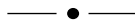


# MARTINDALE- HUBBELL<sup>®</sup> LAW DIGEST



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# FOREWORD

Welcome to the 2008 edition of the **Martindale-Hubbell Law Digest**.

The Law Digest continues to evolve and access to this valuable content is now available in four media: CD ROM; Print on Demand (via [amazon.com/lawdigest](http://amazon.com/lawdigest)); online via subscription to [lexis.com](http://lexis.com); and online via [martindale.com](http://martindale.com). Each service offers vastly different features to best suit the need of the user.

## **CD ROM**

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## **Martindale-Hubbell Online**

The Law Digest has recently been re-introduced and is available at no cost to registered users of [martindale.com](http://martindale.com). Once at the site, individual Law Digests can be accessed via the “Search Legal Topics” section (using the “Advanced Search” feature) using either key word or jurisdictional queries.

## **Content of Law Digest**

This invaluable compendium, now in its 140th year, provides summaries or “digests” of the laws of 151 jurisdictions. In sum, the 2008 edition contains: 57 digests of U.S. States, Territories, and Federal Codes; eleven digests of Canadian Provinces and the Canadian Federal Code; 81 leading trading nations outside of the U.S. and Canada (this figure includes the European Union); and two specialty digests of the U.S. Uniform and Model Acts, and Selected International Conventions. Note: These two specialty digests are included on the CD ROM, Lexis Online, and [martindale.com](http://martindale.com), but are not available in the Print-on-Demand service.

The inclusion of U.S. Uniform and Model Acts on the CD ROM is critical to the legal researcher because they have formed the basis of so much of the statutory law of many states. Also included here are the Uniform Commercial Code, the Uniform Probate Code, and the Revised Model Business Corporation Act.

The Selected International Conventions set forth the texts of those conventions to which the U.S. is a party. Annotations are included.

The Law Digest is the first place to look to find the law on the most important topics in jurisdictions worldwide. The Law Digest summarizes the breadth of statutory law that applies to significant areas of legal practice, for example business regulation, tax, and law related to cross border transactions and matters. General background information is provided to help understand the structure of the different governmental and legal systems in various jurisdictions. The Law Digest is updated annually by pre-eminent law firms, leading legal scholars and other content experts. Web sites are listed to provide further information and access to legal resources to make certain that users get to the next step in their search for relevant information. Further practical information is presented such as normal office hours and national holidays.

## FOREWORD — *continued*

### **Arrangement of Law Digest**

The digests are arranged by a standard taxonomy of Categories, Topics, and Sub-headings. This uniform arrangement of the material, supported by abundant citations, presents the laws in a predictable and accessible manner. To obtain the maximum benefit from the digests, the user should become familiar with the Topical Index included in the prefatory material. This index, which interfiles thousands of legal subjects and cross references, is a powerful research and reference aid. Attention is directed to the numerous forms of instruments preferred by local usage which appear throughout the digests under the appropriate topics, e.g., forms of acknowledgment under the topic “Acknowledgments,” sub-head “Forms.”

### **Notice**

Changes to law may occur after production which can only be reflected in subsequent editions. Accordingly, it is suggested that local counsel be consulted as to the current law applicable to a particular situation.

### **Acknowledgments**

I wish to extend a note of thanks to our Revisers and their knowledgeable staffs and colleagues, and our consulting Law Editors: Professor Michael J. Zimmer of Seton Hall University School of Law and Dr. John J. A. Burke, Professor, Riga International School of Economics and Business Administration, Riga, Latvia. Further, I would like to recognize the hard work of our Editorial staff: Padi Sinegra and Sandy Sauchelli, Senior Editors; and Wesley Barter, Assistant Managing Editor. Without their dedication, professionalism, and personal sacrifice, no work of this scope and quality could be achieved.

As always, I look forward to your suggestions for future Law Digest improvements and inclusions.

Thank you for your continued support.

Stephen L. Torpie  
Senior Managing Editor

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**DENNIS W. ARCHER** of Dickinson Wright PLLC; Detroit, Michigan. Mr. Archer is the former Mayor of the City of Detroit, (1994-2001) and a former Associate Justice of the Michigan Supreme Court (1986-1990). He is the past President of the Wolverine Bar Association, the National Bar Association and the State Bar of Michigan. Mr. Archer is the past President of the National League of Cities, past President of the National Conference of Democratic Mayors and a past member of the Board of Trustees of the United States Conference of Mayors and Board of Directors of the National Conference of Black Mayors. He currently serves on the American Bar Association's Board of Governors. He was President of the American Bar Association-August 2002 to August 2003, the first person of color to be so honored. He also serves as Chairman of Dickinson Wright PLLC.

**MARTHA W. BARNETT** of Holland & Knight, LLP, Tallahassee, Florida. Ms. Barnett is a former Chair of the House of Delegates of the American Bar Association, the first woman lawyer to be so honored, and has served on the ABA's Board of Governors. She was elected President of the American Bar Association, serving as such from July 2000 to August 2001. Ms. Barnett now serves as Chair of Holland & Knight.

**ROBERT H. BERNSTEIN** joined Reed Smith in January 2005. Mr. Bernstein heads the Firm's Labor & Employment Global Marketing Team, strengthening the Firm's offering to its national and international corporate clients. During the past 23 years, Mr. Bernstein has developed an extensive labor and employment practice, exclusively representing multinational and domestic corporations nationwide, with an emphasis in employment litigation. Mr. Bernstein lectures and writes extensively throughout the United States and overseas concerning a wide array of employment law issues. In 1982, Mr. Bernstein earned his J.D. from Georgetown University Law Center; in 1979, he received his B.S.F.S., with distinction, from the Georgetown University School of Foreign Service. Mr. Bernstein is admitted to the New Jersey Bar, the U.S. Court of Appeals for the Third Circuit, and the U.S. District Court for the District of New Jersey. He is a member of the Labor Law Section and Litigation Section of the American Bar Association.

**BENJAMIN R. CIVILETTI** is a partner of Venable, LLP in Washington, D.C. and Baltimore, Maryland. Mr. Civiletti is a former Attorney General of the United States under President Carter, 1979-1981. He is the former Chairman of the ABA Litigation Section and has been a member of the ABA House of Delegates since 1991. He also serves as the ABA Representative to the United Nations. He is the former Chairman of Venable. Mr. Civiletti is a Fellow of the American College of Trial Lawyers and the American Law Institute.

**THOMAS R. CURTIN** of Graham, Curtin & Sheridan, A Professional Association, Morristown, New Jersey. Mr. Curtin is a Life Fellow of the American Bar Foundation. He is a past President of the Morris County Bar Association (1978-1979), the New Jersey State Bar Foundation (1986-1988), the New Jersey State Bar Association (1993-1994), and the Notre Dame Law Association (2000-2001). He is a former Chairman of the New Jersey Commission on Professionalism in the Law (1996-1998). He is a member of the American Bar Association House of Delegates, serving as the New Jersey State Delegate, and the Sports Lawyers Association. He is currently a member of the Notre Dame Law School Advisory Council and has been on the Board of Directors for the National Football Foundation and College Hall of Fame since 2002.

**THOMAS G. HEINTZMAN, O.C., Q.C.**, is a trial and appellate counsel practicing with the law firm of McCarthy Tétrault, Toronto, Ontario. He is a Bencher of the Law Society of Upper Canada, an Officer of the Order of Canada and a past President of the Canadian Bar Association. Mr. Heintzman is a Fellow of the International Academy of Trial Lawyers, and the American College of Trial Lawyers and the Co-Chair of its Special Problems in the Administration of Justice (Canada) Committee.

**DOUGLAS B. HENDERSON** is the Founding and Senior Partner of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Washington, D.C. Mr. Henderson

was the Founder of the Federal Circuit Bar Association, a co-founder of the U.S. Court of Federal Claims Bar Association, and a co-founder of the ITC Trial Lawyers Association. He has been a Member of the Advisory Council of the United States Court of Federal Claims. He was formerly a member of the House of Delegates of the American Bar Association, and Chairman of the Patent Division and Member of Council of the Section of Intellectual Property Law of the American Bar Association.

**PATRICK E. HOBBS**, Dean of Seton Hall University School of Law, first joined the faculty of Seton Hall in 1990. He teaches in the area of taxation and has taught Federal Income Taxation, Corporate Taxation and Business Planning, and Law and Literature. In 1995, he became the Associate Dean for Finance. In 1999, he became the Law School's seventh Dean. Dean Hobbs graduated magna cum laude from Seton Hall University with a B.S. in Accounting. He received his J.D. from the University of North Carolina at Chapel Hill, and earned his LL.M. from New York University. Dean Hobbs was recently appointed a Commissioner on the New Jersey State Commission of Investigation by former Governor James McGreevy. He has chaired the American Bar Association, Section of Legal Education and Admissions to the Bar, Law School Development Committee since 2002, and was also recently appointed to serve on the American Bar Association Standards Review Committee. He also serves as a member of the boards of the Newark Alliance, LexisNexis, Newark Beth Israel Medical Center, the New Jersey Commission of Professionalism, and the New Jersey Institute for Continuing Legal Education. In 2004, he served as Chair of the Newark, New Jersey Mayor's Blue Ribbon Commission on the Downtown Core Redevelopment.

**THOMAS J. KLITGAARD** of Dillingham & Murphy, L.L.P., in San Francisco, California, teaches Asian Legal Systems at the University of San Francisco School of Law. He is a Director of the San Francisco-Shanghai Sister City Committee which has had nearly 200 business, cultural, and public works projects with the Shanghai Municipal Government over the past 25 years. Tom is also the current Chair of the Institute for Law and Technology at the Center for American and International Law in Plano, Texas. He is currently a member of the international arbitration panels of the American Arbitration Association and the Hong Kong International Arbitration Centre and is on the mediation panel of the American Arbitration Association. Tom is a former Senior Vice President and General Counsel of Tandem Computers Incorporated and Sega of America, Inc., and a former law clerk of Supreme Court Justice William O. Douglas. He is a graduate of the Monterey Institute of International Studies Training for Service Abroad Program in the Chinese language. He practices in the areas of patent litigation, intellectual property, and Asian and American corporate law.

