods and services for the time-share program or for units in the time-share program entered into during the developer control period; and

(3) A regular accounting by the developer to the association as to all matters that significantly affect the interests of owners in the time-share program. [Acts 1981, ch. 372, § 9; T.C.A., § 64-3209.]

**66-32-109. Instruments for time-share use.** — Project instruments and time-share instruments creating time-share uses must contain the following:

(1) Identification by name of the time-share project and street address where the time-share project is situated;

(2) Identification of the time periods, type of units and the units that are in the time-share program and the length of time that the units are committed to the time-share program;

(3) In case of a time-share project, identification of which units are in the time-share program and the method whereby any other units may be added, deleted or substituted; and

(4) Any other matters that the developer deems appropriate. [Acts 1981, ch. 372, § 10; T.C.A., § 64-3210.]

**66-32-110. Time-share use management.** — The time-share instruments for a time-share use program shall prescribe reasonable arrangements for management and operation of the time-share program and for the maintenance, repair and furnishing of units which shall ordinarily include, but need not be limited to, provisions for the following:

(1) Standards and procedures for upkeep, repair and interior furnishings of units and for providing maid, cleaning, linen and similar services to the units during use periods;

(2) Adoption of standards and rules of conduct governing the use and occupancy of units by owners;

(3) Payment of the costs and expenses of operating the time-share program

and owning and maintaining the units;

(4) Selection of a managing agent to act on behalf of the developer;

(5) Preparation and dissemination to owners of an annual budget and of operating statements and other financial information concerning the time-share program;

(6) Procedures for establishing the rights of owners to the use of units by prearrangement or under a first-reserved first-served priority system;

(7) Organization of a management advisory board consisting of time-share use owners including an enumeration of rights and responsibilities of the board;

(8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share program and in providing materials and services to the units;

(9) Comprehensive general liability insurance for death, bodily injury and property damage arising out of, or in connection with, the use of units by time-share use owners, their guests and other users;

(10) Methods for providing compensating use periods or monetary compensation to an owner if a unit cannot be made available for the period to which the owner is entitled by schedule or a confirmed reservation;

(11) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share program for failure of the owner to comply with the provisions of the time-share instruments or the rules established by the developer with respect to the use of the units. The owners shall be given notice and the opportunity to refute or explain the charges in person or in writing to the management advisory board before a decision to impose discipline is rendered; and

(12) Annual dissemination to all time-share use owners by the developer, or by the managing agent, of a list of the name and mailing addresses of all current time-share use owners in the time-share program. [Acts 1981, ch. 372, § 11; T.C.A., § 64-3211.]

**66-32-111. Partition.** — No action for partition of a unit may be maintained except as permitted by the time-share instrument. [Acts 1981, ch. 372, § 12; T.C.A., § 64-3212.]

**66-32-112. Public offering statement — General provisions.** — A public offering statement must be provided to each purchaser of a time-share interval and must contain or fully and accurately disclose:

(1) The name of the developer and the principal address of the developer and the time-share intervals offered in the statement;

(2) A general description of the units including, without limitation, the developer's schedule of commencement and completion of all buildings, units, and amenities or if completed that they have been completed;

(3) As to all units offered by the developer in the same time-share project:

(A) The types and number of units;

(B) Identification of units that are subject to time-share intervals; and

(C) The estimated number of units that may become subject to time-share intervals;

- (4) A brief description of the project;
- (5) If applicable, any current budget and a projected budget for the time-share intervals for one (1) year after the date of the first transfer to a purchaser. The budget must include, without limitation:
  - (A) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;
  - (B) The projected common expense liability, if any, by category of expenditures for the time-share intervals;
  - (C) The projected common expense liability for all time-share intervals; and
  - (D) A statement of any services not reflected in the budget that the developer provides, or expenses that it pays;
- (6) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;
- (7) A description of any liens, defects, or encumbrances on or affecting the title to the time-share interval;
- (8) A description of any financing offered by the developer;
- (9) A statement that within ten (10) days from the date of the signing of the contract made by the purchaser, where the purchaser shall have made an on-site inspection of the time-share project prior to the signing of the contract of purchase, and where the purchaser has not made an on-site inspection of the time-share project prior to the signing of the contract of purchase fifteen (15) days from the date of signing of the contract, the purchaser may cancel any contract for the purchase of a time-share interval from developer;
- (10) A statement of any pending suits material to the time-share intervals of which a developer has actual knowledge;
- (11) Any restraints on alienation of any number of portion of any time-share intervals;
- (12) A description of the insurance coverage, or a statement that there is no insurance coverage, provided for the benefit of time-share interval owners;
- (13) Any current or expected fees or charges to be paid by time-share interval owners for the use of any facilities related to the property;
- (14) The extent to which financial arrangements have been provided for completion of all promised improvements; and
- (15) The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit. [Acts 1981, ch. 372, § 13; T.C.A., § 64-3213; Acts 1983, ch. 210, § 3.]

**66-32-113. Escrow of deposits.** — (a)(1) A developer of a time-share program shall deposit into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured, a governmental agency or instrumentality, one hundred percent (100%) of all funds which are received during the purchaser's cancellation period provided for in this part. The deposit of such funds shall be evidenced by an executed escrow agreement between the escrow agent and the developer, the provisions of which shall include that:

(A) Its purpose is to protect the purchaser's right to a refund if the purchaser cancels the sales agreement for a time-share interval within the cancellation period;

(B) Funds may be disbursed to the developer by the escrow agent from the escrow account only after expiration of the purchaser's cancellation period and in accordance with the sales agreement;

(C) The escrow agent may release funds to the developer from the escrow account only after receipt of a sworn statement from the developer that no cancellation notice was received before expiration of the cancellation period; and

(D) If a buyer properly terminates the contract pursuant to its terms or pursuant to this part, the funds shall be paid to the buyer together with any interest earned, all as provided in § 66-32-114(a).

(2) Funds so deposited may be invested by the escrow agent in securities of the United States or any agency thereof or in savings or time deposits in institutions insured by an agency of the United States.

(b) If a developer contracts to sell a time-share estate and the construction, furnishings, and landscaping of the property submitted to time-share ownership have not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this part, the developer shall immediately pay into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured, a governmental agency or instrumentality, all payments received by or on behalf of the developer from the buyer on a contract of purchase. The escrow agent may invest the escrow funds in securities of the United States or any agency thereof or in savings or time deposits in institutions insured by an agency of the United States. Funds shall be released from escrow as follows:

(1) If a buyer properly terminates the contract pursuant to its terms or pursuant to this part, the funds shall be paid to the buyer, together with any interest earned;

(2) If the buyer defaults in the performance of the buyer's obligations under the contract of purchase and sale, the funds shall be paid to the developer, together with any interest earned; or

(3) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection (b), they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent received from the buyer written notice of a dispute between the buyer and developer. If the money remains in this account for more than three (3) months and earns interest, the interest shall be paid as provided in this subsection (b).

(c) For the purpose of this section, "substantially completed" means that all amenities, furnishings, appliances and structural components and mechanical systems of buildings are completed and provided as represented in the public offering statement and that the premises are ready for occupancy and the proper governmental authority has caused to be issued a certificate of occupancy.

(d)(1) In lieu of the provisions in subsection (b), a developer may withdraw, after the initial rescission period for cancellation has expired, all payments received by the developer from the buyer toward the sales price, provided:

(A) The developer, prior to withdrawal of any funds, posts a surety bond, irrevocable letter of credit or other financial assurances acceptable to the commission in an amount equal to one hundred twenty-five percent (125%) of the cost to complete the time-share project. The developer shall be required to submit such cost and financial data as the commission may reasonably require; or

(B) The developer has obtained protection for nondefaulting purchasers in compliance with § 66-32-128, and has obtained a final and binding commitment letter on the construction of the project and a final and binding commitment letter on the financing of the same construction. A bond obtained pursuant to subdivision (d)(1)(A) shall be executed by the seller as principal and by a surety company authorized to do business in Tennessee as surety. The bond shall be conditioned upon the faithful compliance of the seller with this part including substantial completion, as defined in subsection (c), of the project and unit and compliance with the contract of purchase.

(2) Payments so withdrawn pursuant to this subsection (d) may be used only to pay for construction costs of the improvements comprising the time-share project.

(e) In lieu of any escrows required by this section, the commission shall have the discretion to accept other financial assurances including, but not limited to, a performance bond or an irrevocable letter of credit in an amount at least equal to or in excess of the cost to complete the time-share project. [Acts 1981, ch. 372, § 14; T.C.A., § 64-3214; Acts 1982, ch. 753, § 1; 1983, ch. 210, § 4; 1985, ch. 98, §§ 2-4.]

**66-32-114. Mutual rights of cancellation.** — (a) Before transfer of a time-share interval and no later than the date of any sales contract, the developer shall provide the intended transferee with a copy of the public offering statement and any amendments and supplements thereto. The contract is voidable by the purchaser until the purchaser has received the public offering statement. The contract is also voidable by the purchaser for ten (10) days from the date of the signing of the contract by the purchaser if the purchaser shall have made an on-site inspection of the time-share project prior to the signing of the contract, and if the purchaser did not make an on-site inspection of the time-share project prior to signing the contract, for fifteen (15) days thereafter. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded within thirty (30) days after receipt of the notice of cancellation as provided in subsection (c).

(b) During the applicable rescission period, the developer may cancel the contract of purchase without penalty to either party. The developer shall return all payments due, the purchaser shall return all material received in good condition, reasonable wear and tear excepted. If such materials are not returned, the developer may deduct the cost of the same and return the balance to the purchaser.

(c) If either party elects to cancel a contract pursuant to subsection (a) or (b), that party may do so by hand delivering notice thereof to the other party

within the designated period for voiding such contract or by mailing notice thereof by prepaid United States mail, postmarked anytime within the designated period for voiding such contract, to the other party or to such party's agent for service of process. The rescission rights set forth in subsections (a) and (b) may not be waived by either the purchaser or developer. [Acts 1981, ch. 372, § 15; T.C.A., § 64-3215; Acts 1983, ch. 210, § 5.]

**66-32-115. Exemptions from requirement of public offering statement.** — (a) The developer shall not be required to prepare and distribute a public offering statement if the developer has registered and there has been issued a public offering statement or similar disclosure document which is provided to purchasers under the following:

- (1) Securities and Exchange Act of 1933;
- (2) Federal Interstate Land Sales Full Disclosure Act in which the time-share program is made a part of the subdivision that is being registered; and
- (3) Any federal or Tennessee act which requires a federal or state public offering statement or similar disclosure document to be prepared and provided to purchasers.

(b) A public offering statement need not be prepared or delivered in the case of:

- (1) Any transfer of a time-share interval by any time-share interval owner other than the developer and/or his agent;
- (2) Any disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure;
- (5) A disposition of a time-share interval in a time-share project situated wholly outside the state; provided, that all solicitations, negotiations, and contracts took place wholly outside this state and the contract was executed wholly outside this state;
- (6) A gratuitous transfer of a time-share interval; or
- (7) Group reservations made for fifteen (15) or more people as a single transaction between a hotel and travel agent or travel groups for hotel accommodations, where deposits are made and held for more than three (3) years in advance. [Acts 1981, ch. 372, § 16; T.C.A., § 64-3216.]

**66-32-116. Material change.** — The developer shall amend or supplement the public offering statement to report any material change in the information required by § 66-32-112. As to any exchange program, the developer shall use the current written materials that are supplied to it for distribution to the time-share interval owners as it is received. [Acts 1981, ch. 372, § 17; T.C.A., § 64-3217.]

**66-32-117. Liens.** — (a) Unless the purchaser expressly agrees to take subject to or assume a lien prior to transferring a time-share interval other than by deed in lieu of foreclosure, the developer shall record or furnish to the purchaser releases of all liens affecting that time-share interval, or shall provide a surety bond or insurance against the lien.

(b) Unless a time-share interval owner or such owner's predecessor in title agrees otherwise with the lienor, if a lien other than an underlying mortgage

or deed of trust becomes effective against more than one (1) time-share interval in a time-share project, any time-share interval owner is entitled to a release of such owner's time-share interval from the lien upon payment of the amount. The payment must be proportionate to the ratio that the time-share interval owner's liability bears to the liabilities of all time-share interval owners whose interests are subject to the lien. Upon receipt of payment, the lienholder shall promptly deliver to the time-share interval owner a release of the lien covering that time-share interval. After payment, the managing entity may not assess or have a lien against that time-share interval for any portion of the expenses incurred in connection with that lien. [Acts 1981, ch. 372, § 18; T.C.A., § 64-3218.]

**66-32-118. Violations — Attorney's fees — Criminal penalties.** — (a) If a developer or any other person subject to this part violates any provision thereof or any provision of the project instruments, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded for a willful violation of this part. The court may also award reasonable attorney's fees.

(b) Except as provided in subsection (c), any developer or any other person subject to this part who offers or disposes of a time-share interval without having complied with this part or who violates any provision of this part commits a Class C misdemeanor.

(c) Any developer or any other person subject to this part who knowingly, willfully and intentionally offers, disposes of, or jeopardizes the interest of the purchaser of a time-share interval in violation of § 66-32-113, § 66-32-122(a) or § 66-32-128 commits a felony punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment for not less than one (1) year nor more than three (3) years, or by both such fine and imprisonment.

(d) Nothing in this part limits the power of the state to punish any person for any conduct or omission which constitutes a violation under any other provision of this code. [Acts 1981, ch. 372, § 19; T.C.A., § 64-3219; Acts 1986, ch. 601, § 1; 1987, ch. 194, § 1; 1989, ch. 591, § 113.]

**66-32-119. Statute of limitations.** — A judicial proceeding where the accuracy of the public offering statement or validity of any contract of purchase is in issue and a rescission of the contract or damages is sought must be commenced within four (4) years after the date of the contract of purchase, notwithstanding that the purchaser's terms of payments may extend beyond the period of limitation. However, with respect to the enforcement of provisions in the contract of purchase which require the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of four (4) years for each breach, but the parties may agree to reduce the period of limitation to not less than two (2) years. [Acts 1981, ch. 372, § 20; T.C.A., § 64-3220.]

**66-32-120. Financial records.** — (a) The person or entity responsible for making and/or collecting common expenses, assessments or maintenance assessments shall keep detailed financial records.

(b) All financial and other records shall be made reasonably available for examination by any time-share interval owner and such owner's authorized agents. [Acts 1981, ch. 372, § 21; T.C.A., § 64-3221.]

**66-32-121. Powers and duties of commission.** — (a) The commission may adopt, amend, and repeal rules, regulations and issue orders consistent with, and in furtherance of the objectives of this part.

(b) The commission may prescribe forms and procedures for submitting information to the commission.

(c) The commission may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions, in furtherance of the objectives of this part.

(d) The commission may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the commission's duties.

(e) The commission may initiate private investigations within or outside this state.