**RALPH I. LANCASTER, JR.** of Pierce Atwood, LLP Portland, Maine has served as Independent Counsel, In Re Herman, by appointment of the Special Division of the D.C. Court of Appeals. He previously served as Counsel for the United States before the International Court of Justice in a case concerning delimitation of the Maritime Boundary in the Gulf of Maine and as Special Master by appointment of the United States Supreme Court in State of New Jersey vs. State of Nebraska and again as Special Master in State of Virginia vs. State of Maryland. He is currently serving as Special Master in State of New Jersey vs. State of Delaware. Mr. Lancaster began his legal career as a law clerk to the Honorable Edward T. Gignoux. He is a Past-President of the Maine State Bar Association and a former member of the House of Delegates of the American Bar Association. He served as Chair of the Standing Committee on Federal Judiciary of the ABA. He is a Fellow of the American College of Trial Lawyers and served as its President, 1989-1990. He is actively engaged in civil and criminal trial practice.

**J. ALLEN MAINES** of Paul Hastings Janofsky & Walker LLP concentrates on domestic and international corporate counseling, cross-border corporate governance issues and internal investigations, and securities and intellectual property litigation. He has served as Chairman of his firm's Securities Litigation Practice and Litigation Department, and has published and spoken extensively on securities, corporate governance and intellectual property

## LEGAL ADVISORY BOARD — *continued*

issues. Mr. Maines is a faculty member for both the National Institute for Trial Advocacy and the National Association of Corporate Directors. He began his law career as the law clerk for James Wm. Moore, Sterling Professor of Law at Yale University, author of *Moore's Federal Practice* and editor-in-chief of *Collier on Bankruptcy*. He received his J.D. degree, with honors, in 1976 from the University of Florida, where he was executive editor of the *Florida Law Review*, and graduated *magna cum laude* from Taylor University in 1973. Mr. Maines serves on the Board of Directors for the March of Dimes, Earth Share, The Animal Health Trust, the Socionomics Foundation, several for profit entities, and a state university's Center for Corporate Governance.

**KAREN J. MATHIS**, a partner in the Denver office of McElroy, Deutsch, Mulvaney & Carpenter, LLP, is the president of the American Bar Association. She will serve as president for a one-year term, which begins in August 2006 at the adjournment of the association's Annual Meeting in Honolulu. Mathis is a business, commercial and estate planning lawyer with more than 30 years' experience. An active member of the ABA for almost 30 years, Mathis served as the association's second highest elected officer, chair of its House of Delegates, from August 2000 until August 2002. She is the third woman to serve as an ABA president, and the first president from Colorado. She has served as a member of the House of Delegates since 1982. Mathis is also a member of the ABA Board of Governors, and has served on its Executive Committee, Operations Committee and Program and Planning Committee. Mathis's extensive ABA involvement includes leadership of numerous ABA entities. She served as chair of the 30,000-member General Practice, Solo and Small Firm Section (now a Division) in 2002 to 2003; as chair of the Commission on Women in the Profession from 1997 to 2000; and as chair of the Standing Committee on Membership from 1994 to 1997. Mathis has also been active in the Denver Bar Association and Colorado Bar Association for many years. She has held offices in the Young Lawyers Section of both bar associations, and served as vice president of the CBA from 1992-1993.

**JERALYN E. MERRITT** is a criminal defense lawyer in private practice in Colorado. Her practice is limited to criminal defense and related forfeitures, with an emphasis on complex federal drug and white collar crimes. Ms. Merritt served as Treasurer and Secretary and on the Board of Directors of the National Association of Criminal Defense Lawyers, from 1996 through 2004. She was a member of the governing council of the American Bar Association's Criminal Justice Section from 2000 through 2004. She is an elected fellow of the American Board of Criminal Lawyers and a past member of its Board of Governors. Ms. Merritt has testified before both Congress and the United States Sentencing Commission on drug sentencing laws. She is the co-author of a text on the Patriot Act, published by Lexis Publishing. She lectures nationally on a variety of criminal defense topics, and since 1996, has provided insightful legal analysis for MSNBC, Fox News, CNN, Court TV and other television and radio networks. From 2000 to 2003, she was a Lecturer-In-Law at Denver University's College of Law teaching "Wrongful Convictions" and "Criminal Defense." In 1996 and 1997, she served as one of the principal trial lawyers for Timothy McVeigh in the Oklahoma City Bombing Case. She is the founder and creator of two award winning websites, CrimeLynx.com, and TalkLeft: The Politics of Crime (TalkLeft.com), a weblog for legal professionals, journalists and the public.

**HARRIET MIERS** serves as Counsel to the President. Most recently, she served as Assistant to the President and Deputy Chief of Staff, and prior to that she was Assistant to the President and Staff Secretary. Before joining the President's staff, she was Co-Managing Partner at Locke Liddell & Sapp, LLP from 1998-2000. She had worked at the Locke Purnell Rain & Harrell firm, or its predecessor, from 1972 until its merger with the Liddell Sapp firm. From 1995 until 2000, she was chair of the Texas Lottery Commission. In 1992, Harriet became the first woman president of the Texas State Bar, and in 1985 she became the first woman president of the Dallas Bar Association. She also served as Member-At-Large on the Dallas City Council. Ms. Miers had a distinguished career as a trial litigator, representing such clients as Microsoft, Walt Disney Co. and SunGard Data Systems Inc. Moreover, when she left her law firm of Locke Liddell & Sapp, Ms. Miers was serving as Co-Managing Partner of the firm which had more than 400 lawyers. In 1972, Ms. Miers became the first woman hired at Dallas's Locke Purnell Rain Harrell. In March 1996, her colleagues elected her the first female president of Locke Purnell Rain & Harrell, at that time a firm of about 200 lawyers. She was the first

woman to lead a Texas firm of that size. In 1985, Ms. Miers was selected as the first woman to become President of the Dallas Bar Association. In 1992, she became the first woman elected President of the State Bar of Texas. Ms. Miers served as the President of the State Bar of Texas from 1992 to 1993. Ms. Miers has served as Counsel to the President since February 2005. In this role, she has served as the top lawyer to the President and the White House, and in particular has been the principal advisor of judicial nominations. Ms. Miers' professional accomplishments have been recognized time and time again.

**WILLIAM G. PAUL** of Crowe & Dunlevy, A Professional Corporation, Oklahoma City, Oklahoma. Mr. Paul is the former Senior Vice President & General Counsel, Phillips Petroleum Company, Bartlesville, Oklahoma. In 1999, he was elected President of the American Bar Association, to serve as such from August 1999 to July 2000. He has served as President for both the Oklahoma State Bar Association and National Conference of Bar Presidents. Mr. Paul has been a Member of the American Bar Association, House of Delegates since 1975 and is a Fellow in the American College of Trial Lawyers.

**FERNANDO POMBO**, Founder and Senior Partner of Gomez-Acebo & Pombo, Madrid, Spain, has contributed to and authored several publications in the field of international business law. Currently, he is President of the International Bar Association (2007-2009). Mr. Pombo has been a visiting professor at the Institute on International Legal Studies in Salzburg, Austria since 1985. He is also a former President of LES International and a member of the Spanish Arbitration Court. He is fluent in Spanish, English, French and German.

**WM. REECE SMITH, JR.** of Tampa, Florida, is the senior member of Carlton, Fields, P.A. A Rhodes Scholar at Oxford University, England, he was later President of The Florida Bar (1972-73), the American Bar Association (1980-81), and the International Bar Association (1988-90). He is a Fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers and serves on the Council of the American Law Institute. He received the American Bar Association's Gold Medal for "exceptionally distinguished service to the cause of American Jurisprudence."

**TOMASZ WARDYŃSKI**, Polish adwokat and Founding Partner and President of Wardyński & Partners is a member of the Polish Business Council, the European Circuit of England and Wales, and the Garrick Club. He is a specialist in international project financing, privatization and restructuring of state-owned enterprises. He is a member of the Polish Bar Association and a former chairman of its Foreign Committee (1988-92). In 1991-96 he was a member of the Advisory Council on Privatisation to the Prime Minister of Poland. He is a former member of the Supervisory Board of the Polish Development Bank. Since 1986 Tomasz Wardyński has been an honorary legal advisor to her Britannic Majesty's Ambassador in Poland. He is a visiting scholar at the American Bar Foundation as well as an Honorary Commander of the Civil Division of the Most Excellent Order of the British Empire. Tomasz Wardyński is a member of the Polish-British Legal Association, a member of the International Bar Association, a member of the European Circuit of England and Wales, and a member of the Garrick Club.

**WALTER H. WHITE, JR.** is a Partner in Grundberg Mocatta Rakison LLP (GMR), where his practice concentrates on cross-border securities law and emerging markets investment activities. He was the Founding Partner of White and Jones LLP, London, England, which merged with GMR in 2006. Mr. White previously has served as a Partner and Managing Director of Steptoe & Johnson International. Mr. White is a former Commissioner of Securities for the State of Wisconsin 1988-1991. He currently serves on the boards of the ABA Center for Human Rights and the Center for Rule of Law Initiatives; he has previously served as a member of the executive committee of the ABA Board of Governors in the House of Delegates, as the Chair of ABA Africa, as the Chair of the Section of Individual Rights and Responsibilities, and also as Chair of the Young Lawyers Division. Mr. White has also been a member of the State Bar of Wisconsin Board of Governors, on the board of the Milwaukee Foundation and as a board member of the Central-Asian-American Enterprise Fund by appointment of former President Clinton. He also currently serves as a Trustee of Hampshire College and a Director of Church Mutual Insurance Company.

# Topical Index

The body of law suitable for presentation in the **Martindale-Hubbell Law Digests** of the states of the United States, the District of Columbia, Puerto Rico and the Virgin Islands has been classified under a system of categories and topics, that are uniform in these Digests. The same classification system is followed, as closely as cultural conditions permit, in the International Section of the **Law Digests**.

The components of this classification system follow a hierarchy of: Category; Topic; Sub-heading; Catchline. The table of contents before each digest shows only the Categories and the Topics, which are the heart of the classification system. Please note that the Categories are arranged alphabetically in each digest except for the 'Introduction' Category which always comes first. Here is an example of the classification hierarchy showing all components noted above:

<b>DOCUMENTS AND RECORDS</b>	(Category: 12 pt, bold, all caps)
<b>ACKNOWLEDGMENTS</b>	(Topic: 7 pt, bold, all caps)
<b>What Persons May Take.—</b>	(Sub-heading: 7 pt)
<i>Within State.—</i>	
<i>Outside State But Within United States.—</i>	} (Catchlines: 7 pt. italics)
<i>Outside United States.—</i>	

The digests often make cross references to another Topic within the instant Category, or to another Category and Topic entirely. Here is an example of two such cross references that may be found under the Category **ESTATES AND TRUSTS**:

## **ALLOWANCES:**

See topic Descent and Distribution.

In this first example, the Topic 'Descent and Distribution' is also under the Category **ESTATES AND TRUSTS**.

## **CLAIMS:**

See topic Executors and Administrators; category Civil Actions and Procedure, topic Pleading; and category Dispute Resolution, topic Arbitration and Award.

In this second example, the Topic 'Executors and Administrators' is also under the Category 'Estates & Trusts'. The subsequent references however are to different Categories entirely.

This Topical Index inter-files all the Categories and Topics used in the Law Digests, and the more commonly used Sub-headings into a unified index. The user may then identify all major classification entities, and how they reference one another. Forms of many instruments will be found under the appropriate topics. For example, forms of acknowledgment under Category 'Documents and Records', Topic 'Acknowledgments', Sub-head 'Forms'. United States Uniform and Model Acts (promulgated by the National Conference of Commissioners on Uniform State Laws [NCCUSL]) in effect in a given jurisdiction, are listed in each Digest under the Category 'Courts and Legislature', Topic 'Statutes', Sub-heading 'Uniform Acts'. If the law summarized under a specific Topic is governed in large part by a Uniform Act - without substantial local deviations - reference to that Act will also be made under the specific Topic affected. For example, if the Uniform Commercial Code governs a particular subject, this is stated, and the reader referred to the Category 'Business Regulation and Commerce', Topic 'Commercial Code'. Please note that uniform acts not promulgated by NCCUSL are covered under the relevant Categories.

Texts of Selected United States Uniform and Model Acts within the scope of the **Martindale-Hubbell Law Digests** are supplied in full. See the table of contents.

**Abandonment**, see category Family, topics Divorce, Husband and Wife.

**Abatement**, see category Civil Actions and Procedure, topic Actions.

**Absconding debtors**, see category Debtor and Creditor, topic Attachment.

**Absent defendants**, see category Civil Actions and Procedure, topic Process.

**ABSENTEES**.—See category Property; see also categories Business Organizations, topic Corporations; Civil Actions and Procedure, topics Costs, Limitation of Actions, Process, Venue; Debtor and Creditor, topic Attachment; Estates and Trusts, topics Death, Executors and Administrators; Family, topic Guardian and Ward.

**Accidents**, see category Transportation, topic Motor Vehicles.

**ACCORD AND SATISFACTION**.—See category Civil Actions and Procedure.

**Accounts**, see categories Business Regulation and Commerce, topic Banks and Banking; Estates and Trusts, topic Executors and Administrators; Family, topic Guardian and Ward.

**Accounts Receivable**, see category Debtor and Creditor, topic Assignments.

**Accumulations**, see categories Estates and Trusts, topic Trusts; Property, topic Perpetuities.

**ACKNOWLEDGMENTS**.—See category Documents and Records, see also topics Affidavits, Notaries Public; categories Business Regulation and Commerce, topic Sales; Debtor and Creditor, topic Assignments; Mortgages, topics Chattel Mortgages,

Mortgages of Real Property; Property, topics Deeds, Landlord and Tenant.

**ACTIONS**.—See category Civil Actions and Procedure; see also topics Appeal and Error, Certiorari, Judgments, Limitation of Actions, Submission of Controversy, Pleading, Practice, Process, Venue; Courts and Legislature, topic Courts; Debtor and Creditor, topics Attachment, Receivers; Employment, topic Labor Relations; Estates and Trusts, topics Death, Executors and Administrators; Family, topics Divorce, Guardian and Ward, Infants, Marriage. For Declaratory Judgments, see category Civil Actions and Procedure, topic Judgments.

**Adjudication**, see category Civil Actions and Procedure, topic Judgments.

**ADMINISTRATION**.—See categories Estates and Trusts, topic Executors and Administrators; Taxation.

**Administration, when unnecessary**, see category Estates and Trusts, topic Executors and Administrators.

**Admission, demand for**, see category Civil Actions and Procedure, topic Practice.

**Admission to bar**, see category Legal Profession, topic Attorneys and Counselors.

**ADOPTION**.—See category Family.

**Adultery**, see category Family, topic Divorce.

**Advancements**, see category Estates and Trusts, topic Descent and Distribution.

**ADVERSE POSSESSION**.—See category Property; see also category Civil Actions

and Procedure, topic Limitation of Actions.

**Affidavit of defense**, see category Civil Actions and Procedure, topic Pleading.

**AFFIDAVITS**.—See category Documents and Records; see also topic Acknowledgments; categories Civil Actions and Procedure, topics Depositions and Discovery, Evidence, Pleading; Estates and Trusts, topic Executors and Administrators.

**Affirmation as substitute for acknowledgment**, see category Documents and Records, topic Acknowledgments.

**Affirmation as substitute for affidavit**, see category Documents and Records, topic Affidavits.

**Afterborn children**, see category Estates and Trusts, topics Descent and Distribution, Wills.

**Age**, see category Family, topics Adoption, Infants, Marriage.

**AGENCY**.—See categories Business Organizations; see also topics Corporations, Partnerships; categories Business Regulation and Commerce, topic Factors; Civil Actions and Procedure, topic Brokers; Employment, topic Labor Relations; Property, topic Powers of Attorney.

**Agent for service of process**, see categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Process; Estates and Trusts, topic Executors and Administrators; Insurance, topic Insurance Companies; Property, topic Absentees; Transportation, topic Motor Vehicles.

**AIRCRAFT**.—International Digests only. See category Transportation.

**Air pollution**, see category Environment, topic Environmental Regulation.

**ALCOHOL, BEVERAGES AND TOBACCO TAXES**.— See category Taxation.

**Alienation of property**, restrictions on, see category Property, topic Perpetuities.

**ALIENS**.—See category Immigration in International Digests.

**Alimony**, see category Family, topic Divorce; see also category Family, topic Marriage.

**Allowances**, see category Estates and Trusts, topic Executors and Administrators.

**ALTERNATIVE DISPUTE RESOLUTION**.—See category Dispute Resolution.

**Alternative to acknowledgment**, see category Documents and Records, topic Acknowledgments.

**Alternative to affidavit**, see category Documents and Records, topic Affidavits.

**Amendments**, see categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Pleading.

**Anatomical gifts**, see category Estates and Trusts, topic Wills.

**Ancestors**, see category Estates and Trusts, topic Descent and Distribution.

**Ancillary administration**, see category Estates and Trusts, topic Executors and Administrators.

**Annulment of marriage**, see category Family, topic Marriage; see also category Family, topic Divorce.

**Answer**, see category Civil Actions and Procedure, topic Pleading.

**Antenuptial contracts**, see category Family, topic Husband and Wife.

**Antitrust**, see category Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition.

**APPEAL AND ERROR**.—See category Civil Actions and Procedure; see also topics Certiorari; categories Courts and Legislature, topic Courts; Taxation, topic Taxes.

**Appearance**, see category Civil Actions and Procedure, topic Actions, Pleading, Process.

**Applicable law**, see categories Business Regulation and Commerce, topics Contracts and Sales in certain International Digests.

**Apportionment**, see category Taxation, topic Taxes.

**Appraisal of dissenting shareholder's stock**, see category Business Organizations, topic Corporations, subhead Appraisal.

**ARBITRATION AND AWARD**.—See category Dispute Resolution; see also category Civil Actions and Procedure, topic Submission of Controversy.

**Arbitration of death taxes**, see category Taxation, topic Taxes, subhead Interstate Cooperation.

**Armed Forces, acknowledgments of persons in**, see category Documents and Records, topic Acknowledgments.

**Armed Forces, members of, exemptions**, see categories Taxation, topic Taxes; Transportation, topic Motor Vehicles.

**Armed Forces, notarial powers of officers**, see category Documents and Records, topics Notaries Public, Acknowledgments.

**Articles of association or incorporation**, see category Business Organizations, topic Corporations.

**ASSIGNMENTS**.—See category Debtor and Creditor; see also categories Business Regulation and Commerce, topics Commercial Code, Sales; Civil Actions and Procedure, topic Judgments; Employment, topic Labor Relations; Intellectual Property, topic Trademarks and Tradenames; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Deeds.

**ASSOCIATIONS**.—See category Business Organizations; see also topics Corporations, Joint Stock Companies.

**Assumed business names**, see category Intellectual Property, topic Trademarks and Tradenames.

**ATTACHMENT**.—See category Debtor and Creditor; see also topics Executions, Exemptions, Garnishment.

**Attestation**, see category Estates and Trusts, topic Wills.

**Attorney ethics**, see category Legal Profession, topic Attorneys and Counselors.

**Attorney fee clauses**, see category Business Regulation and Commerce, topic Bills and Notes.

**ATTORNEYS AND COUNSELORS**.—See category Legal Profession; see also category Civil Actions and Procedure, topics Costs, Evidence, subhead Witnesses.

**Attorneys in fact**, see category Property, topic Powers of Attorney.

**Attorneys, professional association or corporation**, see category Legal Profession, topic Attorneys and Counselors; also category Business Organizations, topics Associations, Corporations.

**Authentication**, see categories Civil Actions and Procedure, topic Depositions and Discovery; Documents and Records, topics Acknowledgments, Affidavits.

**Automobiles**, see category Transportation, topic Motor Vehicles.

**Award**, see category Dispute Resolution, topic Arbitration and Award.

**Bail**, see category Criminal Law, topic Criminal Law.

**Bailments**, see category Business Regulation and Commerce, topics Carriers, Warehousemen.

**Bank collections**, see category Business Regulation and Commerce, topics Banks and Banking, Commercial Code.

**Bank deposits**, see category Business Regulation and Commerce, topics Banks and Banking, Commercial Code.

**Bankruptcy**, see category Debtor and Creditor, topic Receivers; and category Debtor and Creditor, topic Bankruptcy in International Digests.

**BANKS AND BANKING**.—See category Business Regulation and Commerce; see also topic Bills and Notes; categories Business Organizations, topic Corporations.