(f) The commission shall have the power to revoke, or suspend the real estate license of a sales agent, or the registration of a time-share project, or to otherwise appropriately discipline the sales agent, or fine the developer pursuant to the provisions of § 56-1-308, if, after notice and hearing, any of the following conditions exist:

(1) Any representation in any document or information filed with the commission is false or misleading; or

(2) Any developer or agent of a developer has:

(A) Engaged in or is engaging in any unlawful act or practice;

(B) Disseminated or caused to be disseminated orally, or in writing, any false or misleading promotional materials in connection with a time-share program;

(C) Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-share intervals in the time-share program;

(D) Failed to perform any stipulation or agreement made to induce the commission to issue an order relating to that time-share program;

(E) Otherwise violated any provision of this part or the commission's rules, regulations, or orders;

(F) Makes any willful or negligent misrepresentation, or any willful or negligent omission of material fact about any time-share or time-share project, or exchange program;

(G) Makes any false promises of a character likely to influence, persuade or induce;

(H) Engages in any other conduct which constitutes improper, fraudulent or dishonest dealing; or

(I) Fails to promptly account for any funds held in trust, or who fails to display all records, books and accounts of such funds to the commission upon demand as provided for in this part, and the rules and regulations.

(g) The commission may issue a cease and desist order if the developer has not registered the time-share program as required by this part.

(h) The commission, after notice and hearing, may issue an order revoking the registration of a time-share program upon determination that a developer or agent of developer has failed to comply with a notice of suspension issued by the commission affecting the time-share program.

(i) The commission may reject an application for registration if the commission finds that:

(1) The developer or any entity or individual which composes the developer, or any officer or director of the developer does not possess a history of honesty, truthfulness, and fair dealing. Factors to be used in making such determination shall include whether the developer or any entity or individual which composes the developer, or any officer or director of the developer has:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;

(B) Consented to or suffered a judgment in any civil or administrative action based upon conduct involving an act of fraud or dishonesty;

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;

(D) Knowingly made or caused to be made in any application or report filed with the commission, or in any proceeding before the commission, any written or oral statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to material fact;

(E) Willfully omitted a material fact with respect to information furnished or requested in connection with an application;

(F) Willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person, of any provision of state law or rule; or

(G) Been involved in unlicensed activity; or

(2) The commission may reject an application for registration if the commission finds that the developer or any entity or individual which composes the developer, or any officer or director of the developer does not possess a history of financial integrity. Factors to be used in making such determination shall include whether the developer or any entity or individual which composes the developer, or any officer or director of the developer:

(A) Has been placed in receivership or conservatorship during the previous ten (10) years;

(B) Has filed for bankruptcy within the previous ten (10) years; or

(C) Is liable for amounts of debt which would create excessive risks of default. [Acts 1981, ch. 372, § 22; T.C.A., § 64-3222; Acts 1985, ch. 98, §§ 5, 6; 1988, ch. 482, § 1.]

**66-32-122. Registration — Bond — Statement of exchange agent. —**

(a) Unless exempted by § 66-32-126, a developer may not offer or dispose of a time-share interval unless the time-share program is registered with the commission; provided, that a developer may accept a reservation together with

a deposit if the deposit is placed in an escrow account with an institution having trust powers and is refundable at any time at the purchaser's option. In all cases, a reservation must require a subsequent affirmative act by the purchaser via a separate instrument to create a binding obligation. A developer may not dispose of or transfer a time-share interval while an order revoking or suspending the registration of the time-share program is in effect.

(b) The acquisition agent shall be required to furnish to the commission its principal office address and telephone number and designate its responsible managing employee and shall furnish such additional information as the commission may require.

(c) The sales agent shall, in addition to other requirements of law, be required to furnish to the commission its principal office address and telephone number and designate its responsible managing employee and shall furnish such additional information as the commission may require.

(d) The managing agent shall be required to furnish to the commission its principal office address and telephone number and designate its responsible managing employee and shall furnish such additional information as the commission may require. Such additional information shall include criminal convictions.

(e) An exchange agent, including the developer if it is also the exchange agent, if offering exchange privileges with other time-share interval owners of time-share interval owners who own time-share estates within this state, shall annually file a statement with the commission which must fully and accurately disclose:

(1) The identity of the person operating the exchange program and whether that person is an affiliate of the developer;

(2) A general description of the procedures to qualify for and effectuate exchanges, including any stated or practiced priorities and restrictions, and the extent to which changes thereof may be made;

(3) The expenses, or ranges of expenses, to the time-share interval owners of membership in the exchange program including the expenses, if any, and the person to whom those expenses are payable;

(4) Whether and how any of the expenses specified in subdivision (e)(3) may be altered and, if any of them are to be fixed on a case-by-case basis, the manner in which they are to be fixed in each case;

(5) With respect to the owners of time-share intervals in the exchange program at each project during a calendar year ending not more than fifteen (15) months before the statement is filed;

(6) The percentage of exchanges properly applied for by members or participants in the exchange program that were fulfilled during a calendar year ending not more than fifteen (15) months before the date the statement is filed with the commission, together with a statement of the criteria used to determine whether an exchange was properly applied for and fulfilled; and

(7) The number of persons applying for an exchange program as a whole during the calendar year ending not more than fifteen (15) months before the statement is filed with the commission.

(f) The developer must provide a copy of the most recent exchange agent's statement filed with the commission to the purchaser in addition to the public

offering statement if it is represented to the purchaser that the purchaser is entitled to or required to become a member of the exchange program. The developer is not responsible to the purchaser for any representation made in the exchange agent's statement which is untrue or incorrect. [Acts 1981, ch. 372, § 23; T.C.A., § 64-3223; Acts 1983, ch. 210, § 6; 1989, ch. 65, § 4.]

**66-32-123. Application and fees for registration.** — (a) An application for registration must contain the public offering statement, a brief description of the property, copies of time-share instruments and any documents referred to therein other than tract maps, plats, plans, and such other information required by the commission's rules and regulations and be accompanied by any reasonable fees required by the commission.

(b) Fee for registration of time-share interval plans; expenses for investigation and prosecution:

(1) For the registration of all time-share interval plans and the accommodations and facilities affected thereby which are located within the state, there shall be paid to the commission the sum of one hundred dollars (\$100), together with an annual renewal fee of fifty dollars (\$50.00);

(2) For the registration of all time-share interval plans and the accommodations and facilities affected thereby which are located outside the state, there shall be paid to the commission the sum of two hundred fifty dollars (\$250), together with an annual renewal fee of one hundred dollars (\$100); and

(3) Notwithstanding subdivisions (b)(1) and (b)(2), the fees charged and collected shall be sufficient to cover the cost of administering this part. [Acts 1981, ch. 372, § 24; T.C.A., § 64-3224.]

**66-32-124. Commission regulation of public offering statement.** — (a) The commission at any time may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

(b) The public offering statement may not be used for any promotional purposes before registration and afterwards only if it is used in its entirety. No person may advertise or represent that the commission has approved or recommended the time-share program, the disclosure statement, or any of the documents contained in the application for registration. [Acts 1981, ch. 372, § 25; T.C.A., § 64-3225.]

**66-32-125. Effective date of registration — Incomplete or inadequate application.** — (a) Except as otherwise provided in this section, the effective date of the registration, or any amendment thereto, shall be the forty-fifth day after the filing thereof or such earlier date as the commission may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such registration is filed prior to the effective date, the registration shall be deemed to have been filed when such amendment was filed.

(b) If it appears to the commission that the application for registration, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the commission shall so advise the developer prior to the date the

registration would otherwise be effective. Such notification shall serve to suspend the effective date of the filing until the forty-fifth day after the developer files such additional information as the commission shall require. Any developer, upon receipt of such notice of suspension, may request a hearing. [Acts 1981, ch. 372, § 26; T.C.A., § 64-3226.]

**66-32-126. Exceptions from registration requirement.** — No registration with the commission shall be required in the case of:

- (1) Any transfer of a time-share interval by any time-share interval owner other than the developer and/or the developer's agent;
- (2) Any disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure;
- (5) A disposition of a time-share interval in a time-share project situated wholly outside this state; provided, that all solicitations, negotiations, and contacts took place wholly outside this state and the contract was executed wholly outside this state;
- (6) A gratuitous transfer of a time-share interval; or
- (7) Group reservations made for fifteen (15) or more people as a single transaction between a hotel and travel agent or travel groups for hotel accommodations, where deposits are made and held for more than three (3) years in advance. [Acts 1981, ch. 372, § 27; T.C.A., § 64-3227.]

**66-32-127. Financing of time-share programs.** — (a) In the financing of a time-share program, the developer shall retain financial records of the schedule of payments required to be made and the payments made to any person or entity which is the owner of an underlying blanket mortgage, deed of trust, contract of sale or other lien or encumbrance ("lienhold").

(b) Any transfer of the developer's interest in the time-share program to any third person shall be subject to the obligations of the developer. [Acts 1981, ch. 372, § 28; T.C.A., § 64-3228.]

**66-32-128. Protection of nondefaulting purchasers.** — The developer whose project is subject to an underlying blanket lien or encumbrance shall protect nondefaulting purchasers from foreclosure by the lienholder by obtaining from the lienholder a nondisturbance clause, subordination agreement or partial release of the lien as the time-share intervals are sold. In the alternative, the developer may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the nondefaulting purchasers by posting a bond, equal to fifty percent (50%) of the amount owed to the lienholder, making an assignment of receivables equal to one hundred twenty-five percent (125%) of the principal amounts due to the lienholder, pledging collateral security equal to one hundred percent (100%) of the amount owed to the lienholder or entering into any other financing plan or escrow agreement acceptable to the lienholder. [Acts 1981, ch. 372, § 29; T.C.A., § 64-3229.]

**66-32-129. Protection of lienholder.** — The lienholder in any time-share program shall have the following rights:

(1) A lienholder's lien rights shall be preserved as against any purchaser of time-share interval claiming that the time-share is invalid, void or voidable, thirty (30) days after written notice by certified mail or personal delivery has been given by the developer to the purchaser. Such notice must state the developer has assigned the receivables to the lienholder and that purchaser has thirty (30) days within which to object and specify the invalidity or defect contained within such instrument.

(2) Any purchaser who fails to indicate the invalidity, void or voidableness as provided in subdivision (1) waives or is estopped to raise, the same in any subsequent enforcement of the collection of the receivable by the lienholder. [Acts 1981, ch. 372, § 30; T.C.A., § 64-3230.]

**66-32-130. Premiere tourist resort city.** — Notwithstanding any other provisions of this part, a "premiere tourist resort city" defined as a municipality having a population of three thousand (3,000) or more persons, according to the federal census of 1980 or any subsequent federal census in which at least forty percent (40%) of the assessed valuation, as shown by the tax assessment rolls or books of the municipality, of real estate in the municipality consists of hotels, motels, tourist court accommodations, tourist shops and restaurants, is hereby authorized to adopt by its board of commissioners any ordinance necessary to regulate the sale and use of time-share units within its jurisdiction including the requirement of registration, licenses, transfer and related requirements including any related fees. [Acts 1981, ch. 372, § 34; T.C.A., § 64-3231.]

**66-32-131. Misleading advertising unlawful.** — It is unlawful for any person with intent directly or indirectly to offer for sale or sell time-share intervals in this state to authorize, use, direct or aid in the publication, distribution or circulation of any advertisement, radio broadcast or telecast concerning the time-share project in which the time-share intervals are offered, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employee of any newspaper, or any job printer, or any broadcaster or telecaster, or any magazine publisher, or any of the employees thereof, liable for any publication referred to in this section unless the publisher, employee, or printer has actual knowledge of the falsity thereof or has an interest either as an owner or agent in the time-share intervals so advertised. [Acts 1983, ch. 210, § 7.]

**66-32-132. Advertising — Specific prohibitions.** — No advertising for the offer or sale of time-share intervals shall:

(1) Contain any representation as to the availability of a resale program or rental program offered by or on behalf of the developer or its affiliate unless the resale program and/or rental program has been made a part of the offering and submitted to the commission;

(2) Contain an offer or inducement to purchase which purports to be limited as to quantity or restricted as to time unless the numerical quantity and/or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain any statement concerning the investment merit or profit potential of the time-share interval unless the commission has determined from evidence submitted on behalf of the developer that the representation is neither false nor misleading;

(4) Make a prediction of or imply specific or immediate increases in the price or value of the time-share intervals; nor shall a price increase of a time-share interval be announced more than sixty (60) days prior to the date that the increase will be placed into effect;

(5) Contain statements concerning the availability of time-share intervals at a particular minimum price if the number of time-share intervals available at that price comprises less than ten percent (10%) of the unsold inventory of the developer, unless the number of time-share intervals then for sale at the minimum price is set forth in the advertisement;

(6) Contain any statement that the time-share interval being offered for sale can be further divided unless a full disclosure is included as to the legal requirements for further division of the time-share interval;

(7) Contain any asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of any previously made statement in the advertisement;

(8) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities which comprise the time-share project;

(9) Misrepresent the nature or extent of any services incident to the time-share project;

(10) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(11) Make any misleading or deceptive representation with respect to the contents of the time-share program, the purchase contract, the purchaser's rights, privileges, benefits or obligations under the purchase contract or this part;

(12) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program; or

(13) Describe any proposed or uncompleted private facilities over which the developer has no control unless the estimated date of completion is set forth and evidence has been presented to the commission that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement. [Acts 1983, ch. 210, § 8.]