**Bar**, see categories Legal Profession, topic Attorneys and Counselors; Property, topics Curtesy, Dower.

**Bastards**, see categories Estates and Trusts, topic Descent and Distribution; Family, topic Adoption.

**Beer**, see categories Business Regulation and Commerce, topic Licenses, Business and Professional; Taxation, topic Taxes.

**Beneficiaries**, see categories Estates and Trusts, topics Descent and Distribution, Executors and Administrators, Trusts, Wills; Taxation, topic Taxes, subhead Inheritance Tax.

**Bequests**, see category Estates and Trusts, topic Wills.

**Beverage taxes**, see category Taxation, topic Alcohol, Beverages and Tobacco Taxes.

**BILLS AND NOTES**.—See category Business Regulation and Commerce, see also topic Commercial Code.

**Bills of exchange**, see category Business Regulation and Commerce, topic Bills and Notes.

**Bills of lading**, see category Business Regulation and Commerce, topic Carriers; also category Business Regulation and Commerce, topic Commercial Code.

**Bills of sale**, see category Business Regulation and Commerce, topic Sales; also category Business Regulation and Commerce, topic Commercial Code.

**Birth certificates**, see category Documents and Records, topic Records.

**Blue Sky Laws**, see category Business Regulation and Commerce, topic Securities.

**BONDS**.—See category Civil Actions and Procedure; see also topics Appeal and Error, Costs, Injunctions, Replevin; see also categories Business Regulation and Commerce, topics Brokers, Commercial Code, Securities, Warehousemen; topics Debtor and Creditor, topics Attachment, Executions, Garnishment, Receivers; Documents and Records, topic Notaries Public; Estates and Trusts, topic Executors and Administrators; Family, topic Guardian and Ward; Insurance, topic Surety and Guaranty Companies; Legal Profession, topic Attorneys and Counselors; Mortgages, topic Mortgages of Real Property.

**BROKERS**.—See also category Business Regulation and Commerce, topics Factors, Licenses, Business and Professional, Securities.

**Bulk sales**, see categories Business Regulation and Commerce, topic Commercial Code; Debtor and Creditor, topic Fraudulent Sales and Conveyances.

**Business names**, see category Intellectual Property, topic Trademarks and Tradenames; also category Business Organizations, topics Corporations, Partnerships.

**BUSINESS ORGANIZATIONS [category]**

**BUSINESS REGULATION AND COMMERCE [category]**

**BUSINESS TAXES**.—See category Taxation; see also category Business Organizations, topic Corporations.

**Business trusts**, see categories Business Organizations, topic Joint Stock Companies; Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition.

**Capital**, see category Business Organizations, topic Corporations.

**CARRIERS**.—See category Business Regulation and Commerce; see also category Transportation, topic Motor Vehicles.

**Certificate**, see categories Civil Actions and Procedure, topic Depositions and Discovery; Documents and Records, topics Acknowledgments, Affidavits.

**Certificate of birth**, see category Documents and Records, topic Records.

**Certificate of death**, see category Estates and Trusts, topic Death; also category Documents and Records, topic Records.



**Certificate of incorporation**, see category Business Organizations, topic Corporations.

**Certificate of Marriage**, see categories Documents and Records, topic Records; Family, topic Marriage.

**Certificate of Stock**, see category Business Organizations, topic Corporations.

**CERTIFICATION**.—See category Health, topic Licensure and Certification.

**CERTIORARI**.—See category Civil Actions and Procedure; see also topic Appeal and Error.

**Chain Stores**, see categories Business Regulation and Commerce, topic Licenses, Business and Professional; Taxation, topic Taxes.

**Change of Venue**, see category Civil Actions and Procedure, topic Venue.

**Charitable immunity**, see category Civil Actions and Procedure, topic Damages.

**Charter**, see category Business Organizations, topic Corporations.

**CHATTEL MORTGAGES**.—See category Mortgages; see also categories Business Regulation and Commerce, topics Commercial Code, Sales; Debtor and Creditor, topics Fraudulent Sales and Conveyances, Pledges; Documents and Records, topic Records.

**Chattel paper**, see category Business Regulation and Commerce, topic Commercial Code.

**Checks**, see category Business Regulation and Commerce, topics Banks and Banking, Bills and Notes.

**Children**, see categories Civil Actions and Procedure, topics Limitation of Actions, Evidence, subhead Witnesses, Process; Employment, topic Labor Relations; Estates and Trusts, topics Descent and Distribution, Wills; Family, topics Adoption, Divorce, Guardian and Ward, Infants, Marriage.

**CITIZENSHIP [category]**

**CIVIL ACTIONS AND PROCEDURE [category]**

**Claim and delivery**, see category Civil Actions and Procedure, topic Replevin.

**Claims**, see categories Civil Actions and Procedure, topic Pleading; Estates and Trusts, topic Executors and Administrators.

**Class actions**, see category Civil Actions and Procedure, topic Actions.

**Close corporations**, see category Business Organizations, topic Corporations.

**Codes**, see category Courts and Legislature, topic Statutes, also category Civil Actions and Procedure, topic Practice; category Courts and Legislature, topic Law Reports, Codes, in International Digests.

**Collateral inheritance tax**, see category Taxation, topic Taxes.

**Collateral security**, see category Debtor and Creditor, topic Pledges; see also category Business Regulation and Commerce, topic Commercial Code.

**Collection agencies**, see category Business Regulation and Commerce, topic Licenses, Business and Professional.

**Color of title**, see category Property, topic Adverse Possession.

**Combinations**, see category Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition.

**COMMERCIAL CODE**.—See category Business Regulation and Commerce; see also topics Banks and Banking, Bills and Notes, Brokers, Carriers, Contracts, Factors, Frauds, Statute of, Sales, Securities, Warehousemen; categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Limitation of Actions; Debtor and Creditor, topics Assignments, Fraudulent Sales and Conveyances, Liens, Pledges; Documents and Records, topics Records, Seals; Mortgages, topic Chattel Mortgages. For full text of the Code see table of contents.

**Commercial paper**, see category Business Regulation and Commerce, topic Commercial Code.

**COMMERCIAL REGISTER (International Digests only)**.—See category Business Regulation and Commerce; see also category Business Organizations, topics Corporations, Joint Stock Companies; Immigration, topic Aliens.

**Commercial travelers**, see category Business Regulation and Commerce, topic Licenses, Business and Professional.

**Commission merchants**, see category Business Regulation and Commerce, topic Factors.

**Commissions**, see category Civil Actions and Procedure, topic Depositions and Discovery. see also categories Estates and Trusts, topics Executors and Administrators, Trusts; Family, topic Guardian and Ward.

**Common carriers**, see categories Business Regulation and Commerce, topic Carriers; Transportation, topic Motor Vehicles.

**Common law marriage**, see category Family, topic Marriage.

**Common trust funds**, see category Business Regulation and Commerce, topic Banks and Banking.

**Community property**, see category Family, topic Husband and Wife.

**Companies**, see categories Business Organizations, topics Associations, Corporations, Joint Stock Companies; Business Regulation and Commerce, topic Banks and Banking; Insurance, topics Insurance Companies, Surety and Guaranty Companies.

**Comparative negligence**, see category Civil Actions and Procedure, topic Damages.

**Compelling attendance of witness**, see category Civil Actions and Procedure, topic Depositions and Discovery.

**Compensation**, see categories Employment, topic Relations; Estates and Trusts, topics Executors and Administrators, Trusts; Family, topic Guardian and Ward; Legal Profession, topic Attorneys and Counselors.

**Competency**, see categories Civil Actions and Procedure, topics Evidence, subhead Witnesses, Limitation of Actions; Estates and Trusts, topics Executors and Administrators, Wills; Family, topics Guardian and Ward, Husband and Wife, Infants, Marriage.

**Compilations**, see category Courts and Legislature, topic Statutes.

**Complaint**, see category Civil Actions and Procedure, topic Pleading.

**Compromise**, see category Civil Actions and Procedure, topic Accord and Satisfaction.

**Compromise of death taxes**, see category Taxation, topic Taxes, subhead Interstate Co-operation.

**Compulsory arbitration**, see category Dispute Resolution, topic Arbitration and Award.

**Compulsory continuing legal education**, see category Legal Profession, topic Attorneys and Counselors.

**Conditional sales**, see category Business Regulation and Commerce, topic Sales; also category Business Regulation and Commerce, topic Commercial Code.

**Condominiums**, see category Property, topic Real Property.

**Confession of judgment**, see category Civil Actions and Procedure, topic Judgments.

**Confidential relations**, see category Civil Actions and Procedure, topic Evidence, subhead Witnesses.

**Conflicts of laws**, see category Business Regulation and Commerce, topics Contracts and Sales in certain International Digests.

**Consanguinity**, see categories Estates and Trusts, topic Descent and Distribution; Family, topic Marriage.

**Consent**, see category Family, topics Adoption, Marriage.

**Consignments**, see category Business Regulation and Commerce, topic Factors; also category Business Regulation and Commerce, topic Commercial Code.

**Constitutions**, see category Introduction, topic Government and Legal System in International Digests only.

**CONSULS**.—See category Introduction, International Digests only.

**Consumer Credit Code**, see category Business Regulation and Commerce, topic consumer Credit in states enacting Uniform Consumer Credit Code.

**CONSUMER PROTECTION**.—See category Business Regulation and Commerce.

**Consumer transactions**, see category Business Regulation and Commerce, topic Consumer Protection, also topics Bills and Notes, Interest, Sales.

**Contamination**, see category Environment, topic Environmental Regulation.

**Continuation statement**, see categories Business Regulation and Commerce, topic Commercial Code; Mortgages, topic Chattel Mortgages.

**Contract provisions as to venue**, see category Civil Actions and Procedure, topic Venue.

**Contractors' bonds**, see category Debtor and Creditor, topic Liens, subhead Mechanics' Liens.

**CONTRACTS**.—See category Business Regulation and Commerce, see also topic Commercial Code; categories Documents and Records, topic Seals; Family, topics Husband and Wife, Infants.

**Contributions for social security or unemployment compensation**, see category Taxation, topic Taxes.

**Controversies**, see category Civil Actions and Procedure, topic Submission of Controversy. See also categories Civil Actions and Procedure, topic Accord and Satisfaction; Dispute Resolution, topic Arbitration and Award.

**Conventions**, in certain International Digests see category Treaties and Conventions, topic Treaties; see also category Taxation, topic Treaties and Agreements. See European Union Digest. See also Part VI, for Selected International Conventions to which U.S. is a party.

**Conveyances**, see category Property, topic Deeds. See also categories Business Regulation and Commerce, topic Frauds, Statute of; Debtor and Creditor, topic Fraudulent Sales and Conveyances, Mortgages, topic Mortgages of Real Property.

**Copartners**, see category Business Organizations, topic Partnerships.

**Copyright**, see United States Copyright Law Digest; see category Intellectual Property, topic Copyright in Dominion of Canada and International Digests.

**Corporate Seal**, see categories Business Organizations, topic Corporations; Documents and Records, topic Seals.

**CORPORATE TAXES**.—See category Taxation; see also category Business Organizations, topic Corporations.

**CORPORATIONS**.—See category Business Organizations, see also topics Associations, Joint Stock Companies; categories Business Regulation and Commerce, topics Banks and Banking, Carriers, Commercial Code, Securities; Civil Actions and Procedure, topics Process, Venue; Debtor and Creditor, topic Attachment; Insurance, topics Insurance Companies, Surety and Guaranty Companies; Property, topic Deeds; Taxation, topic Taxes. In International Digests, see also category Citizenship, topic Aliens.

**COSTS**.—See category Civil Actions and Procedure.

**Counselors**, see category Legal Profession, topic Attorneys and Counselors.

**Counterclaim**, see category Civil Actions and Procedure, topic Pleading.

**County clerk's certificate**, see category Documents and Records, topic Acknowledgments, subhead Authentication.

**COURTS**.—See category Courts and Legislature.

**COURTS AND LEGISLATURE [category]**

**Coverture**, see category Family, topics Husband and Wife, Marriage.

**Credit cards**, see category Business Regulation and Commerce, topics Consumer Protection, Sales.

**Credit, letters of**, see category Business Regulation and Commerce, topic Commercial Code.

**Credit sales**, see category Business Regulation and Commerce, topic Sales; also category Business Regulation and Commerce, topic Consumer Protection.

**CREDITORS' SUITS**.—See category Debtor and Creditor; see also topics Executions, Fraudulent Sales and Conveyances; category Estates and Trusts, topic Executors and Administrators.

**CRIMINAL LAW [category]**

**Cumulative voting**, see category Business Organizations, topic Corporations.

**Curators**, see category Family, topic Guardian and Ward.

**CURRENCY**.—See category Introduction, International Digests only; see also categories Foreign Trade and Commerce, topics Foreign Exchange and Foreign Trade Regulations; Business Regulation and Commerce, topic Banks and Banking.

**CURTESY**.—See category Property; see also topic Dower; categories Estates and Trusts, topics Descent and Distribution, Wills.

**CUSTOMS (DUTY)**.—See category Foreign Trade and Commerce, topic in certain International Digests.

**DAMAGES**.—See category Civil Actions and Procedures. see also category Estates and Trusts, topic Death.

**Days of grace**, see category Business Regulation and Commerce, topic Bills and Notes.

**Dealerships**, see category Business Regulation and Commerce, topic Contracts in International Digests only.

**DEATH**.—See category Estates and Trusts; see also categories Documents and Records, topic Records; Employment, topic Labor Relations; Property, topic Absentees.

**Death actions**, see category Estates and Trusts, topic Death.

**Death certificate**, see category Documents and Records, topic Records.

**Death taxes**, see category Taxation, topic Taxes.

**DEBTOR AND CREDITOR [category]**

**Debs of decedents**, see category Estates and Trusts, topic Executors and Administrators.

**Decedents' estates**, see category Estates and Trusts, topics Descent and Distribution, Executors and Administration, Wills; see also categories Debtor and Creditor, topic Homesteads; Documents and Records, topic Records; Family, topic Husband and Wife; Property, topics Curtesy, Dower.

**Deceptive practices**, see category Business Regulation and Commerce topics, Consumer Protection, Sales.

**Declarations**, see category Civil Actions and Procedure, topic Pleading.

**Declaratory judgments**, see category Civil Actions and Procedure, topics Judgments, Submission of Controversy.

**Deed tax**, see categories Taxation, topic Taxes subhead Real Estate Conveyance Tax; Property, topic Deeds.

**DEEDS**.—See category Property; see also topic Real Property; categories Business Regulation and Commerce, topic Frauds, Statute of; Debtor and Creditor, topics Fraudulent Sales and Conveyances, Homesteads; Documents and Records, topics Acknowledgments, Records; Family, topics Husband and Wife, Infants; Mortgages, topic Mortgages of Real Property.

**Deeds of mortgage**, see category Mortgages, topic Mortgages of Real Property.

**Deeds of trust**, see category Mortgages, topic Mortgages of Real Property.

**Default**, see category Civil Actions and Procedure, topic Judgments.

**Defendants**, see category Civil Actions and Procedure, topics Actions, Process.

**Defense, affidavit of**, see category Civil Actions and Procedure, topic Pleading.

**Delayed birth certificates**, see category Documents and Records, topic Records.

**Demurrers**, see category Civil Actions and Procedures, topic Pleading.

**DEPOSITIONS**.—See category Civil Actions and Procedures, topic Depositions and Discovery; see also topic Evidence; categories Documents and Records, topic Affidavits.

**Deposits**, see category Business Regulation and Commerce, topic Banks and Banking.

**DESCENT AND DISTRIBUTION**.—See category Estates and Trusts; see also categories Citizenship, topic Aliens; Debtor and Creditor, topic Homesteads; Estates and Trusts, topic Wills; Family, topics Adoption, Husband and Wife; Property, topics Curtesy, Dower; Taxation, topic Taxes.

**Desertion**, see category Family, topics Divorce, Husband and Wife.

**Devisees**, see category Estates and Trusts, topic Wills.

**Die, right to**, see category Estates and Trusts, topic Wills.

**Digests**, see category Courts and Legislature, topic Reports.

**Direct actions against insurer**, see category Transportation, topic Motor Vehicles, subhead Direct Actions.

**Directors**, see category Business Organizations, topic Corporations.

**Disabilities**, see categories Citizenship, topic Aliens; Civil Actions and Procedure, topics Evidence, subhead Witnesses, Limitation of Actions; Estates and Trusts, topics Executors and Administrators, Wills; Family, topics Guardian and Ward, Husband and Wife, Infants.

**Discovery**, see category Civil Actions and Procedure, topics Depositions and Discovery Practice.

**Discrimination**, see categories Employment, topic Labor Relations; Property, topic Real Property.

**Disinheritance**, see category Estates and Trusts, topic Wills.

**Dismiss**, see category Civil Actions and Procedure, topics Judgments, Pleading, Practice.

**Dispossession**, see category Property, topic Landlord and Tenant.

**DISPUTE RESOLUTION [category]**

**Disputed domicile in death tax matters**, see category Taxation, topic Taxes, subhead Interstate Co-operation.

**Dissenting shareholder**, see category Business Organizations, topic Corporations.

**DISSOLUTION OF MARRIAGE**.—See category Family; see also topics Divorce, Marriage.

**Distress**, see category Property, topic Landlord and Tenant.

**Distribution**, see category Estates and Trusts, topics Descent and Distribution, Executors and Administrators.

**Distribution if abroad**, see category Estates and Trusts, topic Executors and Administrators.

**Distributorships**, see category Business Regulation and Commerce, topic Contracts in International Digests only.

**Division of property of spouses on dissolution of marriage**, see category Family, topic Dissolution of Marriage; or topic Divorce.

**DIVORCE**.—See category Family; see also topics Dissolution of Marriage, Marriage; category Property, topics Curtesy, Dower.

**DOCUMENTS AND RECORDS [category]**

**DOMESTIC PARTNERS**.—See category Family.

**Domicile, disputed**, see category Taxation, topic Taxes.

**DOWER**.—See category Property; see also topics Curtesy, Deeds; categories Debtor and Creditor, topic Homesteads; Documents and Records, topic Acknowledgements; Estates and Trusts, topics Descent and Distribution, Executors and Administrators, Wills; Family, topic Husband and Wife.

**Drafts**, see category Business Regulation and Commerce, topics Bills and Notes, Commercial Code.

**Durable Power of Attorney**, see category Property, topic Powers of Attorney.

**Earnings, exemption of**, see category Debtor and Creditor, topics Exemptions, Garnishment.

**Ecology**, see category Environment, topic Environmental Regulation.

**Election**, see category Estates and Trusts, topic Wills.

**Employer and employee**, see category Employment, topic Labor Relations.

**Employers' Liability**, see category Employment, topic Labor Relations.

**EMPLOYMENT [category]**

**EMPLOYMENT TAXES**.—See category Taxation; see also category Employment, topic Labor Relations.

**Energy law**, see category Mineral, Water and Fishing Rights, topic Mines and Minerals.

**Entirety, tenancy by, in personalty**, see category Property, topic Personal Property.

**Entirety, tenancy by, in realty**, see category Property, topic Real Property.

**ENVIRONMENT [category]**

**ENVIRONMENTAL REGULATION**.—See category Environment.

**ENVIRONMENTAL TAXES**.—See category Taxation.

**Equity**, see categories Civil Action and Procedure, topics Actions, Pleading, Practice; Courts and Legislature, topic Courts.

**Equity in redemption**, see category Mortgages, topic Mortgages of Real Property. See also category Taxation, topic Taxes.

**Error, writ of**, see category Civil Actions and Procedure, topic Appeal and Error.

**ESCHEAT**.—See category Property; see also topic Absentees; categories Business Organizations, topic Corporations, subhead Unclaimed Dividends; Business Regulation and Commerce, topic Banks and Banking, subhead Unclaimed Deposits; Estates and Trusts, topics Descent and Distribution, Wills, subhead Unclaimed Legacies.

**Establishing birth records**, see category Documents and Records, topic Records.

**Estate tax**, see category Taxation, topic Taxes.

**ESTATES AND TRUSTS [category]**

**Estates**, see categories Debtor and Creditor, topic Homesteads; Estates and Trusts, topics Descent and Distribution, Executors and Administrators, Trusts, Wills; Property, topics Curtesy, Dower, Real Property.

**European Economic Community**, see European Union Digest in Part V.

**Evasion**, see category Taxation, topic Taxes, subhead Penalties.

**EVIDENCE**.—See category Civil Actions and Procedure; see also topics Depositions and Discovery, category Documents and Records, topic Affidavits.