**66-32-133. Prize or gift promotional offers — Unlawful acts.** — The following unfair acts or practices undertaken by, or omissions of, any person in the operation of any prize or gift promotional offer, by any means, including, but not limited to, by mail, by telephone, by advertisement or in person, for a time-share project are prohibited:

(1) Failing to clearly and conspicuously state the name and street address of

the person making the offer;

(2) Representing or leading a person to believe that the person is or could be a winner if the person has not won or is not eligible to win;

(3) Representing or leading a person to believe that the person has been “selected” or is otherwise part of a select or special group when the person has not been selected or is not part of a select or special group;

(4) Representing that a person has won or could win a prize, or will receive a gift, or thing of value or has been selected, or is eligible, to win a prize, or receive a gift, or thing of value if the receipt of the prize, or gift, or thing of value is conditioned upon the person listening to or observing a sales promotional effort, making a purchase, or incurring any monetary obligation unless it is clearly and conspicuously disclosed, at the time of the initial offer, contact, or notification of the prize or gift, or thing of value that an attempt will be made to induce the consumer or person to incur a monetary obligation, including the amount of any monetary obligation;

(5) Failing to clearly and conspicuously disclose next to each prize, gift, or thing of value offered or any product offered for sale through the promotional plan the item’s approximate verifiable retail value, which means the price at which the person offering the item can substantiate that a substantial number of these items have been sold at retail by another person or, in the event such substantiation is unavailable, nor more than three (3) times the amount actually paid by the sponsor or promoter for the item;

(6) Representing that the prize, gift, or thing of value offered or any product offered for sale through the promotional plan possesses particular features or benefits, if it does not, or is of a particular standard, quality, grade, or model, if it is of another;

(7) Failing to clearly and conspicuously disclose next to each prize, gift, or thing of value offered, a statement of odds, if applicable, in Arabic numerals, of receiving each item offered, and a statement, if applicable, that those offers are not exclusive to the above-named person and whether all prizes or gifts will be awarded;

(8) Making the receipt of an offered prize or gift contingent upon the consent of individual winners or recipients to allow their names to be used for promotional purposes, or failing to obtain the express written or oral consent of individual winners or recipients before their names are used for a promotional purpose in connection with the mailing to a third person;

(9) Refusing to disclose or make available, upon request, the names of the recipients of any prizes or gifts within the geographic area wherein the promotional offers were made;

(10)(A) Failing to clearly and conspicuously disclose in any initial offer, at a minimum, the following:

(i) A general description of the types and categories of any restrictions, qualifications, or other conditions, that must be satisfied before the person is entitled to receive or use the prize, gift, or thing of value or product or service offered;

(ii) The approximate total of all costs, fees, or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize, gift, or thing of value or product or service offered; and

(iii) That the details and an explanation of all restrictions, qualifications or other conditions of the offer shall be provided prior to the acceptance of the offer; or

(B) Failing to clearly and conspicuously state verbally, or upon request, in writing, before an offer can be accepted all restrictions, qualifications, monetary obligations, and other conditions that must be satisfied before the person is entitled to receive or use the prize, gift, or thing of value or product or service offered, including:

(i) Any deadline by which the recipient must visit the business, attend or listen to a sales presentation or otherwise respond in order to receive the prize, gift, or thing of value or product or service offered;

(ii) The date or dates on or before which the prize, gift or thing of value, product or service offered will terminate or expire and, if applicable, when the prizes will be awarded;

(iii) The approximate duration of any mandatory sales presentation or tour, if applicable;

(iv) Any other conditions, such as a minimum or maximum age qualification, any financial qualification, or requirement that, if the recipient is married, both spouses must be present or respond in order to receive the prize, gift or thing of value or product or service offered; and

(v) All other material rules, terms, restrictions, and conditions of the offer or promotional program including, but not limited to, any promotional service, handling, shipping, delivery, freight, postage or processing fees, charges, or other extra costs for the receipt or use of the prize, gift, or thing of value or product or service offered; provided that the requirements of this subdivision shall not be construed to require that foreign tax rates be included;

(11) Misrepresenting in any manner the rules, terms, restrictions, monetary obligation, or conditions of participation in the promotional plan or offer;

(12) Failing to award and distribute the prize, gift, or thing of value or product or service offered in accordance with the rules, terms, and conditions of the offer or promotional program as stated or disclosed in accordance with subdivisions (1)-(11); and

(13)(A) Failing to award and distribute at least one (1) of each prize or gift of the value and type represented in the promotional program by the day and year specified in the promotion. When a promotion promises the award of a prescribed number of each prize, such number of prizes shall be awarded by the date and year specified in the promotion. For purposes of this subdivision (13)(A), distribution of cash shall be equivalent to distribution of a gift or prize, and a qualified recipient shall be allowed to choose either the gift or prize or cash in an amount equal to the cost of the gift or prize only if the gift or prize is not delivered to a qualified recipient within seventy-two (72) hours of the time the recipient would have been entitled to the gift or prize.

(B) Such choice shall be disclosed to the recipient at the time of the initial offering. [Acts 1983, ch. 210, § 9; 1991, ch. 81, §§ 1, 2; 1991, ch. 84, § 1; 1993, ch. 230, § 1.]

**66-32-134. Violation of §§ 66-32-131 — 66-32-133.** — Whenever the commission determines from evidence available to it that a person is violating or failing to comply with the requirements of §§ 66-32-131 — 66-32-133, the commission may order the person to cease and desist from such violations and may take enforcement action under the provisions of §§ 66-32-121 — 66-32-126. [Acts 1983, ch. 210, § 10.]

**66-32-135. Construction of §§ 66-32-131 — 66-32-133 with Tennessee Consumer Protection Act.** — The provisions of §§ 66-32-131 — 66-32-133 shall be in addition to those provisions in the Tennessee Consumer Protection Act, compiled in title 47, chapter 18; provided, that to the extent that any provisions of the Tennessee Consumer Protection Act are in conflict with the provisions contained in §§ 66-32-131 — 66-32-133, the provisions of Tennessee Consumer Protection Act shall control. [Acts 1983, ch. 210, § 11.]

**66-32-136. Advertising material — Engaging time-share resale broker in connection with resale of time-share interval.** — (a) Any advertising material relating to the solicitation of an agreement engaging the services of a time-share resale broker in connection with the resale of a time-share interval pursuant to § 66-32-137(b) is subject to the provisions of §§ 66-32-131 — 66-32-135.

(b) “Advertising material” includes any oral or written sales pitch, promotional brochure, pamphlet, catalogue, advertisement, sign, billboard or other material to be disseminated to the public by any means relating to the solicitation of an agreement engaging the services of a time-share resale broker in connection with the resale of a time-share interval, pursuant to § 66-32-137(b), including a transcript of any standard oral sales presentation or any radio or television advertisement.

(c) No written advertising material relating to the solicitation of an agreement engaging the services of a time-share resale broker in connection with the resale of a time-share interval, pursuant to § 66-32-137(b), may be utilized by a time-share resale broker unless the advertising material includes in conspicuous type the disclosure described in § 66-32-137(b)(1).

(d) The commission has authority to enforce the provisions of this section as provided in §§ 66-32-121 and 62-13-109. [Acts 1990, ch. 672, §§ 3, 5.]

**66-32-137. Violations — Required contents of written agreements engaging the services of a resale broker and contracts for purchase and sale.** — (a) It is a violation of this part for any time-share resale broker to:

(1) Enter into any agreement with any person engaging the services of the time-share resale broker in connection with the resale of a time-share interval unless a written agreement complying in all respects with the provisions of subsection (b) is first executed by the time-share resale broker and the person engaging the services of the time-share resale broker;

(2) Accept any moneys or any other thing of value from any person engaging the services of the time-share resale broker in connection with the resale of a time-share interval in advance of the closing of the resale of such time-share

interval; or

(3) Utilize any form of contract or purchase and sale agreement in connection with the resale of a time-share interval unless the contract or purchase and sale agreement complies in all respects with the provisions of subsection (d).

(b) In addition to all requirements of and obligations under the Tennessee Real Estate Broker License Act of 1973, compiled in title 62, chapter 13, all agreements engaging the services of a time-share resale broker in connection with the resale of a time-share interval shall contain all of the following:

(1) The following statement in conspicuous type located immediately prior to the space in the agreement reserved for the signature of the owner:

“THERE IS NO GUARANTEE THAT YOUR TIME-SHARE INTERVAL CAN BE SOLD AT ANY PARTICULAR PRICE OR WITHIN ANY PARTICULAR PERIOD OF TIME”;

(2) A complete and clear disclosure of any fees, commissions, and other costs or compensation payable to or received by the time-share resale broker under the agreement, whether directly or indirectly;

(3) The term of the agreement, a statement regarding the ability of any party to extend the term of the agreement, and a description of the conditions under which the agreement may be extended and all related costs;

(4) A description of the services to be provided by the time-share resale broker under the agreement, and a description of the obligations of each party regarding a resale purchaser, including any costs to be borne and any obligations regarding notification of the managing entity and any exchange company;

(5) A statement disclosing whether the agreement grants exclusive rights to the time-share resale broker to locate a purchaser during the term of the agreement, a statement disclosing to whom and when any proceeds from a sale of the time-share interval will be disbursed, and a statement whether any party may terminate the agreement and under what conditions;

(6) A statement disclosing whether the agreement permits the time-share resale broker or any other person to make any use whatsoever of the time-share interval in question and a detailed description of any such permitted use rights, including a disclosure of to whom any rents or profits generated from such use of the time-share interval will be paid; and

(7) A statement disclosing the existence of any judgments or orders against the time-share resale broker resulting from a violation by the time-share resale broker of this part, the Tennessee Real Estate Broker License Act of 1973, compiled in title 62, chapter 13, or the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1, or resulting from consumer fraud on the part of the time-share resale broker.

(c) The person engaging the services of the time-share resale broker must receive a fully executed copy of the agreement described in subsection (b) on the day such person signs it.

(d) All forms of contract or purchase and sale agreement utilized by a time-share resale broker in connection with the sale of a time-share interval shall contain all of the following:

(1) An explanation of the form of time-share ownership being purchased and

a legally sufficient description of the time-share interval being purchased;

(2) The name and address of the managing entity of the time-share plan;

(3) The following statement in conspicuous type located immediately prior to the space in the contract reserved for the signature of the purchaser:

“THE CURRENT YEAR’S ASSESSMENT FOR COMMON EXPENSES ALLOCABLE TO THE TIME-SHARE INTERVAL YOU ARE PURCHASING IS \$ \_\_\_\_\_. THIS ASSESSMENT, WHICH MAY BE INCREASED FROM TIME TO TIME BY [insert name of entity having authority to increase assessment], IS PAYABLE IN FULL ON OR BEFORE [state payment due date(s)]. THIS ASSESSMENT [INCLUDES/DOES NOT INCLUDE] YEARLY AD VALOREM REAL ESTATE TAXES. [If ad valorem real property taxes are not included in the current year’s assessment for common expenses, the following statement must be included: THE MOST RECENT ANNUAL ASSESSMENT FOR AD VALOREM REAL ESTATE TAXES FOR THE TIME-SHARE INTERVAL YOU ARE PURCHASING IS \$ \_\_\_\_\_ ]. FAILURE TO TIMELY PAY THESE ASSESSMENTS MAY RESULT IN RESTRICTION OR LOSS OF YOUR USE AND/OR OWNERSHIP RIGHTS.”

In making the disclosures required by this subdivision (d)(3), the time-share resale broker may rely upon information provided in writing by the managing entity of the time-share project;

(4) A complete and accurate disclosure of the terms and conditions of the purchase and closing, including the obligations of the seller and/or the purchaser for closing costs and title insurance;

(5) A statement disclosing the existence of any mandatory exchange program membership included in the time-share project; and

(6) In lieu of subdivisions (d)(1)-(5), a time-share resale broker affiliated with a time-share developer may use the public offering statement and sales contract to consummate a resale; provided, that such information includes the substance of all of subdivisions (d)(1)-(5).

(e) The commission has authority to enforce the provisions of this section as provided in §§ 66-32-121 and 62-13-109. [Acts 1990, ch. 672, §§ 4, 5.]

**66-32-138. Delivery of required renewal documentation and fees.**

— Notwithstanding any other provision of law to the contrary, all documentation and fees which are a prerequisite to the renewal of a license or registration shall be delivered to the commission no later than sixty (60) days prior to the expiration date of the license or registration. [Acts 2000, ch. 861, § 1.]

**66-32-139. Registration of acquisition agents — Penalties for prohibited activity and conduct — Commission’s authority to promulgate rules and regulations.**

— (a) All acquisition agents and their representatives, as defined in § 66-32-102, shall register with the commission and furnish such information as provided by commission regulation. The application for registration shall be accompanied by a twenty-five dollar (\$25.00) registration fee.

(b) The commission has the authority to assess civil penalties, or to suspend or revoke the registration of an acquisition agent, for any activity or conduct in

violation of § 62-13-312 or § 66-32-121. The commission also has the authority to promulgate rules and guidelines for the training and conduct of acquisition agents. [Acts 2000, ch. 861, § 3.]

PART 2—VACATION CLUB ACT OF 1995

**66-32-201. Short title.** — This part shall be known and may be cited as the “Tennessee Vacation Club Act of 1995.” [Acts 1995, ch. 90, § 1.]

**66-32-202. Legislative intent.** — The purpose of this part is to recognize that the sale and promotion of vacation clubs is an emerging, dynamic segment of the international tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structure; and that a uniform and consistent method of regulation is necessary in order to safeguard the state’s consumers and the state’s economic well-being. It is the intent of the general assembly that this part be interpreted broadly in order to enhance the quality of vacation clubs offered and sold in this state and to protect consumers who purchase vacation club interests. [Acts 1995, ch. 90, § 2.]

**66-32-203. Application.** — This part applies only to sellers of vacation club interests who offer for disposition vacation club interests to the general public in Tennessee. For purposes of this section, an offer shall be considered to be made in this state only if the offer:

- (1) Originates from this state; or
- (2) Is directed by the offeror into this state and is received at the place to which it is directed. [Acts 1995, ch. 90, § 3.]

**66-32-204. Exemptions.** — This part does not apply to any of the following:

- (1) An offer or disposition other than in the ordinary course of business by any holder of a purchase money lien, including any assignee thereof, who acquires a vacation club interest as a result of an owner’s default with respect to the owner’s purchase money financing obligations, whether such vacation club interest is acquired by foreclosure, the acceptance of a deed in lieu thereof, or other legal or equitable means;
- (2) A gratuitous disposition;
- (3) A disposition by devise, descent, or distribution or a disposition to an inter vivos trust;
- (4) An offer or disposition of a vacation club interest by an owner other than a developer, unless such owner makes such offer and disposition in the ordinary course of its business; or
- (5) An offer or disposition of a vacation club interest that is part of a duly registered vacation club pursuant to the laws of a state with the same or more stringent requirements as this state. [Acts 1995, ch. 90, § 4.]

**66-32-205. “Vacation club interest” defined** — “Vacation club interest” means and includes the following interests in a vacation club:

(1) A “specific time-share interest,” which is a right to use a specific accommodation or accommodations, and facilities at one (1) component site of a vacation club, for the remaining term of the vacation club in the event that the reservation system is terminated for any reason prior to the expiration of the term of the vacation club, together with use rights in the other accommodations and facilities of the vacation club created by or acquired through the reservation system; provided, that there is a one-to-one purchaser to accommodation ratio for each time-share interval, which entitles a particular owner who complies fully with the reservation system’s rules and regulations to reserve, use and occupy a protected accommodation of the vacation club completely independent of any other owner’s failure for reason to reserve, use, or occupy an accommodation of the vacation club; and

(2) A “nonspecific time-share interest,” which is a right to use all of the accommodations and facilities of a vacation club created by or acquired through the reservation system, but including no specific right to use any particular accommodations or facilities for the remaining term of the vacation club in the event that the reservation system is terminated for any reason prior to the expiration of the term of the vacation club; provided, that there is a one-to-one purchaser to accommodation ratio for each time-share interval, which entitles a particular owner who complies fully with the reservation system’s rules and regulations to reserve, use and occupy a protected accommodation of the vacation club completely independent of any other owner’s failure for reason to reserve, use, or occupy an accommodation of the vacation club. [Acts 1995, ch. 90, § 6.]

**66-32-206. Reservation systems.** — (a) A vacation club’s reservation system shall be subject to the requirements for subordination or other financial assurances set forth in this part. Prior to offering vacation club interests, a developer shall create or provide a reservation system, including all appropriate computer hardware and software which is necessary to satisfy owners’ reasonable expectations concerning the use and occupancy of the vacation club’s accommodations, based upon the developer’s representations and the terms and conditions of the vacation club documents, and establish rules and regulations for its operation. In establishing such rules and regulations, the developer shall take into account the anticipated demand for use and occupancy of the vacation club’s accommodations in view of the size and type of each accommodation, each component site location, the time of year, the projected common expenses of the vacation club from year to year, and all other relevant factors, and shall use its good faith and best efforts, based upon all evidence reasonably available to the developer under the circumstances, to maximize the collective opportunities for all of the owners of vacation club interests to use and occupy the vacation club’s accommodations.

(b)(1) The person or persons authorized by the vacation club documents to make additions or substitutions of accommodations to the vacation club, pursuant to this part, shall owe a fiduciary duty to each owner of a vacation club interest to act in the collective best interests of all such owners in

connection with any such addition or substitution and to adhere to the demand balancing standard set forth above in ascertaining the desirability of any proposed addition or substitution and the anticipated impact thereof upon the practical ability of owners to reserve, use, and occupy the vacation club's accommodations.

(2) Prior to offering any vacation club interest in a vacation club, a developer shall provide to the commission satisfactory evidence of the existence of the vacation club's reservation system and shall certify to the commission that such reservation system is fully operative.

(3) Any agreement between a vacation club and a reservation system provider must state that, following a termination of the provider's contract by either party, the reservation system provider will, in the vacation club managing entity's sole discretion, either:

(A) Permit the vacation club to utilize the reservation system for a transition period of up to nine (9) months in the same manner and at the same cost as the vacation club utilized the reservation system prior to the termination in order to afford the vacation club managing entity a reasonable opportunity to obtain a new reservation system and arrange for the transfer of all relevant data from the old reservation system to the new reservation system as described in subdivision (b)(3)(B); or

(B) Promptly transfer to the vacation club managing entity all relevant data contained in the reservation system, including but not limited to the names, addresses, and reservation status of accommodations at the vacation club's component sites, the names and addresses of all owners, all outstanding confirmed reservations and reservation requests, and such other owner and component site records and information as is sufficient, in the reasonable discretion of the vacation club managing entity, to permit the uninterrupted operation and administration of the vacation club for the collective benefit of owners of vacation club interests therein. All reasonable costs incurred by the reservation system provider in effecting such transfer shall be reimbursed thereto and shall constitute common expenses of the vacation club. [Acts 1995, ch. 90, § 8.]

**66-32-207. Developers subject to commission — Prerequisites to vacation club offering.** — A developer of a vacation club interest shall in all respects be subject to the authority of the commission and any rules and regulations promulgated by the commission. Unless specifically exempted, a developer of a vacation club interest may not offer or dispose of a vacation club interest unless it is registered with the commission under § 66-32-123, and pays any fee required by § 66-32-123. Prior to offering any vacation club intervals in a vacation club, a developer shall provide the commission:

(1) Satisfactory evidence of the existence of the time-share intervals that are part of the vacation club;

(2) The marketing plan for the vacation club;

(3) Proof of ownership or a leasehold estate of the time-share intervals that are part of the vacation club; and

(4) Satisfactory proof of compliance with this part, including, but not limited to, a public offering statement, escrow of deposits, cancellation rights, advertising and promotional offers. [Acts 1995, ch. 90, § 9.]

## PART 3—MEMBERSHIP CAMPING ACT

**66-32-301. Short title.** — This part shall be known and may be cited as the “Membership Camping Act.” [Acts 1985, ch. 303, § 1; T.C.A., § 47-18-401.]

**66-32-302. Part definitions** — As used in this part, unless the context otherwise requires:

(1) “Advertisement” means any written, printed, verbal, or visual offer;

(2) “Blanket encumbrance” means any mortgage, deed of trust, option to purchase, vendor’s lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance granted by the membership camping operator, which secures or evidences the obligation to pay money or to sell or convey any campgrounds located in this state made available to purchasers by the membership camping operator or any portion thereof and which authorizes, permits, or requires the foreclosure or other disposition of the campground affected;

(3) “Campground” means real property owned or operated by a membership camping operator which is available for camping by purchasers of membership camping contracts;

(4) “Camping site” means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for camping;

(5) “Facilities” means the following amenities provided and located on property owned or operated by a membership camping operator: camping sites, rental trailers or cabins, swimming pools, sport courts, recreation buildings, and trading posts or grocery stores;

(6) “Holder” includes the seller who acquires a membership camping contract or, if the contract is purchased, a financing agency or other assignee that purchases the contract;

(7) “Membership camping contract” means an agreement offered or sold within this state evidencing a purchaser’s title to, interest in, right or license to use, for more than thirty (30) days, the campgrounds and facilities of a membership camping operator and includes a membership which provides for this use;

(8) “Membership camping operator” means any enterprise, other than one that is tax exempt under § 501(c)(3) of the Internal Revenue Code of 1954, as amended, that solicits membership camping contracts paid for by a fee or periodic payments and has as one (1) of its purposes camping or outdoor recreation including use of camping sites primarily by purchasers;

(9) “Nondisturbance agreement” means an instrument by which the holder of a blanket encumbrance agrees that:

(A) Its rights in any campground made available to purchasers by the membership camping operator shall be subordinate to the rights of purchasers from and after the recordation of the instrument;

(B) The holder and all successors and assignees, and any person who acquires the campground through foreclosure or by deed in lieu of foreclosure of such blanket encumbrance, shall take the campground subject to the rights of purchasers; and

(C) The holder or any successor acquiring the campground through the blanket encumbrance shall not use or cause the campground to be used in a manner which would materially prevent purchasers from using or occupying the campground in a manner contemplated by the purchasers' membership camping contracts; provided, that the holder shall have no obligation or liability to assume the responsibilities or obligations of the membership camping operator under membership camping contracts;

(10) "Offer" means any solicitation reasonably designed to result in the entering into of a membership camping contract;

(11) "Person" means any individual, corporation, partnership, company, and any other form of multiple organization for carrying on foreign or domestic business, other than a government or a subdivision of a government;

(12) "Purchaser" means a person who enters into a membership camping contract and obtains the right to use the camping or outdoor facilities of a membership camping operator;

(13) "Reciprocal program" means any arrangement allowing purchasers to use camping sites, facilities, or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract;

(14) "Sale" or "sell" means entering into, or other disposition, of a membership camping contract for value, but the term "value" does not include a fee to offset the reasonable costs of transfer of a membership camping contract; and

(15) "Seller" means a membership camping operator. [Acts 1985, ch. 303, § 2; T.C.A., § 47-18-402.]

**66-32-303. Disclosures to purchasers.** — A membership camping operator shall disclose the following information to a purchaser before the purchaser signs a membership camping contract or gives any money or thing of value for the purchase of a membership camping contract. The disclosures shall be delivered to the purchaser prior to the time the contract is signed and may be presented in any format selected by the membership camping operator. The disclosures may be included in or as part of the contract at the option of the membership camping operator and shall clearly communicate all of the following as of a date no more than one (1) year prior to the date of purchase:

(1) The name and address of the principal place of business of the membership camping operator and any material affiliate of the membership camping operator;

(2) A brief description of the membership camping operator's experience in the membership camping business, including the number of years the membership camping operator has been in the membership camping business;

(3) A brief description of the nature of the purchaser's right or license to use the membership camping operator's campground or facilities;

(4) The location of each of the membership camping operator's campgrounds and a brief description of the significant facilities at each campground then available for use by purchasers and those which are represented to purchasers as being planned, together with a brief description of any facilities that are or will be available to nonpurchasers or nonmembers.

(A) "Significant facilities" includes, but is not limited to, each of the following: the number of campsites in each park; the number of campsites in

each park with full or partial hookups; swimming pools; tennis courts; recreation buildings; restrooms and showers; laundry rooms; trading posts; or grocery stores; and

(B) "Partial hookups" means those hookups with at least one (1) of the following connections: electricity, water, or sewer connections;

(5) A brief description of the membership camping operator's ownership of, or other right to use, the campgrounds represented to be available for use by purchasers, together with the duration of any material lease, license, franchise, or reciprocal agreement entitling the membership camping operator to use the campground, and any material provisions of any agreements which restrict a purchaser's use of the campground;

(6) A summary or copy of the rules, restrictions, or covenants regulating the purchaser's use of the membership camping operator's campgrounds, including a statement of whether and how the rules, restrictions, or covenants may be changed;

(7) A description of any restraints on the transfer of the membership camping contract;

(8) A brief description of the policies relating to the availability of camping sites and whether reservations are required;

(9) A brief description of any grounds for forfeiture of a purchaser's membership camping contract;

(10) A brief description of all payments of a purchaser under a membership camping contract, including initial fees and any further fees, charges, or assessments, together with any provisions for changing the payments;

(11) A copy of the membership camping contract signed by the purchaser;

(12) A statement of the purchaser's right to cancel the membership camping contract as provided in § 66-32-304;

(13) A description of the manner in which the membership camping operator has complied or proposes to comply with the provisions of § 66-32-307;

(14) A description of any liens, defects, or encumbrances on or affecting the title to the membership contracts or to the campgrounds;

(15) A statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacement;

(16) The projected common expense liability, if any, by category of expenditures for the members;

(17) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(18) A description of the insurance coverage, or a statement that there is no insurance coverage, provided for the benefit of members; and

(19) A statement of the means, including all financial arrangements, by which the developer proposes to assure the completion of all promised improvements. [Acts 1985, ch. 303, § 3; T.C.A., § 47-18-403.]

**66-32-304. Cancellation of contracts.** — (a) Any membership camping contract may be cancelled at the option of the purchaser by personally delivering or sending written notice of the cancellation to the membership camping operator at the address shown in the contract. The notice must be posted not later than twelve o'clock midnight (12:00) of the fifteenth calendar

day following the day on which the membership camping contract was signed, if the purchaser did not make an on-site inspection of the campground, or the tenth calendar day following the day on which the membership camping contract was signed, if the purchaser did make an on-site inspection of the campground.

(b) The purchaser's cancellation right shall be set forth in bold type in the membership camping contract in close proximity to the purchaser's signature line.

(c) Within thirty (30) days after the membership camping operator receives a notice of cancellation, and provided that the purchaser's check, if any, has been cleared by the purchaser's bank, the membership camping operator shall refund to the purchaser any deposit, down payment or other payment therefor. [Acts 1985, ch. 303, § 4; T.C.A., § 47-18-404.]

**66-32-305. Inducements — Disclosures.** — (a) It is unlawful for any person by any means, as part of an advertising program, to offer any item of value as an inducement to the recipient to visit a membership camping operator's campground, attend a sales presentation, or contact a salesperson, unless the person clearly discloses in writing in the offer, in readily understandable language, each of the following:

(1) The name and street address of the membership camping operator;

(2) A general statement that the advertising program is made by a membership camping operator and the purpose of any requested visit, including, but not limited to, the intent to offer a sales presentation, and that an attempt will be made to induce the person to incur a monetary obligation, including the amount of any monetary obligation;

(3) A statement of the odds, in arabic numerals, of receiving each item offered, plus a statement, in arabic numerals, of the number of offers on which those odds are based, and a statement, if applicable, that those offers are not exclusive to the property within named;

(4) The approximate verifiable retail value of each item offered, which means the price at which the person offering the item can substantiate that a substantial number of these items have been sold at retail by another person or, in the event such substantiation is unavailable, no more than three (3) times the amount actually paid by the sponsor or promoter for the item and a statement that the recipient shall be allowed to choose either the item offered or cash in an amount equal to the retail value of the item, as such value is represented within the written offer; and

(5) All restrictions, qualifications, and other conditions that must be satisfied before the recipient is entitled to receive the item, including:

(A) Any deadline by which the recipient must visit the campground, attend the sales presentation, or respond in order to receive the item;

(B) The approximate duration of any normal sales presentation and tour;

(C) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife must be present in order to receive the item; and

(D) All other materials, rules, terms, and conditions of the offer or program.

(b) It is unlawful to make receipt of an offered prize contingent upon consent by the individual winners to allow their names to be used for promotional purposes.

(c) It is unlawful to use the names of individual winners for a promotional purpose in connection with a mailing to a third person before obtaining their express written or oral consent to such use.

(d) It is unlawful for any person making an offer subject to subsection (a), or any employee or agent of the person, to offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

(e) It is unlawful for any person making an offer subject to subsection (a), or any employee or agent of the person, to fail to provide any offered item or to fail to provide cash, if chosen by the recipient, in an amount equal to the retail value of the item, as such value is represented within the written offer, which any recipient who has responded to the offer is entitled to receive. The recipient shall be allowed to choose either the item offered or the cash.

(f)(1) If the person making an offer subject to subsection (a) is unable to provide an offered item because of limitations of supply, quantity, or quality not reasonably foreseeable or controllable by the person making the offer and the recipient does not choose to accept cash in an amount equal to the retail value of the item, as such value is represented within the written offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered, or shall inform the recipient of the recipient's right to at least one (1) of the following additional options:

(A) The person making the offer will provide a like item of equivalent or greater verifiable retail value or a rain check for the item. This option must be offered if the offered item is not reasonably available;

(B) The person making the offer will provide a substitute item of equivalent or greater verifiable retail value.

(2) If a rain check is provided, the person making an offer subject to subsection (a) shall, within a reasonable time, and in no event more than one hundred twenty (120) days after the raincheck is provided, deliver the agreed item to the recipient's address without additional cost or obligation to the recipient, unless the item for which the rain check is provided remains unavailable because of limitations of supply, quantity, or quality not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for these reasons, the person shall, not more than thirty (30) days after the expiration of the one-hundred-twenty-day period, deliver a like item of equal or greater value. The recipient has thirty (30) days from receipt of the delivered item to return the item and request cash in an amount equal to the retail value as represented within the written offer or the retail value represented of any substitute item offered, whichever is greater. The person making the offer shall provide payment within ten (10) days from return of the item.

(g) On the request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to subsection (a) shall show the recipient sufficient evidence verifying that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

(h) It is unlawful for any person making an offer subject to subsection (a), or any employee or agent of the person, to:

(1) Misrepresent the size, quantity, or identity of any prize, gift, money, or other item of value offered;

(2) Misrepresent in any material manner the odds of receiving any particular gift, prize, amount of money, or other item of value;

(3) Label any offer a “notice of termination” or “notice of cancellation”;

(4) Misrepresent, through omission or in any other material manner, the offer or program;

(5) Represent or lead a person to believe that the person is or could be a winner if the person had not won or is not eligible to win; or

(6) Represent or lead a person to believe that the person has been “selected” or is otherwise part of a select or special group when the person has not been selected or is not part of a select or special group. [Acts 1985, ch. 303, § 5; 1991, ch. 82, §§ 1-5; 1991, ch. 83, §§ 1-4; T.C.A., § 47-18-405.]

**66-32-306. Purchasers’ remedies.** — (a) A purchaser’s remedy for errors in or omissions from the membership camping contract and related materials delivered to the purchaser at the time of sale or any of the disclosures required in § 66-32-305 is limited to a right of rescission and refund of the purchase price paid by the purchaser. This limitation does not apply to errors or omissions from the contract or disclosures or other requirements of this part which are a part of a scheme to willfully misstate or omit the information required.

(b) Reasonable attorney fees shall be awarded to the prevailing party in any action under this part. [Acts 1985, ch. 303, § 6; T.C.A., § 47-18-406.]