**EXCHANGE CONTROLS**.—In International Digests only. See categories Foreign Trade and Commerce; see also topics Foreign Exchange, Foreign Trade Regulation; Introduction, topic Currency.

**Excuses for nonperformance**, see category Business Regulation and Commerce, topic Contracts in certain International Digests.

**EXECUTIONS**.—See category Debtor and Creditor; see also topics

Attachment, Exemptions, Garnishment; categories Civil Actions and Procedure, topics Appeal and Error, Judgments, Sequestration.

**EXECUTORS AND ADMINISTRATORS.**—See category Estates and Trusts, see also topics Descent and Distribution, Wills.

**EXEMPTIONS.**—See category Debtor and Creditor; see also topics Executions, Garnishment, Homesteads; categories Estates and Trusts, topic Executors and Administrators; Taxation, topic Taxes.

**Factorizing,** see category Debtor and Creditor, topic Garnishment.

**FACTORS.**—See category Business Regulation and Commerce; see also topics Agency, Brokers; category Debtor and Creditor, topic Pledges.

**FAMILY** [category]

**Family law,** see category Family, topics Marriage, Divorce, Husband and Wife, Infants.

**Fees,** see specified topics, e.g., categories Business Organization, topic Corporations; Business Regulation and Commerce, topic Commercial Code; Mortgages, topic chattel Mortgages, etc.

**Fictitious names,** see category Intellectual Property, topic Trademarks and Tradenames.

**Fiduciaries,** see categories Estates and Trusts, topic Executors and Administrators, Trusts; Family, topic Guardian and Ward; Property, topic Powers of Attorney.

**Fieri facias,** see category Debtor and Creditor, topic Executions.

**Filing under Uniform Commercial Code,** see categories Business Regulation and Commerce, topic Commercial Code; Documents and Records, topic Records.

**Filing fees,** see categories Business Organization, topic Corporations; Business Regulation and Commerce, topic Commercial Code; Documents and Records, topic Records; Estates and Trusts, topic Executors and Administrators; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Deeds.

**Financial responsibility,** see category Transportation, topic Motor Vehicles.

**Financing statement,** see categories Business Regulation and Commerce, topic Commercial Code; Mortgages, topic Chattel Mortgages.

**Fishing zone,** see category Mineral, Water and Fishing Rights.

**FOOD, DRUGS, DEVICES AND COSMETICS.**—See category Health.

**Forced heirs,** see category Estates and Trusts, topic Wills.

**Foreclosure,** see categories Debtor and Creditor, topic Liens; Mortgages, topics Chattel Mortgages, Mortgages of Real Property.

**Foreign automobiles,** see category Transportation, topic Motor Vehicles.

**Foreign conveyances of incumbrances,** see categories Documents and Records, topic Records; Property, topic Real Property.

**Foreign corporations,** see categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Process. See also categories Business Regulation and Commerce, topic Banks and Banking; Insurance, topics Insurance Companies, Surety and Guaranty Companies. See also category Citizenship, topic Aliens in certain International Digests.

**Foreign depositions,** see category Civil Actions and Procedure, topic Depositions and Discovery.

**Foreign distribution,** see category Estates and Trusts, topic Executors and Administrators.

**Foreign divorce,** see category Family, topic Divorce.

**Foreign exchange,** see categories Foreign Trade and Commerce, topics Foreign Exchange, Foreign Trade Regulations; Introduction, topic Currency, in International Digests only.

**Foreign executors and administrators,** see category Estates and Trusts, topic Executors and Administrators.

**Foreign guardians,** see category Family, topic Guardian and Ward.

**FOREIGN INVESTMENT.**—See category Foreign Trade and Commerce, topic Foreign Investment, in International Digests.

**Foreign judgments,** see category Civil Actions and Procedure, topic Judgments.

**Foreign marriages,** see category Family, topic Marriage.

**Foreign operators of motor vehicles,** see category Transportation, topic Motor Vehicles.

**FOREIGN TRADE.**—See category Foreign Trade and Commerce; see also topics Foreign Exchange, Foreign Trade Regulations; Introduction, topic Currency, in International Digests only.

**FOREIGN TRADE AND COMMERCE** [category, International Digests only]

**FOREIGN TRADE REGULATIONS.**—See category Foreign Trade and Commerce, in International Digests only.

**Foreign vehicles,** see category Transportation, topic Motor Vehicles.

**Foreign wills,** see category Estates and Trusts, topic Wills.

**Foreigners,** see category Citizenship, topic Aliens.

**Forms,** see categories Civil Actions and Procedure, topics Depositions and Discovery, Judgements; Documents and Records, topics Acknowledgments, Affidavits; Estates and Trusts, topics Executors and Administrators, Wills; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Deeds.

**Forthcoming bonds,** see category Debtor and Creditor, topics Attachment, Executions, Garnishment.

**Franchise taxes,** see categories Taxation, topics Business Taxes, Corporate Taxes; Business Organizations, topic Corporations.

**FRANCHISES.**—See also category Business Regulation and Commerce, topics Securities, Monopolies, Restraint of Trade and Competition, Contracts in International Digests only.

**FRAUD AND ABUSE.**—See category Health.

**FRAUDS, STATUTE OF.**—See category Business Regulation and Commerce, see also topic Commercial Code.

**FRAUDULENT SALES AND CONVEYANCES.**—See category Debtor and Creditor; see also topics Attachment, Exemptions, Garnishment; category Business Regulation and Commerce, topic Commercial Code.

**Frivolous Claims,** see category Civil Actions and Procedure, topic Pleading.

**Fuels taxes,** see category Taxation, topic Gasoline and Special Fuels Taxes.

**GARNISHMENT.**—See category Debtor and Creditor; see also topics Attachment, Executions, Exemptions.

**Gas,** see category Mineral, Water and Fishing Rights, topic Mines and Minerals.

**GASOLINE AND SPECIAL FUEL TAXES.**—See category Taxation.

**GIFT TAX.**—See category Taxation, see also topics Estate Tax, Inheritance Tax.

**Gifts to Minors,** see category Family, topic Infants.

**GOVERNMENT AND LEGAL SYSTEM.**—See category Introduction; see also category Courts and Legislature.

**Government contracts,** see category Business Regulation and Commerce, topic Contracts in certain International Digests.

**Government, suit against,** see category Civil Actions and Procedure, topic Damages.

**Grace,** see category Business Regulation and Commerce, topics Bills and Notes, Commercial Code.

**Guardian ad litem,** see category Family, topic Infants.

**GUARDIAN AND WARD.**—See category Family, see also topic Infants.

**Guests, liability to,** see category Transportation, topic Motor Vehicles.

**HEALTH** [category]

**Health regulations,** see category Health.

**Heirs,** see category Estates and Trusts, topic Descent and Distribution.

**HOLIDAYS.**—See category Introduction; see also category Business Regulation and Commerce, topics Bills and Notes, Commercial Code.

**Holographic wills,** see category Estates and Trusts, topic Wills.

**HOMESTEADS.**—See category Debtor and Creditor; see also topic Exemptions.

**HUSBAND AND WIFE.**—See category Family; see also topics Divorce, Guardian and Ward, Marriage; categories Civil Actions and Procedure, topic Evidence, subhead Witnesses; Debtor and Creditor, topic Homesteads; Documents and Records, topic Acknowledgments; Estates and Trusts, topics Descent and Distribution, Executors and Administrators; Property, topics Curtesy, Dower, Real Property.

**Hydrocarbons,** see category Mineral, Water and Fishing Rights, topic Mines and Minerals.

**Illegitimate children,** see categories Estates and Trusts, topic Descent and Distribution; Family, topic Adoption.

**Immigration,** see category Citizenship, topic Immigration in International Digests.

**INCOME TAX.**—See category Taxation.

**Incompetency,** see categories Civil Actions and Procedure, topics Evidence, subhead Witnesses, Limitation of Actions; Estates and Trusts, topics Executors and Administrators, Wills; Family, topics Guardian and Ward, Husband and Wife, Infants.

**Incorporation,** see categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Banks and Banking; Insurance, topics Insurance Companies, Surety and Guaranty Companies.

**Industrial property,** see category Intellectual Property, topics Copyright, Patents, Trademarks and Tradenames in International Digests, and Part II for Digests of U.S. Laws, as well as domestic Digests for category Intellectual Property, topic Trademarks and Tradenames.

**INFANTS.**—See category Family; see also topics Adoption, Guardian and Ward, Marriage; categories Civil Actions and Procedure, topics Evidence, subhead Witnesses, Limitation of Actions; Employment, topic Labor Relations; Estates and Trusts, topics Executors and Administrators, Wills.

**Infants' torts, parental liability for,** see category Family, topic Infants.

**INFORMATION TECHNOLOGY, INTERNET AND NEW MEDIA.**—See category Business Regulation and Commerce.

**Inheritance,** see categories Citizenship, topic Aliens; Estates and Trusts, topics Descent and Distribution, Wills; Family, topic Adoption; Property, topics Curtesy, Dower.

**INHERITANCE TAX.**—See category Taxation; see also topics Estate Tax, Gift Tax.

**Initiative,** see category Courts and Legislature, topic Legislature.

**INJUNCTIONS.**—See category Civil Actions and Procedure; see also category Courts and Legislature, topic Courts.

**Insane persons,** see category Family, topic Guardian and Ward.

**Insolvency,** see category Debtor and Creditor, topic Bankruptcy in International Digests only.

**Installment sales,** see category Business Regulation and Commerce, topics Interest, Sales; also topic Consumer Protection.

**INSURANCE** [category]

**INSURANCE.**—See categories Health; Insurance; see also categories Business Organizations, topic Corporations; Transportation, topic Motor Vehicles.

**INSURANCE COMPANIES.**—See category Insurance; see also categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Bonds.

**Insurer, direct action against,** see category Transportation, topic Motor Vehicles, subhead Direct Actions.

**INTELLECTUAL PROPERTY [category]**

**INTEREST.**—See category Business Regulation and Commerce; see also topic Banks and Banking.

**International Conventions,** see Part VI.

**Internet,** see category Business Regulation and Commerce, topic Information Technology, Internet and New Media.

**Interpleader,** see category Civil Actions and Procedure, topic Actions.

**Interrogatories,** see category Civil Actions and Procedure, topic Depositions and Discovery.

**Intervention,** see category Civil Actions and Procedure, topic Actions.

**Inter vivos trusts,** see category Estates and Trusts, topic Trusts; Bequests and devises to, see category Estates and Trusts, topic Wills.