**66-32-307. Prerequisites to selling membership camping contracts.** — With respect to any campground in this state acquired and put into operation by a membership camping operator after July 1, 1985, the membership camping operator shall not sell membership camping contracts in this state granting the right to use such campground until one (1) of the following requirements has been satisfied:

(1) Each person holding an interest in a blanket encumbrance shall have executed and delivered a nondisturbance agreement and such agreement shall have been recorded in the real estate records of the county in which the campground is located;

(2) The financial institution providing the major hypothecation loan to the membership camping operator, the “hypothecation lender”, shall have a lien on, or security interest in, the membership camping operator’s interest in the campground, and the hypothecation lender shall have executed and delivered a nondisturbance agreement and recorded such agreement in the real estate records of the county in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed, delivered, and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty (30) days to cure, any default under the blanket encumbrance before such person commences any foreclosure action affecting

the campground. For the purposes of this provision, a major hypothecation loan to a membership camping operator is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts;

(3) In the event the membership camping operator is selling real estate to purchasers, each person holding an interest in a blanket encumbrance shall have executed and delivered an agreement providing for periodic releases from the blanket encumbrance as real estate sales fees are paid on the debt. However, in such case, the membership camping operator shall have obtained an irrevocable letter of credit or surety bonds in favor of the holder of the blanket encumbrance insuring the completion of the roads and structural amenities which are promised for the project now being developed; or

(4) The membership campground operator whose project is subject to an underlying blanket lien or encumbrance may obtain the agreement of the lienholder to take the project, in the event of default by the developer, subject to the rights of the nondefaulting purchasers by posting a bond equal to fifty percent (50%) of the amount owed to the lienholder, making an assignment of receivables equal to one hundred twenty-five percent (125%) of the principal amounts due to the lienholder, pledging collateral security equal to one hundred percent (100%) of the amount owed to the lienholder or entering into any other financing plan or escrow agreement acceptable to the lienholder. [Acts 1985, ch. 303, § 7; T.C.A., § 47-18-407.]

**66-32-308. Violations — Penalties.** — (a) Any person who willfully violates any provision of this part commits a misdemeanor. It is a misdemeanor for any person in connection with the offer or sale of any camping club contracts willfully to:

(1) Make any untrue or misleading statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) Employ any device, scheme, or artifice to defraud; or

(3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) No indictment or information may be returned under this part more than two (2) years after the alleged violation. [Acts 1985, ch. 303, § 8; T.C.A., § 47-18-408.]

**66-32-309. Exemptions.** — The provisions of this part shall not apply to:

(1) Mobile home parks or camping or recreational trailer parks which are open to the general public and do not solicit purchases of membership camping contracts, but rather contain only camping sites rented for per use fee;

(2) Any person who engages in the business of arranging and selling reciprocal programs and who does not own campgrounds and facilities; or

(3) Sales of time-share intervals in a time-share project which is registered under the Tennessee Time-Share Act, compiled in part 1 of this chapter. [Acts 1985, ch. 303, § 9; T.C.A., § 47-18-409.]

**66-32-310. Violation of Tennessee Consumer Protection Act.** — A violation of this part shall constitute a violation of the Tennessee Consumer Protection Act, as set out in title 47, chapter 18, part 1. For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce. [Acts 1985, ch. 303, § 10; T.C.A., § 47-18-410.]

**66-32-311. Retail Installment Sales Act applicable.** — Membership camping contracts covered by this part shall be subject to the provisions of the Tennessee Retail Installment Sales Act, as set out in title 47, chapter 11. [Acts 1985, ch. 303, § 11; T.C.A., § 47-18-411.]

**66-32-312. Void agreement — Waiver of cancellation provisions.** — Any contractual agreement containing a waiver of the provisions of § 66-32-304 is contrary to public policy and is void and unenforceable. [Acts 1990, ch. 804, § 1; T.C.A., § 47-18-412.]



# RULES OF THE DEPARTMENT OF COMMERCE AND INSURANCE

## CHAPTER 0780-8-01

### RULES AND REGULATIONS FOR DEBT MANAGEMENT SERVICES

#### SECTION.

0780-08-01-.01. Purpose of Rules.  
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0780-08-01-.03. Retained Powers.  
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#### SECTION.

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**Editor's Notes.** At the time this publication went to press this chapter had not been finalized. The proposed language is set out below.

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#### **0780-08-01-.01. Purpose of Rules**

The purpose of these rules is to institute the registration and regulation of providers of debt-management services and to protect the interests of consumers as required by the Uniform Debt-Management Services Act.

**Authority:** *T.C.A. § 47-18-5501. Administrative History: Original rule filed*

**Editor's Notes.** At the time this publication went to press this regulation had not been finalized. The proposed language is set out above.

#### **0780-08-01-.02. Short Title**

These rules may be cited as the Tennessee Debt-Management Services Rules.

**Authority:** *T.C.A. § 47-18-5501. Administrative History: Original rule filed*

**Editor's Notes.** At the time this publication went to press this regulation had not been finalized. The proposed language is set out above.

#### **0780-08-01-.03. Retained Powers**

It is the express intent of these rules that such powers as are herein delegated by the Administrator are also retained and may be exercised by the Administrator at the Administrator's election.

**Authority:** *T.C.A. § 47-18-5501 and 47-18-5532. Administrative History: Original rule filed*

**Editor's Notes.** At the time this publication went to press this regulation had not been finalized. The proposed language is set out above.

#### **0780-08-01-.04. Definition**

(1) When used in these rules and in the Uniform Debt-Management Services Act, as amended, unless the context otherwise requires:

(a) “Act” shall mean Chapter 469 of the Public Acts of 2009, otherwise known as the Uniform Debt-Management Services Act, as amended, and its codification in Tennessee Code Annotated.

(b) “Director” shall mean the Director of the Consumer Affairs Division for the Department of Commerce and Insurance of the State of Tennessee, or any successor person authorized to exercise similar functions.

(c) “Division” shall mean the Director, staff, employees, and agents of the Consumer Affairs Division of the Department of Commerce and Insurance of the State of Tennessee or such other agency as shall administer the Act or any successor statute.

(d) “UAPA” shall mean the Uniform Administrative Procedures Act as set forth in T.C.A. § 4-5-101, et seq., and any rules promulgated thereunder to the extent such rules are not inconsistent with the Act or these rules.

(e) “Branch office” means any office of a provider within this state other than its principal place of business within this state.

(2) Unless the context otherwise requires or a rule expressly provides otherwise, terms defined in the Act shall have the same meaning when used in these rules.

**Authority:** T.C.A. §§ 47-18-5502 and 47-18-5532. **Administrative History:** Original rule filed

**Editor’s Notes.** At the time this publication finalized. The proposed language is set out went to press this regulation had not been above.

#### **0780-08-01-.05. Administration of the Act**

##### (1) General

(a) The Administrator delegates to the Director all of the power and duties granted to and imposed upon the Administrator by the Act except the power:

1. To issue orders and impose any sanction pursuant to T.C.A. §§ 47-18-5433 (a)(1),(2),(3) and (b), or 47-18-5534 (b) and (c) in any contested case, as such term is defined in the UAPA and

2. To adopt any rule as such term is defined in the UAPA;

(b) Without limiting the foregoing delegation, the Director is expressly empowered to:

1. Conduct examinations and investigations as provided by § T.C.A. 47-18-5532(b)

2. Issue registrations; and

3. Accept on behalf of the Administrator settlement agreements reached between the Division and any person pursuant to T.C.A. § 4-5-105.

4. Nothing herein limits the Director’s authority, duties, or responsibilities set forth elsewhere in state law, regulation or rule.

(c) Unless expressly required or requested, only the original executed copy of each form is required.

(d) Filing Requirements.

1. Applications, financial statements, reports, educational materials, and other information shall be filed on good quality white paper, 8 1/2 by 11 or 8 1/2 by 14 in size.

2. All documents filed with the Division shall be in clear and easily readable form and suitable for photocopying.

3. Exhibits may be attached or filed separately, properly marked or identified.

4. Each copy of educational materials and financial analysis models must be bound securely. The Division reserves the right to reject any such document the pages which are not securely bound together.

5. All applications, reports, financial statements, correspondence, educational materials, financial analysis models, exhibits and/or other information required or requested pursuant to the Act or the Debt-Management Services Rules may be submitted to the Division in the paper format prescribed in this subpart (d) or through electronic data gathering, access, retrieval, and storage methods acceptable to the Division.

(e) Upon a request for records under Tennessee's Public Records Act, T.C.A. § 10-7-501 et seq., the Division shall assess reasonable charges for the copying and associated labor.

**Authority:** T.C.A. §§ 47-18-5501, 47-18-5532, and 47-18-5534. **Administrative History:** Original rule filed

**Editor's Notes.** At the time this publication went to press this regulation had not been finalized. The proposed language is set out above.

#### **0780-08-01-.06. Applicability**

(1) The person forming an agreement to provide debt management services and any person to whom the account is then transferred are providers subject to the provisions of the Uniform Debt-Management Services Act, as codified at Tenn. Code Ann. §§ 47-18-5501, et seq.

(2) After October 1, 2010 any person conducting business in this state as a debt-management services provider must apply to the Division to become registered.

(3) Debt-management services do not include:

(a) legal services provided by an attorney authorized to practice law in good standing in Tennessee during the entire time services are provided and in an attorney-client relationship; or

(b) accounting services provided by a certified public accountant licensed to provide accounting services in good standing in Tennessee during the entire time services are provided and in an accountant-client relationship; or

(c) financial planning services provided in a financial planner-client relationship by a person who is either licensed as an insurance provider in good standing or registered as an investment adviser representative in good standing in this state and currently holds one of the following professional designations during the entire time services are provided:

1. Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, PA;

3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(d) services provided within the scope of the business or profession by:

1. A judicial officer; or person acting under court order or administrative order;
2. An assignee for the benefit of creditors;
3. A bank or government regulated bank affiliate;
4. A title insurer, an escrow company, or a person providing bill paying services if the provision of debt-management services is incidental to the bill-paying services.

**Authority:** T.C.A. §§ 47-18-5503 and 47-18-5532. **Administrative History:** Original rule filed

**Editor's Notes.** At the time this publication finalized. The proposed language is set out went to press this regulation had not been above.

#### **0780-08-01-.07. Registration Application**

(1) After October 1, 2010, applications for registration shall be submitted on forms approved by the Director.

(2) Any application submitted which lacks required information or reflects a failure to meet any requirement for registration will be held by the program office with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration sent to the applicant. The application will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed one hundred-eighty (180) days from the date of application. If the applicant fails to timely and completely respond to the written notification within the time-frame established by the written notification, the application will be closed.

(a) Upon determination that an application submitted directly to the Division has been abandoned, the Division shall by Order of Abandonment cancel the pending application without prejudice and, within thirty (30) days of such cancellation, mail a copy of the Order of Abandonment to the last known business address of the applicant.

(3) Any application submitted may be withdrawn, provided however, that the application fee shall not be refunded.

(4) Applications must be complete before they are submitted for consideration. After October 1, 2010, applications shall at a minimum include:

(a) A complete and properly executed application form signed under penalty of perjury and before a notary by the person applying; and

(b) Non-refundable application fee; and

(c) A surety bond as required by § T.C.A. 47-18-5513, or an acceptable surety alternative that complies with the provisions of § T.C.A. 47-18-5514; and

(d) Evidence of insurance as required by § T.C.A. 47-18-5504(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).

1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy.

2. The written notice of termination or reduction of the policy shall be sent by certified U.S. mail to the Division.

3. The insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy; and

(e) Articles of incorporation and by-laws of the applicant; and

(f) A description of any ownership interest of at least ten percent (10%) by a director, owner, or employee of the applicant in:

1. Any affiliate of the applicant; or

2. Any entity that provides products or services to the applicant or any individual related to the applicant's debt-management services; and

(g) Name and address of each corporate person that owns an interest or is otherwise affiliated with or controls, directs, or influences the operations of the applicant; and

(h) Name and address of each corporate person in which the applicant owns an interest or is otherwise affiliated with or whose operations are controlled, directed, or influenced by the applicant; and

(i) The names and addresses of all employers of each of the applicant's directors during the immediately preceding ten (10) years; and

(j) The names, addresses, and amounts of compensation for the five (5) most highly compensated employees for each of the three (3) years immediately preceding the application, or the period of the applicant's existence if less than three (3) years, if the applicant meets any of the criteria outlined in § T.C.A. 47-18-5506(17); and

(k) The identity of each director who is an affiliate as defined by § T.C.A. 47-18-5502(2); and

(l) Evidence of tax-exempt status under the Internal Revenue Code, 26 U.S.C. § 501, if applicant is a not-for-profit corporation and exempt from taxation; and

(m) Consent to jurisdiction of the State of Tennessee and venue in Davidson County, Tennessee; and

(n) Disclosure of and identification information for all trust accounts; and

(o) Irrevocable consent to authority of Administrator to review and examine all trust accounts; and

(p) Applicant's financial statements prepared in accordance with the provisions of § T.C.A. 47-18-5506(7); and

(q) Evidence of the applicant's accreditation by an independent accrediting organization approved by the Director; and

(r) Evidence of certification by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant; and

(s) Detailed descriptions of the three most common education programs provided for Tennessee consumers and copies of all materials associated with the education programs; and

(t) A description of the financial analysis and initial budget plan, including any form or electronic model used to evaluate the financial conditions of Tennessee consumers; and

(u) Copies of each agreement form used with Tennessee consumers and any other documents or information required to be signed or provided to a Tennessee consumer; and

(v) A schedule of all fees and charges, including any recommended donations, used with Tennessee consumers; and

(w) Sworn criminal-history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of doing debt-management services provider business, for every officer of the applicant and every employee or agent who is authorized to have access to the trust account(s). The sworn criminal-history records check must be submitted directly from the criminal-history records check provider to the Division.

1. Applicants that have had these sworn criminal history records checks performed for the purpose of doing debt-management services provider business in another state within twelve (12) months prior to submitting the registration application may have the results of those sworn criminal-history records submitted directly from the other state to the Division as certified business records of the other state; and

(x) Disclosure of any debt-management services agreements or plans entered into with Tennessee consumers since June 23, 2009; and

(y) Any other information required to determine whether the application should be approved or denied.

(5) An applicant shall notify the Division within ten (10) days after a change in any information originally reported in the initial registration application occurs.

**Authority:** T.C.A. §§ 47-18-5504, 47-18-5505, 47-18-5506, 47-18-5507, 47-18-5508, 47-18-5509, 47-18-5510, 47-18-5513, 47-18-5514, and 47-18-5532. **Administrative History:** Original rule filed

**Editor's Notes.** At the time this publication went to press this regulation had not been finalized. The proposed language is set out above.

### **0780-08-01-.08. Renewal of Registrations**

(1) Registrations shall expire on the last day of the twelfth (12th) month following their issuance or renewal, and shall become invalid on such date unless renewed prior to its expiration date.

(2) Renewal applications must be received by the Division not less than thirty (30) days nor more than sixty (60) days prior to the expiration of a registration.

(3) A provider choosing not to renew its registration shall notify the Division of its intention prior to the expiration date of the registration, and shall surrender the registration certificate to the Division immediately upon its expiration.

(4) Applications for the renewal of registrations shall be made on forms provided by the Director.

(5) Applications for renewals will not be considered filed until the applicable

fee prescribed in these rules and all other information required pursuant to the Act and the Debt-Management Services Rules are received.