**Intestacy,** see category Estates and Trusts, topic Descent and Distribution.

**Intoxicating liquors,** see categories Business Regulation and Commerce, topic Licenses, Business and Professional; Taxation, topic Taxes.

**INTRODUCTION [category]**

**Inventory,** see categories Estates and Trusts, topic Executors and Administrators; Family, topic Guardian and Ward.

**Investment securities,** see category Business Regulation and Commerce, topics Commercial Code, Securities.

**Iron Curtain distributees,** see category Estates and Trusts, topic Executors and Administrators, subhead Distribution if Abroad.

**Issue,** see category Estates and Trusts, topic Descent and Distribution.

**Joinder,** see category Civil Actions and Procedure, topic Actions. See also category Civil Actions and Procedure, topic Pleading.

**JOINT STOCK COMPANIES.**—See category Business Organizations; see also topics Associations, Corporations.

**Joint tenancy,** see category Property, topic Real Property.

**Judgment notes,** see category Business Regulation and Commerce, topic Bills and Notes.

**JUDGMENTS.**—See category Civil Actions and Procedure; see also topic Submission of Controversy; categories Courts and Legislature, topic Courts; Debtor and Creditor, topics Executions, Exemptions; Dispute Resolution, topic Arbitration and Award; Family, topic Divorce (recognition of foreign judgment).

**Jurat,** see category Documents and Records, topic Affidavits.

**Jurisdiction,** see category Courts and Legislature, topic Courts. See also category Civil Actions and Procedure, topic Process.

**Justices of the Peace,** see category Courts and Legislature, topic Courts.

**Justification,** see category Civil Actions and Procedure, topic Bonds.

**Juveniles,** see categories Employment, topic Labor Relations; Family, topic Infants.

**Labels,** see category Intellectual Property, topic Trademarks and Tradenames.

**LABOR RELATIONS.**—See category Employment.

**LANDLORD AND TENANT.**—See category Property.

**Language, plain, statutory requirement for,** see category Business Regulation and Commerce, topic Consumer Protection.

**Law reports,** see category Courts and Legislature, topic Reports; also category Courts and Legislature, topic Law Reports, Codes, in International Digests.

**Law students,** see category Legal Profession, topic Attorneys and Counselors.

**Lawyers,** see category Legal Profession, topic Attorneys and Counselors.

**Leases,** see category Property, topic Landlord and Tenant; see also category Business Regulation and Commerce, topic Frauds, Statute of.

**Legacies,** see category Estates and Trusts, topic Wills.

**Legacy tax,** see category Taxation, topic Taxes.

**Legal education,** see category Legal Profession, topic Attorneys and Counselors.

**LEGAL PROFESSION [category]**

**LEGISLATURE.**—See category Courts and Legislature; see also topics Statutes; and in International Digest. See also category Introduction, topic Government and Legal System.

**Letters of credit,** see category Business Regulation and Commerce, topic Commercial Code.

**Letters rogatory,** see category Civil Actions and Procedure, topic Depositions and Discovery.

**Levy,** see categories Debtor and Creditor, topics Attachment Executions, Garnishment; Taxation, topic Taxes.

**LICENSES.**—See categories Business Regulation and Commerce; Health; see also categories Business Organizations, topic Corporation; Business Regulation and Commerce, topics Brokers, Securities; Family, topic Marriage; Legal Profession, topic Attorneys and Counselors; Taxation, topic Taxes; Transportation, topic Motor Vehicles.

**LIENS.**—See category Debtor and Creditor; see also topics Attachment, Executions, Fraudulent Sales and Conveyances, Garnishment, Homesteads, Pledges; see also categories Business Regulation and Commerce, topics Brokers, Carriers, Commercial Code, Factors, Warehousemen; Civil Actions and Procedure, topic Judgments;

Employment, topic Labor Relations; Legal Profession, topic Attorneys and Counselors; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Landlord and Tenant; Taxation, topic Taxes; Transportation, topic Motor Vehicles.

**LIMITATION OF ACTIONS.**—See category Civil Actions and Procedure, see also topic Prescription ( in International Digests ); categories Debtor and Creditor, topic Liens; Estates and Trusts, topic Death; Property, topic Adverse Possession.

**LIMITED LIABILITY COMPANIES.**—See category Business Organizations.

**Limited partnership,** see category Business Organizations, topic Partnerships.

**Living wills,** see category Estates and Trusts, topic Wills.

**Lobbyists,** see category Courts and Legislature, topic Legislature.

**LOCAL AND MUNICIPAL TAXES.**—See category Taxation.

**Long arm statutes,** see category Civil Actions and Procedure, topic Process.

**Maintenance,** see category Family, topics Divorce, Marriage.

**MARRIAGE.**—See category Family; see also topics Divorce, Husband and Wife; categories Civil Actions and Procedure, topic Evidence, subhead Witnesses; Debtor and Creditor, topic Homesteads; Documents and Records, topic Records, subhead Vital Statistics; Estates and Trusts, topics Descent and Distribution, Wills; Property, topics Curtesy, Dower.

**Marriage Certificate,** see categories Documents and Records, topic Records; Family, topic Marriage.

**Married women,** see categories Civil Actions and Procedure, topic Evidence, subhead Witnesses; Debtor and Creditor, topics Exemptions, Homesteads; Documents and Records, topic Acknowledgments; Estates and Trusts, topics Descent and Distribution, Executors and Administrators, Wills; Family, topics Dissolution of Marriage, Divorce, Husband and Wife, Marriage; Property, topics Deeds, Dower.

**Mechanics' liens,** see category Debtor and Creditor, topic Liens.

**MEDIATION.**—See Category Dispute Resolution.

**Membership associations,** see category Business Organizations, topic Associations.

**Mental incompetency,** see category Family, topic Guardian and Ward.

**MINERAL, WATER AND FISHING RIGHTS [category]**

**MINES AND MINERALS.**—See category Mineral, Water and Fishing Rights; see also category Employment, topic Labor Relations.

**MINES, MINERALS AND FISHERIES TAXES.**—See category Taxation; see also category Mineral, Water and Fishing Rights.

**Minors,** see categories Estates and Trusts, topic Trusts; Family, topics Guardian and Ward, Infants.

**Model Business Corporation Act,** see category Business Organizations, topic Corporations; for text of Act see Part III.

**MONOPOLIES, RESTRAINT OF TRADE AND COMPETITION.**—See category Business Regulation and Commerce.

**Moratorium,** see categories Introduction, topic Holidays; Mortgages, topic Mortgages of Real Property.

**MORTGAGES [category]**

**MORTGAGES OF PERSONAL PROPERTY.**—See category Mortgages, topic Chattel Mortgages.

**MORTGAGES OF REAL PROPERTY.**—See category Mortgages; see also topic Chattel Mortgages; categories Business Regulation and Commerce, topic Frauds, Statute of; Debtor and Creditor, topic Fraudulent Sales and Conveyances; Documents and Records, topics Acknowledgments, Records; Property, topic Deeds.

**Motion for Judgment,** see category Civil Actions and Procedure, topic Judgments.

**MOTOR VEHICLES.**—See category Transportation.

**Names,** see categories Business Organizations, topics Corporations, Partnerships; Intellectual Property, topic Trademarks and Tradenames.

**Negligence,** see categories Business Regulation and Commerce, topic Sales; Civil Actions and Procedure, topics Damages, Limitation of Actions; Estates and Trusts, topic Death; Family, topic Infants; Transportation, topic Motor Vehicles.

**Negotiable instruments,** see category Business Regulation and Commerce, topics Bills and Notes, Commercial Code.

**New Media,** see category Business Regulation and Commerce, topic Information Technology, Internet and New Media.

**New promise,** see category Civil Actions and Procedure, topic Limitation of Actions.

**Next of kin,** see category Estates and Trusts, topic Descent and Distribution.

**No-fault insurance,** see category Transportation, topic Motor Vehicles, subhead No-Fault Insurance.

**Noise,** see category Environment, topic Environmental Regulation.

**Nominees, Securities in name of,** see category Estates and Trusts, topic Trusts.

**Nonprofit Corporations,** see category Business Organizations, topics Associations, Corporations.

**Nonresidents,** see categories Business Organizations, topic Corporations; Civil Actions and Procedure, topics Costs, Limitation of Actions, Process, Venue; Debtor and Creditor, topic Attachment; Estates and Trusts, topic Executors and Administrators; Family, topic Guardian and Ward; Property, topic Absentees; Transportation, topic Motor Vehicles.

**Nonsupport,** see category Family, topics Divorce, Husband and Wife.

**NOTARIES PUBLIC.**—See category Documents and Records; see also topics Acknowledgments, Affidavits; categories Civil Actions and Procedure, topic

Depositions and Discovery.

**Notes**, see category Business Regulation and Commerce, topics Bills and Notes, Commercial Code.

**Notice of sale**, see categories Debtor and Creditor, topics Attachment, Executions, Liens; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Taxation, topic Taxes.

**Notice to creditors**, see categories Business Organizations, topic Corporations; Debtor and Creditor, topic Fraudulent Sales and Conveyances; Estates and Trusts, topic Executors and Administrators.

**Notices**, see category Business Regulation and Commerce, topic Sales in certain International Digests.

**Nuncupative wills**, see category Estates and Trusts, topic Wills.

**Oaths**, see categories Civil Actions and Procedure, topic Depositions and Discovery; Documents and Records, topics Affidavits, Notaries Public.

**Occupational diseases**, see category Employment, topic Labor Relations.

**OFFICE HOURS AND TIME ZONE**.—See category Introduction.

**Oil and gas**, see category Mineral, Water and Fishing Rights, topic Mines and Minerals, see also category Taxation, topic Taxes.

**Oleographic wills**, see category Estates and Trusts, topic Wills.

**Parent**, see categories Estates and Trusts, topic Descent and Distribution; Family, topics Adoption, Divorce, Guardian and Ward, Infants.