(6) Applicants are responsible for annual renewal whether or not a notice of renewal is received from the Administrator.

(7) After October 1, 2010, an application for renewal of a debt-management services provider registration shall include at a minimum:

(a) A complete and properly executed renewal application form Signed under penalty of perjury and before a notary by the person applying; and

(b) Non-refundable renewal application fee; and

(c) A surety bond as required by § T.C.A. 47-18-5513, or an acceptable surety alternative that complies with the provisions of § T.C.A. 47-18-5514; and

(d) Evidence of insurance as required by § T.C.A. 47-18-5504(b)(4) in the amount of two hundred and fifty thousand dollars (\$250,000).

1. Any insurance policy submitted by a provider as evidence of insurance required by the Act shall include the insurer's written agreement to provide the Administrator with written notice of termination or reduction of the policy.

2. The written notice of termination or reduction of the policy shall be sent by certified U.S. mail to the Division.

3. The insurer's termination or reduction of liability shall be effective from and after the expiration of sixty (60) days from the Division's receipt of such written notice or on such later date as is stated in the written notice. The insurer's termination or reduction of liability shall not affect, reduce, or release its liability for any acts or practices that occurred during the time the policy was in force and prior to the effective date of termination or reduction of the policy; and

(e) Disclosure of any changes of information reported in the initial registration application or the immediately previous renewal application, as applicable; and

(f) Applicant's financial statements prepared in accordance with the provisions of § T.C.A. 47-18-5506(7); and

(g) Evidence of the applicant's accreditation by an independent accrediting organization approved by the Director; and

(h) Evidence of certification, by an independent certifying program approved by the Director, of all counselors and debt specialists conducting business in this state on behalf of the applicant; and

(i) Sworn criminal-history records checks, including fingerprints, conducted within the immediately preceding twelve (12) months for the purpose of doing debt-management services provider business, for every officer of the applicant and every employee or agent who is authorized to have access to the trust account(s). The criminal-history records check must be submitted directly from the criminal-history check provider to the Division.

1. Applicants that have had these criminal-records checks performed for the purpose of doing debt-management services provider business in another state within twelve (12) months prior to submitting the registration application may have the results of that background check submitted directly from the other state to the Division as certified business records of the other state; and

(j) Disclosure of the total amount of money received by the applicant from or on behalf of Tennessee consumers pursuant to debt-management services agreements and plans during the preceding twelve (12) month period, and the total amount of money distributed to creditors of those Tennessee consumers during the same twelve (12) month period; and

(k) Disclosure of the gross amount accumulated during the preceding twelve (12) month period pursuant to debt-management services plans by or on behalf of Tennessee consumers with whom the applicant has debt-management services agreements; and

(l) Any other information required to determine whether the application should be approved or denied.

(8) An applicant shall notify the Division within ten (10) days after a change in any of the information originally reported in the renewal application occurs.

**Authority:** *T.C.A. §§ 47-18-5504, 47-18-5506, 47-18-5511, 47-18-5513, 47-18-5514, and 47-18-5532. Administrative History: Original rule filed*

**Editor's Notes.** At the time this publication finalized. The proposed language is set out went to press this regulation had not been above.

#### **0780-08-01-.09. Fees**

(1) Nonrefundable debt-management services registration ..... \$2,000.00

(2) Renewal fee for debt-management services registration ..... \$2,000.00

**Authority:** *T.C.A. §§ 47-18-5505 and 47-18-5532. Administrative History: Original rule filed*

**Editor's Notes.** At the time this publication finalized. The proposed language is set out went to press this regulation had not been above.

#### **0780-08-01-.10. Submission of Information**

(1) An applicant or registrant shall inform the Division in writing of any change in business name or business structure within thirty (30) days before the change occurs. Debt-management services provider registrations are non-transferable.

(2) An applicant or registrant shall inform the Division in writing within ten (10) days of receipt of notice and provide a copy of:

(a) Any indictment or information filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent of the applicant or registrant or any person occupying a similar status with or performing similar functions for the applicant or registrant, alleging the commission of any felony regardless of subject matter, or of any misdemeanor involving a security or any aspect of the debt-management by services business.

(b) Any complaint filed in any court of competent jurisdiction naming the applicant or registrant, any affiliate, partner, officer, director, owner, or agent, or any person occupying a similar status with or performing similar functions for the applicant or registrant, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the debt-management services business; and

(c) Any complaint or order filed by a federal or state regulatory agency or the United States Post Office naming the applicant or registrant, any affiliate,

partner, officer, director, owner or agent, or any person occupying a similar status with or performing a similar function for the applicant or registrant, related to the debt-management services business.

(3) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any answer, response, or reply to any complaint, indictment, or information described in subparts (a) through (c) above.

(4) Within ten (10) days of receipt, an applicant or registrant shall file with the Division a copy of any decision, order or sanction that is made, entered or imposed with respect to any proceedings described in subparts (a) through (c) above.

(5) Nothing in paragraphs (2),(3), or (4) is intended to relieve the applicant or registrant from any duty the applicant or registrant has to comply with the legal process or any reporting requirements elsewhere specified in these rules or in the Act.

(6) Trust Accounts

(a) An applicant or registrant shall file with the Division a notice of relocation of trust accounts from one bank to another bank thirty (30) days prior to the date on which the relocation of the trust accounts becomes effective.

(b) In the event of the relocation of trust accounts from one bank to another, the applicant or registrant shall provide the new trust account numbers to the Division no later than two (2) days after receiving the new trust account numbers from the new bank.

(c) An applicant or registrant shall notify the Division of a theft from a trust account within five (5) days of discovery of the theft from the trust account.

**Authority:** T.C.A. §§ 47-18-5507, 47-18-5522, and 47-18-5532. **Administrative History:** Original rule filed

**Editor's Notes.** At the time this publication finalized. The proposed language is set out went to press this regulation had not been above.

**0780-08-01-.11. Standards of Practice**

(1) Code of Conduct

(a) Upon any request for additional information or upon receipt of notice of any written complaint against the provider, such party shall, within ten (10) business days, file a written answer to the request for additional information or to the complaint with the Director.

(b) A provider shall immediately determine the state of residence of a potential customer during the first contact with the potential customer. If the potential customer is a resident of the state of Tennessee, the provider shall notify the potential customer of its current registration status in the state of Tennessee in writing.

(c) A provider shall notify the Director in writing of the opening of a branch office as well as the name of the person responsible for the branch office, as well as the certified counselor(s) and certified debt specialist(s) working in the branch office no later than thirty (30) days prior to the opening of the branch office.

(d) A provider shall comply with all applicable federal and state laws and

rules in providing debt-management services and otherwise comply with all federal and state laws and rules applicable to it.

(e) A provider shall keep a consumer reasonably informed about the status of the debt-management services being performed for the consumer and shall promptly comply with the consumer's reasonable requests for information.

(2) A provider shall not use improper or questionable methods of soliciting consumers, including but not limited to misleading or deceiving consumers or utilizing scare tactics or other improper tactics and shall not pay another person or accept payment from another person for engaging in these improper methods.

(3) A provider shall not associate its business with any business or person that engages in or attempts to engage in unfair, deceptive, or misleading practices or acts with consumers.

(4) Unless responding to a request for information, subpoena or order issued by a regulatory agency, law enforcement agency, or court of competent jurisdiction, a provider shall not disclose any consumer information obtained relative to a debt-management services agreement or plan performed to someone other than the consumer unless the disclosure is expressly authorized in writing by the consumer.

(5) A provider shall not misrepresent its debt-management services, the features of any service, or make unwarranted claims about the merits of a service that the provider offers.

(6) A provider shall not accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the consumer in connection with work for which the provider is responsible.

(7) Before the execution of an agreement for debt-management services, a provider shall clearly and conspicuously disclose to the consumer any interest in a business that may affect the consumer. No provider shall allow its interest in any business to affect the quality or results of the debt-management services that the provider may be called upon to perform.

(8) A provider shall fully comply with all Federal Trade Commission rules, regulations and guidelines including but not limited to the Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 CFR Part 255.

(9) A provider shall not engage in false or misleading advertising.

(10) A provider shall not perform or recommend any debt-management services that would violate applicable federal or state laws.

(11) A provider shall not engage in deceptive or unfair trade practices. Examples of deceptive or unfair trade practices include but are not limited to:

(a) proposing or communicating any alteration of a material term of a debt-management services agreement or plan to a consumer or a consumer's creditor without first receiving explicit written instructions from a consumer directing the provider to make a specific alteration; or

(b) expressly or impliedly representing that any of its goods or services are "free" if the consumer will be asked to make any payment in connection with the goods or services, other than a payment that will be forwarded in its entirety to the consumer's creditors. A provider may represent that a consultation or other initial contact is "free" if the consultation or contact is provided

with no obligation by the consumer to make any payment in connection with the consultation or contact; or

(c) expressly or impliedly representing that any payments made by consumers in connection with providers are voluntary contributions, or are payments to support a non-profit organization, unless at least 51% of the payment is paid to or for the benefit of the nonprofit organization for purposes other than to pay provider for services rendered to a nonprofit organization; or

(d) expressly or impliedly misrepresenting the effects of a debt-management plan on a consumer's ability to obtain credit; or

(e) enrolling a consumer into a debt-management plan unless, prior to enrollment, the consumer has received credit counseling that includes access to a credit counselor who has sufficient experience and training to counsel consumers in financial literacy, money management, budgeting and responsible use of credit and is advised of the various options available to the consumer for addressing the consumer's financial problems; or

(f) enrolling a consumer into a debt-management plan if the consumer's estimated monthly living expenses and estimated monthly provider payments exceed their income. A consumer in this situation may be enrolled in a debt-management plan if the consumer is specifically advised not to enroll into a debt-management plan because the consumer cannot afford the debt-management plan payment and the consumer independently states that the consumer believes that the consumer can afford the debt-management plan payment by reducing expenses, obtaining additional income or funds from another source, or otherwise adjusting the budget estimate to make the debt management plan affordable; or

(g) disclosing or using any consumer's private financial and personal information that the providers receive in connection with providing debt-management services except in accordance with and as permitted by applicable law, but not limited to, the Gramm Leach Bliley Act, 15 U.S.C.A. § 6801, et seq.; or

(h) entering into any agreement with any person that contains any standards or criteria under which the person must enroll consumers into a debt-management plan; or

(i) entering into any agreement with any person that sets any minimum enrollment rate, or other standard mandating the number of consumers who must be enrolled into debt-management plans or an amount that the person must collect from consumers; or

(j) entering into any agreement with any person that sets any minimum revenues, or other standards mandating the amount of revenue that must be generated through a debt-management plan; or

(k) using the name or mark of a person other than the provider when communicating with consumers or creditors in connection with the performance of debt-management services; or

(l) entering into any agreement with a third-party that limits the use of any data reflecting either the provider's or the third-party's performance of any debt-management services, including data reflecting the payments that either the provider or the third-party has processed or is processing in connection with a debt-management plan; or

(m) expressly or impliedly misrepresenting the purpose of any fee or contribution that is paid by consumers; or

(n) failing to clearly and conspicuously disclose the nature and types of services that will be provided under any agreement prior to the consumer's agreeing to receive such services; or

(o) debiting, cashing, depositing or otherwise collecting or attempting to collect monies from a consumer after a consumer has asserted a violation of state law, regulation or rule in the debt-management plan services process; or

(p) using logos, symbols, business names or the like that might represent or imply to a consumer an affiliation or association with any government entity; or

(q) failing to have full and complete substantiation for any and all claims and representations made to consumers and in any advertising or promotional materials upon request to the Division; or

(r) submitting any false, misleading or deceptive information to the Division relating to a registration application or renewal application; or

(s) failing to comply with all of the prerequisites for providing debt-management services outlined in § T.C.A. 47-18-5417 and/or any applicable federal laws, regulations or rules.

**Authority:** T.C.A. §§ 47-18-104, 47-18-5515, 47-18-5528, and 47-18-5532.

**Administrative History:** Original rule filed

**Editor's Notes.** At the time this publication finalized. The proposed language is set out went to press this regulation had not been above.

### **0780-08-01-.12. Examinations, Records, and Reports**

#### **(1) Recordkeeping Requirements**

(a) A registrant shall retain copies of all records for five (5) years from the date of completion or cancellation of an educational program, financial analysis or debt-management services agreement. If the registrant has been notified in writing by the Director to retain records for a longer period of time, the registrant shall retain records beyond this time period as requested.

(b) Every debt-management services provider registered in this state shall make and keep current the following books and records relating to its business, at a minimum.

1. Ledgers reflecting all assets and liabilities, income and expense and capital accounts.

2. A record or ledger reflecting separately for each consumer the clearance dates all money received from each consumer and all payments made on behalf of each consumer, and in all cases the name of the consumer in which the money has been received or paid.

3. Copies of all communications, correspondence, and other records relating to debt-management services agreements and plans with, about or on behalf of consumers.

4. A separate file containing all written complaints made or submitted by consumers to the debt-management services provider or counselors or debt specialists relating directly or indirectly to debt-management services, and any records received or produced in the course of investigating and resolving the consumer complaints.

5. The personnel or contractor records for any employee, agent or contractor of the debt-management services provider about whom the debt-management services provider's business has received complaints from consumers regarding any conduct relative to the debt-management services provider's business.

6. A consumer information form for each consumer. If recommendations are to be made to the consumer, the form shall include such information as is necessary to determine suitability.

7. A record of the proof of money balances of all trust accounts. Such balances shall be prepared currently at least once a month.

8. All partnership certificates and agreements or, in the case of a corporation, all articles of incorporation, by-laws, minute books and stock certificate books of the debt-management services provider.

9. A separate file containing copies of all advertising circulated by the debt-management services provider in the conduct of its debt-management services provider business.

(2) Every provider shall make and keep such accounts, correspondence, and other records as the Administrator prescribes by rule.

(a) All activities, books, accounts, and the records of a provider or a person to which a provider has delegated its obligations under an agreement are subject at any time and from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the Administrator, as the Administrator deems necessary or appropriate in the public interest or for the protection of consumers or the Act.

(b) The cost of such examination shall be borne by the person examined in the same manner as is then provided for insurance companies; provided that not more than two (2) such examinations shall be charged to such person in any twelve-month period.

**Authority:** T.C.A. §§ 47-18-5506, 47-18-5512, and 47-18-5532. **Administrative History:** Original rule filed

**Editor's Notes.** At the time this publication went to press this regulation had not been finalized. The proposed language is set out above.

### **0780-08-01-.13. Severability**

If any Rule, term or provision of this Chapter shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other Rule, term or provision of the Chapter, and the remaining Rules, terms and provisions shall be and remain in full force and effect.

**Authority:** T.C.A. §§ 47-18-5541. **Administrative History:** Original rule filed

**Editor's Notes.** At the time this publication went to press this regulation had not been finalized. The proposed language is set out above.

# RULES OF TENNESSEE MOTOR VEHICLE COMMISSION

## CHAPTER 0960-1 GENERAL RULES

### SECTION.

- 0960-1-.01. Definitions.
- 0960-1-.02. Warranty Service.
- 0960-1-.03. Warranty Charges and Sales Incentives Audits.
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### SECTION.

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- 0960-1-.26. Salesperson Licenses.
- 0960-1-.27. Lemon Law.

### **0960-1-.01. Definitions**

For the purposes of these rules and T.C.A. § 55-17-101 et seq. and unless the context requires otherwise:

(1) the term "representative" shall include regional, zone or district executive sales, service and parts personnel whose area of responsibility includes Tennessee and whose duties include contacting motor vehicle dealers or their employees in Tennessee and every other person employed by a motor vehicle manufacturer or distributor, directly or indirectly, to call upon or contact motor vehicle dealers or their employees in Tennessee concerning new motor vehicle sales, advertising, service, parts, business management, used motor vehicle sales or for any other purpose.

(2) the term "labor rate" shall mean the total labor cost including salary and benefits, overhead and profit attributable to employees of a motor vehicle dealer performing or assisting in the performance of warranty repairs or servicing.

(3) the term "labor rate per hour" shall mean the labor rate per hour attributable to employees of a motor vehicle dealer performing or assisting in the performance of warranty repairs or servicing.

(4) the term "warranty repairs or servicing" shall mean the actual work or service, including reasonable diagnostic time, performed by a motor vehicle dealer under the terms of a valid, new car manufacturer's warranty.

(5) the term "retail labor rate" shall mean the total labor cost including

salary and benefits, overhead and profit attributable to employees of a motor vehicle dealer performing or assisting in the performance of repairs or servicing of vehicles not covered by a new car manufacturer's warranty.

(6) the term "posted retail labor rate" shall mean the "retail labor rate" as defined in Rule 0690-1-.05 (5) which has been filed by a motor vehicle dealer with the Tennessee Motor Vehicle Commission pursuant to T.C.A. § 55-17-121 (a).

(7) the term "manual" shall mean the standard rate manual published by the manufacturer of a line-make or trade name of motor vehicle or any component thereof stating the standard time units required or allotted to perform specific warranty repairs or servicing.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule certified May 31, 1974. Repealed and refiled October 23, 1978; effective January 29, 1979.

#### **0960-1-.02. Warranty Service.**

A franchised motor vehicle dealer shall perform warranty repairs or servicing on all motor vehicles of the same trade name or line-make that the dealer is licensed to sell whether the dealer sold the motor vehicle or not.

**Authority:** T.C.A. §§ 55-17-107. **Administrative History:** Original rule was certified May 31, 1974. Repealed and refiled October 23, 1978, effective January 29, 1979.

#### **0960-1-.03. Warranty Charges and Sales Incentives Audits.**

(1)(a) All charges made by a motor vehicle dealer to a manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative for warranty repairs or servicing shall be submitted within thirty (30) days after such repairs or servicing is completed. All such claims for warranty repairs or servicing properly submitted shall be deemed approved and shall be promptly paid, unless within sixty (60) days after such claims are received, the manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative provides the submitting dealer with written notice that the claim or claims are rejected and the reason therefore. A manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative may, within twelve (12) months after the payment of a warranty claim, review its action, audit the submitting dealer's records and disallow the claim for good cause.

(b) A manufacturer, distributor, manufacturer or distributor branch, or manufacturer or distributor representative may, within twelve (12) months after the payment of sales incentives, review its action, audit the submitting dealer's records and disallow the claim for good cause.

(2) Unless a motor vehicle dealer's franchise agreement with a manufacturer or distributor provides to the contrary, a motor vehicle dealer is required to retain parts replaced during warranty repairs or services for a period of thirty (30) days after the date the dealer submits a claim for warranty reimbursement to the manufacturer or distributor for the repairs or servicing in which the part or parts were replaced.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule certified

*file* May 31, 1974. Repealed and *refile* October 23, 1978; effective January 29, 1979. Repeal and new rule *file* July 23, 2010; effective October 21, 2010.

**0960-1-.04. Computation of Warranty Charges.**

A motor vehicle dealer's charge for warranty repairs or servicing of a vehicle shall be computed by multiplying the sum of the hours or portions thereof allotted to the particular warranty repair or service by the manual of the manufacturer of the line-make of motor vehicle being repaired or services and the actual hours or portions thereof spent diagnosing the condition or problem requiring warranty repair or service multiplied by the "labor rate per hour".

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule *certifie* May 31, 1974. Repealed and *refile* October 23, 1978; effective January 29, 1979.

**0960-1-.05. Approval of Requested Labor Rates.**

A manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative shall either approve or disapprove, in writing, a motor vehicle dealer's request for an adjustment in labor rate charged to the manufacturer or distributor for warranty repairs of servicing within thirty (30) days following receipt of the request for warranty labor rate adjustment.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule *certifie* May 31, 1974. Repealed and *refile* October 23, 1978; effective January 29, 1979.

**0960-1-.06. Notice of Termination, Cancellation or Non-Renewal.**

(1) In the event that a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative determines that the franchise of an existing motor vehicle dealer should be terminated or cancelled or should not be renewed, it shall give written notice to the dealer and to the Tennessee Motor Vehicle Commission at least sixty (60) days prior to the effective date of the termination, cancellation or non-renewal. This notice shall contain a concise statement of the reasons for the termination, cancellation or non-renewal of the franchise. Upon application of the person canceling, terminating or failing to renew a franchise and with notice to the dealer affected thereby, the Commission may permit a cancellation, termination or non-renewal of a franchise upon less than sixty (60) days notice, if it determines in writing that a lesser notice period is justified in light of the circumstances surrounding the cancellation, termination or non-renewal.

(2) Failure of a manufacturer, distributor, manufacturer or distributor branch or manufacturer or distributor representative to give adequate notice pursuant to Rule 0960-1-.05 (1) or to keep the franchise in full force and effect pending a final determination by the Commission or to abide by the Commission's final order may result in the Commission's refusal to issue a motor vehicle dealer's license to another dealership selling the same trade name and linemake of motor vehicles as the affected dealer or doing business in the same relevant market area as the affected dealer. This remedy is in addition to any other remedy provided in T.C.A. § 55-17-101 et seq.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule certified May 31, 1974. Repealed and refilled October 23, 1978; effective January 29, 1979.

**0960-1-.07. Zoning Restrictions.**

All applicants for a motor vehicle dealer's license shall file with their application a statement from the proper local authority that the location or the proposed location of the dealer's established place of business complies with all applicable local zoning requirements.

**Authority:** T.C.A. §§ 55-17-107 and 55-17-111 (a). **Administrative History:** Original rule filed February 5, 1979; effective May 28, 1979.

**0960-1-.08. Dealer Applications.**

(a) An applicant for a license to sell used motor vehicles shall comply with T.C.A. § 55-17-111 and shall provide the Commission with all information required by this section.

(b) Applicants are required to provide to the Commission, and keep current, the names of any inventory financiers, i.e. "floor planners" used by the dealership.

(c) If an applicant has not supplied all the necessary materials within one hundred twenty (120) days from the date of any request for further information by the Commission, the application shall be deemed expired.

**Authority:** T.C.A. §§ 55-17-107 and 55-17-111. **Administrative History:** Original rule filed February 5, 1979; effective May 28, 1979. Amendment filed November 15, 2000; effective January 30, 2001. Repeal and new rule filed August 20, 2008; effective November 3, 2008.

**0960-1-.09. Signs.**

All motor vehicle dealers shall install signs at their established place of business identifying them as a motor vehicle dealer. Such sign shall consist of letters no less than eight (8) inches in height and shall not advertise any other business or product.

**Authority:** T.C.A. §§ 59-1702(a) and 59-1707(a). **Administrative History:** Original rule filed February 5, 1979; effective May 28, 1979.

**0960-1-.10. Reasonable Business Hours.**

All motor vehicle dealers shall be open at their established place of business during reasonable business hours, and these hours shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign. For this section, "reasonable business hours" means at least three days a week for a minimum of twelve hours (12) total during the week. The reasonable business hours must be between 8:00 a.m. and 7:00 p.m., and at least eight (8) of the hours must be on Monday, Tuesday, Wednesday, Thursday or Friday.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule filed February 5, 1979; effective May 28, 1979. Repeal and new rule filed August 20, 2008; effective November 3, 2008.

**0960-1-.11. Inspection of Business Records.**

(1) All persons licensed by the Commission shall make available for inspection

tion during normal business hours by the Commission or their duly authorized representatives, all books, records and other memorandums of all transactions, transfers and/or sales of motor vehicles and dead files (any paperwork from an uncompleted deal where a credit application is received or a buyer's/purchase order is prepared).

(2) All records shall be kept on site or at a location where the records can be accessed in a reasonable amount of time. Records may be kept in written or electronic format.

(3) All business records shall be kept for the period of time required by state or federal law or regulation.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule file February 5, 1979; effective May 28, 1979. Repeal and new rule file August 20, 2008; effective November 3, 2008.

### **0960-1-.12. Advertising of Motor Vehicles.**

#### (1) General Principles.

(a) All advertising in any form of media including any oral, written, graphic or pictorial statement made in the course of soliciting business, including without limitation, a statement or representation contained in a notice, sign, poster, display, circular, pamphlet, or letter, on radio, the Internet, via an on-line computer service, or on television, must conform to all applicable provisions of this chapter in addition to any other applicable Tennessee state or federal laws and regulations.

(b) False, misleading or deceptive advertising of motor vehicles is prohibited.

(c) Any disclosures of material facts in the advertising of motor vehicles must be made in a clear and conspicuous manner.

#### (2) Advertising of New Motor Vehicles.

(a) If a motor vehicle advertisement pertains to a specific new vehicle, the advertisement must indicate the stock number of that vehicle.

(b) If a motor vehicle advertisement pertains to a new vehicle which is not then in stock, the advertisement must disclose that the vehicle is to be ordered from a manufacturer, distributor, wholesaler or other identified source.

(c) A group of similar motor vehicles may be advertised by one stock number, as long as the advertised price of each vehicle of that group is the same.

#### (3) Advertising of Used Motor Vehicles.

(a) If an advertised motor vehicle is required by T.C.A. Title 55, Chapter 3 to be titled as a used motor vehicle, the advertisement shall disclose that the motor vehicle is "used", or "pretitled", or "previously owned", or words of similar import or intent.

(b) If a motor vehicle advertisement pertains to either a specific used vehicle or group of used vehicles, the advertisement must indicate the stock number of at least one of the vehicles.

#### (4) Price Advertising.

(a) If the price of a motor vehicle is advertised, the advertisement:

1. Shall include in the advertised price all costs and charges and any additional fees payable by the purchaser of the vehicle advertised.

2. Shall separately describe any additional fee includable under (a)(1) of this paragraph, and state clearly and conspicuously the amount thereof.

3. Shall state the following are not included in the advertised price:

- (i) the cost of optional equipment selected by the purchaser; and
- (ii) State and local taxes, tags, registration and title fees.

4. Shall not state an advertised price which includes any trade-in allowance, downpayment, capitalized cost reduction or any funds which the consumer is expected to pay in order to reduce the cost of the vehicle to the advertised price, other than rebates from the manufacturer or distributor to all consumers. However, the use of a down payment or a capitalized cost reduction as a term of credit is acceptable. If the rebate from manufacturers or distributors to all customers is utilized in order to reduce the price, then that fact must be disclosed in the advertisement.

5. If on a new motor vehicle, shall not state that the advertised price has been discounted unless the price is discounted from the manufacturers suggested retail price (M.S.R.P.).

(b) When the "suggested retail price" of a new motor vehicle is advertised by a manufacturer, distributor, factory representative, or distributor representative, that price must include all charges (other than those for optional equipment); except, however, that destination charges and sales taxes must be specifically excluded.

(c) No motor vehicle advertisement may indicate the price of a motor vehicle in terms of the "invoice," "factory invoice," or "dealer invoice" unless:

1. The invoiced price is the actual price of the manufacturer or distributor to the dealer; and

2. The advertisement discloses any other material factors that may affect the ultimate cost to the dealer, such as manufacturer incentives and awards and dealer hold back.

(d) Unsubstantiated selling claims and misleading statements or inferences including the use of superlatives are strictly prohibited. Examples include: "write your own deal," "name your own price," "we are number 1 in car sales," "lowest price in the south."

(e) If the price and/or terms of sale or lease of a specific motor vehicle, or group of motor vehicles is advertised, the motor vehicle(s) shall be presented and sold at the advertised price and/or terms. Unless the advertisement states that the advertised price and/or terms are effective for only a specific time period or expire at a specific time, the period of time the price and/or terms remain effective is five (5) days following the last date said advertisement is published in any advertising medium.

(5) Reduced interest rates. No reduced interest rate on motor vehicle financing may be advertised if the cost thereof should be directly or indirectly borne by the buyer unless the advertisement discloses that such rate will affect the negotiated price of the vehicle to the buyer.

(6) Trade-in allowance. No motor vehicle advertisement may include a "guarantee" or "minimum" trade-in allowance unless the advertisement also states the price of the vehicle in accordance with paragraph (4) of this rule.

(7) Identification. All advertising in all forms of media, including computer generated advertising, initiated from this state shall identify the motor vehicle dealer by name and/or dealer license number.

(8) Credit Sales Advertising and Federal Regulation Z as issued by the Board of Governors of the Federal Reserve System. An advertisement which complies with the Federal Truth in Lending Act (15 U.S.C. § 160 et seq.) and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this section. Any advertisement not in compliance with these Federal provisions constitutes violation(s) of this rule.

(9) Lease Advertising and Federal Regulation M as issued by the Board of Governors of the Federal Reserve System. An advertisement which complies with the Consumer Leasing Act of 1976 (15 U.S.C. § 1601 et seq.) and amendments thereto, and any regulations issued or which may be issued thereunder, shall be deemed in compliance with the provisions of this section. Any advertisement not in compliance with these Federal provisions constitutes violation(s) of this rule.

(10) Free offers. "Free," "at no cost" or other words to that effect shall not be used unless the "free" item, merchandise, or service is available without a purchase. The provision shall not apply to advertising placed by manufacturers, distributors, or line-make marketing groups. An advertisement which complies with the Federal Trade Commission guidelines at 16 CFR 251.1 and the Consumer Protection Act of 1977, Tennessee Code Annotated, Section 47-18-120, concerning free offers in connection with negotiated sales shall be deemed in compliance with the provisions of this section. Any advertisement not in compliance with these provisions constitutes violation(s) of this rule.

(11) Advertising Repossessed Vehicles or Special Loans on Vehicles. Advertising of "repossessed" vehicles, or any inference made to that effect, will be construed to be misleading or deceptive unless such vehicle has been repossessed from an immediate former owner. Additionally, a dealer shall not advertise in any manner as to infer that a purchaser will be receiving benefits of any existing loan on a vehicle when no such benefit or loan exists.

**Authority:** T.C.A. § 55-17-107(1). **Administrative History:** Original rule file August 16, 1988; effective September 30, 1988. Amendment file January 18, 1991; effective March 4, 1991. Amendment file November 15, 2000; effective January 30, 2001.

### **0960-1-.13. Civil Penalties.**

(1) The Commission may, in a lawful proceeding respecting any individual or entity required to be licensed, registered or certified or who is otherwise subject to regulation by the Commission, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to such individual/entity. The amount of any such civil penalty assessed shall be a minimum of one hundred dollars (\$100.00) and shall not exceed five thousand dollars (\$5000.00) for each day of violation or for each act of violation.

(2) In determining the amount of a civil penalty the Commission may consider the following factors:

(a) whether the amount imposed will be a substantial economic deterrent to the violator;

(b) the circumstances leading to the violation;

- (c) the severity of the violation and the risk of harm to the public;
- (d) the economic benefits gained by the violator as a result of non-compliance; and
- (e) the interest of the public.

(3) For purposes of the assessment of civil penalties pursuant to this rule, each separate act shall constitute a separate violation, and each day of continued violation shall constitute a separate violation.

**Authority:** T.C.A. §§ 55-17-107, 55-17-117 and 56-1-308. **Administrative History:** Original rule file February 16, 1990; effective April 2, 1990. Amendment file March 17, 2005; effective May 31, 2005. Repeal and new rule file August 20, 2008; effective November 3, 2008.

#### **0960-1-.14. License Fees.**

(1) The biennial license fees for licenses issued and renewed and other related fees shall be as follows:

(a) For each manufacturer, distributor, factory branch, distributor branch, one thousand six hundred dollars (\$1,600.00);

(b) For each manufacturer, distributor, fifty dollars (\$50.00) per franchised dealer in Tennessee;

(c) For each motor vehicle dealer selling new or used motor vehicles, four hundred dollars (\$400.00);

(d) For each factory representative or distributor representative, four hundred dollars (\$400.00);

(e) For each motor vehicle salesman, thirty-five dollars (\$35.00);

(f) For each application for endorsement of change of employer for a motor vehicle salesman by an employer, thirty-five dollars (\$35.00);

(g) For each automotive dismantler and recycler, four hundred dollars (\$400.00);

(h) For each automobile auction, eight hundred dollars (\$800.00);

(i) For each motor vehicle show permit, two hundred dollars (\$200.00);

(j) For each duplicate license, twenty-five dollars (\$25.00);

(k) For each name change, including additional line-make, four hundred dollars (\$400.00);

(l) A four hundred dollar (\$400.00) fee will be assessed per re-inspection of an applicant when re-inspection is necessitated by an action or inaction of the applicant;

(m) Twenty-five percent (25%) of all license application fees will be forfeited if the applicant fails to submit all required documentation within ninety (90) days of receipt of the application. Documents will be returned to the applicant after ninety (90) days from the initial receipt.

**Authority:** T.C.A. §§ 55-17-107(1), 55-17-111, and 55-17-112(a). **Administrative History:** Original rule file July 14, 1989; effective August 28, 1989. Amendment file March 29, 1993; effective May 13, 1993. Amendment file November 15, 2000; effective January 30, 2001. Repeal and new rule file July 23, 2010; effective October 21, 2010.

#### **0960-1-.15. Liability Insurance and Workers' Compensation.**

(1) An applicant for a motor vehicle dealer license or an automobile auction license shall submit to the Commission with each application for license a

certificate of comprehensive garage liability insurance, which covers all premises and operations as listed in the application for license, in a minimum amount of coverage of Three Hundred Thousand Dollars (\$300,000.00) per occurrence.

(2) The minimum required coverage must remain and continue in force for as long as the dealer or automobile auction remains licensed. Upon notice of cancellation, the licensee shall either cease business operations until proof of minimum coverage is provided, or provide evidence of minimum coverage from another provider.

(3) All motor vehicle dealers shall comply with the applicable workers' compensation laws of the State of Tennessee.

**Authority:** T.C.A. §§ 55-17-107. **Administrative History:** Original rule file November 15, 2000; effective January 30, 2001. Repeal and new rule file August 20, 2008; effective November 3, 2008. Repeal and new rule file July 23, 2010; effective October 21, 2010.

#### **0960-1-.16. Automobile Auction Minimum Requirements.**

(1) Except as otherwise provided in this Chapter or state law, automobile auctions shall be licensed by the Motor Vehicle Commission and shall be wholesale transactions wherein the buyers are licensed motor vehicle dealers or their authorized agents. Unlicensed individuals are prohibited from buying automobiles or other motor vehicles at automobile auctions. Motor vehicle dealers may bring no more than five (5) employees with them to an automobile auction to assist them in the evaluation of automobiles offered for auction and/or the transportation of those automobiles purchased. These employees are not permitted to participate in the auction process (bidding, buying or selling).

(2) The following are minimum requirements for licensed automobile auctions:

(a) Zoning — The automobile auction must have a letter of compliance with local ordinances from the local zoning authority.

(b) Insurance

1. The automobile auction must have garage keepers legal liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00); and

2. Check and title insurance approved by the Commission.

(c) Surety Bond — The automobile auction must have a \$50,000.00 surety bond issued by a licensed bonding company.

(d) Financial

1. The automobile auction must have a compiled financial statement prepared in accordance with generally accepted accounting principles by a certified public accountant or public accountant dated not earlier than twelve (12) months prior to the date of the application and must furnish a copy of the same to the Commission along with any changes to the statement; and

2. The automobile auction must have a minimum net worth of at least \$100,000.00.

(e) Building — The automobile auction lot must have a building suitable for vehicles to pass through for viewing and auctioning purposes, an office

space for processing sales and for retention of records, and adequate rest room facilities.

(f) Auction Lot — The automobile auction lot must be graveled or paved and large enough to accommodate parking for 100 vehicles.

(g) Fence — The auction building and lot must be fenced to keep out unauthorized people (e.g. chain link fence).

(h) Employee at entrance — An employee must be at entrances at least one hour prior to the auction sale and on station until the auction is completed to check for dealer/salesman licensing credentials. In the alternative, subject to the Commission's approval, a licensed automobile auction may establish a registration procedure by which licensure and other credentials are verified and identification cards issued which are checked at the entrance to the auction.

(i) Telephone — The automobile auction must have a business telephone in the auction company name. Cellular telephones are not acceptable.

(j) Sign — All signs must be visible, and a permanent professional business sign must be installed and must have letters which are at least 8 inches tall.

(k) Business Tax — The automobile auction must hold a current business tax license as required by local applicable law.

(l) The automobile auction must obtain and have displayed on its premises a valid license from the Motor Vehicle Commission.

(m) The automobile auction must obtain and have displayed on its premises a valid license from the Tennessee Auctioneer Commission.

**Authority:** T.C.A. §§ 55-17-107, 55-17-109 and 55-17-111. **Administrative History:** Original rule file November 15, 2000; effective January 30, 2001. Amendment file August 20, 2008; effective November 3, 2008.

#### **0960-1-.17. Motor Vehicle Shows.**

(1) A motor vehicle show is any display, except as provided herein below, of motor vehicles by one or more manufacturers, distributors or motor vehicle dealers.

(2) A motor vehicle show permit must be obtained from the Motor Vehicle Commission by the sponsor or promoter thereof no later than ten (10) days prior to the commencement of the motor vehicle show. The permit, or copy thereof, shall be prominently displayed at any entrance into the motor vehicle show.

(3) A motor vehicle show permit shall be good for seven (7) days and may be renewed one (1) time.

(4) The applicant shall provide to the Commission the names and addresses of each manufacturer, distributor or motor vehicle dealer displaying motor vehicles at the show.

(5) The sales price of each motor vehicle displayed at the show shall be prominently displayed with the vehicle. Any warranty information associated with the vehicle must be available upon request.

(6) Any manufacturer, distributor, motor vehicle dealer or other person displaying motor vehicles at a motor vehicle show shall have a representative present at all times during the motor vehicle show.

(7) No sales, or negotiations leading to the sale, of motor vehicles, other than non-motorized camping trailers and travel trailers as provided by T.C.A. Title 55, Chapter 17 et seq., may take place at the motor vehicle show.

(8) A manufacturer, distributor or motor vehicle dealer may display at a single location without obtaining a motor vehicle show permit, provided that no representatives of the displayer are present and that no sales solicitations or activities take place, at the following locations:

(a) The interior common areas of shopping malls, hotels or convention centers;

(b) The interior of wholesale shopping clubs;

(c) County, regional or state fairs;

(d) Agricultural events and educational demonstrations;

(e) Sporting and entertainment events in conjunction with the sponsorship thereof;

(f) Commercial airport terminals.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule file November 15, 2000; effective January 30, 2001. Repeal and new rule file August 20, 2008; effective November 3, 2008.

#### **0960-1-.18. Exemptions for Auctions of Motor Vehicles for Estate Sales and for Nursing or Health Care Home Expenses.**

(1) The following shall be exempt from the licensing provisions of this Chapter:

(a) Estate Auctions. Up to five (5) motor vehicles owned and titled to the individual decedent may be placed for sale at auction with the decedent's other personal property.

(b) Auction Sales for Expenses to be Utilized for Nursing or Health Care Home Expenses Purposes. Up to five (5) motor vehicles owned and titled to the individual for whom proceeds from the sale will be used to fund nursing or health care home expenses may be placed at auction.

**Authority:** T.C.A. § 55-17-107(1). **Administrative History:** Original rule file November 15, 2000; effective January 30, 2001.

#### **0960-1-.19. Compliance with State and Federal Laws and Regulations.**

(1) All motor vehicle licensees licensed pursuant to this Chapter shall comply with all applicable Tennessee and federal laws and regulations.

(2) These rules shall in no way be construed to exempt any person from any other provision of Tennessee or federal laws and regulations.

**Authority:** T.C.A. §§ 55-17-107(1) and 55-17-118. **Administrative History:** Original rule file November 15, 2000; effective January 30, 2001.

#### **0960-1-.20. Sales of Used Motor Vehicles by Unlicensed Individuals.**

(1) Unless otherwise provided by T.C.A. Title 55, Chapter 17 et seq., and these regulations, an individual may sell or offer to sell up to five (5) used motor vehicles registered and titled in his/her name within a twelve (12) month period without a motor vehicle dealer's license.

(2) Selling for or contracting with other unlicensed third parties for the sale of used vehicles titled in a third party's name is strictly prohibited.

(3) If an individual sells or offers to sell more than five (5) vehicles within a twelve (12) month period, he/she shall be found in violation of this rule for engaging in the unlicensed sale of motor vehicles.

(4) "Individual," as used in this section, includes, but is not limited to, any person or persons living together in a single household.

**Authority:** T.C.A. §§ 55-17-107; 55-17-109 and 55-17-110. **Administrative History:** Original rule file November 15, 2000; effective January 30, 2001. Repeal and new rule file August 20, 2008; effective November 3, 2008.

#### **0960-1-.21. Motor Vehicle Dealer Facilities.**

The following minimum requirements apply to all motor vehicle dealer facilities:

(1) The facility must be physically separate and apart from any other businesses and shall not include any private residence, tent or temporary stand. The facility may be connected to another business facility provided there is a permanent wall from floor to ceiling between the two businesses and the motor vehicle facility has a separate outside entrance and exit. Any doors between the businesses shall be permanently sealed.

(2) The facility shall contain adequate office space (a minimum of 288 square feet) for processing sales and purchases of motor vehicles. The facility shall also contain restroom accommodations.

(3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. Mobile and/r cellular telephones are not acceptable as the primary business telephone. The primary phone number of the dealership shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign.

(4) The facility shall have immediate access to and exclusive dedicated use of a motor vehicle storage or display lot capable of accommodating fifteen (15) motor vehicles of the dealership's product line. A lot shall consist of compacted gravel, chert, stone or similar materials and shall not include unimproved land or residential driveways. The facility shall also contain a minimum of three (3) parking spots dedicated for customer parking.

(5) The facility shall be used exclusively for buying, selling, renting, displaying, advertising, demonstrating, servicing or repairing motor vehicles or selling functional or nonfunctional parts, including accessories, safety equipment and vehicle branded clothing.

**Authority:** T.C.A. §§ 55-17-107 and 55-17-114. **Administrative History:** Original rule file August 20, 2008; effective November 3, 2008. Repeal and new rule file July 23, 2010; effective October 21, 2010.

#### **0960-1-.22. Surety Bonds.**

(1) The surety bond required by T.C.A. Title 55, Chapter 17, Section 111(g) must remain and continue in force for as long as the licensee remains licensed and must name the Tennessee Motor Vehicle Commission as beneficiary. Upon notice of cancellation, the licensee shall either cease business operations until proof of minimum coverage is provided, or provide evidence of minimum coverage from another provider.

(2) Any surety is required to provide sixty (60) days notice of cancellation to the Commission.

**Authority:** T.C.A. § 55-17-107 and 55-17-111. **Administrative History:** Original rule file August 20, 2008; effective November 3, 2008.

**0960-1-.23. Mail from Commission.**

Except as otherwise provided, a licensed individual or entity or any individual or entity required to be licensed, or who is otherwise subject to regulation by the Commission, shall respond in writing to any communication from the Commission requesting a response within thirty (30) days of the mailing of such communication by registered or certified mail to the last address furnished to the Commission by the licensee, unless otherwise granted an extension of time.

**Authority:** T.C.A. § 55-17-107. **Administrative History:** Original rule file August 20, 2008; effective November 3, 2008.

**0960-1-.24. Sales Tax Identification Number.**

All motor vehicle dealers and automobile auctions shall obtain and hold a current sales tax identification number indicating their business as that of a motor vehicle dealer. Upon expiration of a sales tax identification number, the licensee shall either cease business operations, or provide evidence of a valid sales tax identification number. The dealer's or automobile auction's license shall be invalid during the period of time without a sales tax identification number.

**Authority:** T.C.A. §§ 55-17-107 and 55-17-111. **Administrative History:** Original rule file August 20, 2008; effective November 3, 2008.

**0960-1-.25. Business License.**

All motor vehicle dealers and automobile auctions shall obtain and hold a current city and county business license indicating their business as that of a motor vehicle dealer. Upon expiration of a business license, the licensee shall either cease business operations, or provide evidence of licensure. The dealer's or automobile auction's license shall be invalid during the period of time without a business license.

**Authority:** T.C.A. §§ 55-17-107 and 55-17-111. **Administrative History:** Original rule file August 20, 2008; effective November 3, 2008.

**0960-01-.26. Salesperson Licenses.**

(1) An individual who has submitted a complete application and the required fees to the Motor Vehicle Commission for a motor vehicle salesperson's license may work as a trainee under the supervision of a licensed salesperson while the license application is pending. An individual whose salesperson's license has been denied, suspended or revoked may not work as a trainee.

(2) A licensed motor vehicle salesperson may sell motor vehicles at any motor vehicle dealership owned by the employer listed on their salesperson's license.

(3) An individual may not hold a motor vehicle salesperson's license for more than one (1) motor vehicle dealer at any time.

**Authority:** T.C.A. §§ 55-17-107, 55-17-109, 55-17-110 and 55-17-113. **Administrative History:** Original rule file August 20, 2008; effective November 3, 2008.

**0960-01-.27. Lemon Law.**

Sellers of new motor vehicles shall make available to customers information regarding T.C.A. § 55-24-201 et seq. (Lemon Law). This may be done by directing customers to the Motor Vehicle Commission's website.

**Authority:** T.C.A. §§ 55-17-107 and 55-17-114. **Administrative History:** Original rule file August 20, 2008; effective November 3, 2008.





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