**Parental liability**, see category Family, topic Infants.

**Part payment**, see category Civil Actions and Procedure, topic Limitation of Actions.

**Partial release**, see categories Business Regulation and Commerce, topic Commercial Code; Mortgages, topics Chattel Mortgages, Mortgages of Real Property.

**Parties**, see category Civil Actions and Procedure, topic Actions.

**PARTITION**.—See category Civil Actions and Procedures.

**PARTNERSHIP**.—See category Business Organizations; see also topics Associations, Joint Stock Companies; category Intellectual Property, topic Trademarks and Tradenames.

**Patents**, see United States Patent Law Digest; see category Intellectual Property, topic Patents in Dominion of Canada and International Digests.

**Pawnbrokers**, see categories Business Regulation and Commerce, topic Interest; Debtor and Creditor, topic Pledges.

**Penalties**, see categories Environment, topic Environmental Regulation; Taxation, topic Taxes.

**Permits**, see category Environment, topic Environmental Regulation.

**Perpetuating testimony**, see category Civil Actions and Procedure, topic Depositions and Discovery.

**PERPETUITIES**.—See category Property.

**PERSONAL PROPERTY**.—See category Property; see also categories Business Regulation and Commerce, topics Commercial Code, Frauds, Statute of, Sales; Debtor and Creditor, topics Exemptions, Fraudulent Sales and Conveyances, Liens, Pledges; Estates and Trusts, topic Descent and Distribution; Mortgages, topic Chattel Mortgages; Taxation, topic Taxes.

**Petroleum**, see categories Mineral, Water and Fishing Rights, topic Mines and Minerals; Taxation, topic Taxes.

**"Plain language" statutes**, see category Business Regulation and Commerce, topic Consumer Protection.

**PLEADING**.—See category Civil Actions and Procedure; see also topics Accord and Satisfaction, Actions, Limitation of Actions, Practice, Process, Submission of Controversy; category Courts and Legislature, topic Courts.

**PLEDGES**.—See category Debtor and Creditor.

**Pollution**, see category Environment, topic Environmental Regulation.

**Posthumous children**, see category Estates and Trusts, topics Descent and Distribution, Wills.

**Pour over trusts**, see category Estates and Trusts, topic Wills, subhead Bequests and Devices to Inter Vivos Trusts.

**POWERS OF ATTORNEY**.—See category Property, topic Powers of Attorney.

**PRACTICE**.—See category Civil Actions and Procedure; see also topics Actions, Appeal and Error, Depositions and Discovery, Injunctions, Judgments, Pleading, Process, Submission of Controversy; categories Courts and Legislature, topic Courts; Debtor and Creditor, topics Creditors' Suits, Executions.

**Preliminary injunction**, see category Civil Actions and Procedure, topic Injunctions.

**Premium tax**, see category Insurance, topic Insurance Companies.

**Prescription**, see categories Civil Actions and Procedure, topic Limitation of Actions; Property, topic Adverse Possession; in certain International Digests, category Civil Actions and Procedure, topic Prescription.

**Presumption of death or survivorship**, see category Estates and Trusts, topic Death.

**Pretermitted children**, see category Estates and Trusts, topic Wills.

**Price fixing contracts**, see category Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition.

**PRINCIPAL AND AGENT**.—See also categories Business Organizations, topic Partnerships; Business Regulation and Commerce, topics Brokers, Factors; Employment, topic Labor Relations.

**Privileged communications**, see category Civil Actions and Procedure, topic Evidence, subhead Witnesses.

**Probate**, see category Estates and Trusts, topic Wills.

**Probate Code**, see category Estates and Trusts, topic Wills.

**Probate courts**, see category Courts and Legislature, topic Courts.

**Procedure**, see categories Civil Actions and Procedure, topics Actions, Pleading, Practice; Courts and Legislature, topic Courts.

**PROCESS**.—See category Civil Actions and Procedure. see also category Transportation, topic Motor Vehicles.

**Process agent**, see categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Securities; Civil Actions and Procedure, topic Process; Insurance, topic Insurance Companies; Property, topic Absentees.

**Product liability**, see category Business Regulation and Commerce, topic Sales.

**Professional associations**, see category Business Organizations, topic Associations.

**Professional corporations**, see category Business Organizations, topic Corporations.

**Prohibited marriages**, see category Family, topic Marriage.

**Promissory notes**, see category Business Regulation and Commerce, topics Bills and Notes, Commercial Code.

**Proof of claims**, see categories Civil Actions and Procedure, topic Pleading; Estates and Trusts, topic Executors and Administrators.

**Proof of deeds**, see category Documents and Records, topic Acknowledgments.

**PROPERTY [category]**

**PROPERTY TAXES**.—See category Taxation.

**Proxies**, see category Business Organizations, topic Corporations.

**Public administrators**, see category Estates and Trusts, topic Executors and Administrators.

**PUBLIC HEALTH**.—See category Health.

**Public works**, see category Debtor and Creditor, topic Liens, subhead Mechanics' Liens.

**Publication**, see category Civil Actions and Procedure, topic Process.

**Pyramid sales**, see category Business Regulation and Commerce, topic Securities.

**Qualification of foreign corporation**, see category Business Organizations, topic Corporations.

**Quitclaim deeds**, see category Property, topic Deeds.

**Railroads**, see category Business Regulation and Commerce, topic Carriers.

**Real estate brokers**, see category Business Regulation and Commerce, topic Brokers.

**Real estate conveyance tax**, see category Taxation, topic Taxes.

**Real estate subdividers**, see Model Land Sales Practices Act, reproduced in Part III, and category Courts and Legislature, topic Statutes, subhead Uniform Acts, for states adopting.

**REAL PROPERTY**.—See category Property; see also topics Adverse Possession, Curtesy, Deeds, Dower, Landlord and Tenant; categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Frauds, Statute of; Civil Actions and Procedure, topic Partition; Debtor and Creditor, topics Fraudulent Sales and Conveyances, Homesteads, Liens; Documents and Records, topic Records; Estates and Trusts, topic Descent and Distribution; Family, topic Husband and Wife; Mortgages, topic Mortgages of Real Property; Taxation, topic Taxes.

**RECEIVERS**.—See category Debtor and Creditor; see also topic Executions; categories Business Organizations, topic Corporations.

**Recognition of foreign acknowledgments**, see category Documents and Records, topic Acknowledgments.

**RECORDS**.—See category Documents and Records; see also categories Business Regulation and Commerce, topics Commercial Code, Sales; Civil Actions and Procedure, topic Judgments; Debtor and Creditor, topics Assignments, Liens; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Deeds.

**Redemption**, see categories Debtor and Creditor, topics Executions, Liens; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Taxation, topic Taxes.

**Referendum**, see category Courts and Legislature, topic Legislature.

**Registration**, see categories Business Regulation and Commerce, topic Securities; Documents and Records, topic Records; Intellectual Property, topic Trademarks and Tradenames.

**Registration as law student**, see category Legal Profession, topic Attorneys and Counselors.

**Release**, see categories Business Regulation and Commerce, topic Commercial Code; Civil Actions and Procedure, topic Judgments; Debtor and Creditor, topics Attachment, Liens; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Dower.

**Rent**, see category Property, topic Landlord and Tenant.

**Renunciation**, see category Estates and Trusts, topics Descent and Distribution, Trusts, Wills.

**REPLEVIN**.—See category Civil Actions and Procedure.

**Reply**, see category Civil Actions and Procedure, topic Pleading.

**REPORTS**.—See category Courts and Legislature. see also categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Banks and Banking; Insurance, topic Insurance Companies; Transportation, topic Motor Vehicles.

**Reservation of name**, see category Business Organizations, topic Corporations.

**Residency requirements**, see category Family, topic Divorce.

**Restraint of Trade**, see category Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition.

**Restrictions on alienation**, see category Property, topic Perpetuities.

**Retail Credit Sales**, see category Business Regulation and Commerce, topics Consumer Protection, Sales.

**Retaliatory laws**, see category Insurance, topic Insurance Companies.

**Review**, see category Civil Actions and Procedure, topics Appeal and Error, Certiorari; Taxation, topic Taxes.

**Revival**, see category Civil Actions and Procedure, topics Actions, Judgments, Limitation of Actions.

**Revocation of will**, see category Estates and Trusts, topic Wills.

**Right to work laws**, see category Employment, topic Labor Relations.

**Rule in Shelley's case**, see category Property, topic Real Property.

**SALES**.—See category Business Regulation and Commerce; see also topics Commercial Code, Consumer Protection, Contracts, Frauds, Statute of, Securities; categories Debtor and Creditor, topics Assignments, Executions, Fraudulent Sales and Conveyances, Pledges; Documents and Records, topic Acknowledgments; Estates and Trusts, topic Executors and Administrators; Family, topic Guardian and Ward; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Deeds; Taxation, topic Taxes; Transportation, topic Motor Vehicles.

**Sales of accounts**, see category Business Regulation and Commerce, topic Commercial Code.

**SALES AND USE TAXES**.—See category Taxation.

**Satisfaction**, see categories Civil Actions and Procedure, topics Accord and Satisfaction, Judgments; Debtor and Creditor, topics Executions, Liens; Mortgages, topics Chattel Mortgages, Mortgages of Real Property.

**Savings Banks**, see category Business Regulation and Commerce, topic Banks and Banking.

**Scroll**, see category Documents and Records, topic Seals.

**SEALS**.—See category Documents and Records; see also topics Acknowledgments, Affidavits, Notaries Public; categories Business Regulation and Commerce, topics Commercial Code, Sales; Civil Actions and Procedure, topic Depositions and Discovery; Mortgages, topics Chattel Mortgages, Mortgages of Real Property; Property, topic Deeds.

**Secured transactions**, see categories Business Regulation and Commerce, topics Commercial Code, Sales; Mortgages, topic Chattel Mortgages; Taxation, topic Stamp and Seal Taxes.

**SECURITIES**.—See category Business Regulation and Commerce; see also topic Commercial Code; categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Bonds; Debtor and Creditor, topic Pledges; Family, topics Guardian and Ward, Infants; Estates and Trusts, topic Trusts; Mortgages, topics Chattel Mortgages, Mortgages of Real Property.

**Security agreement**, see categories Business Regulation and Commerce, topic Commercial Code; Mortgages, topic Chattel Mortgages.

**Security deposits**, see category Property, topic Landlord and Tenant.

**Security devices**, see categories Business Regulation and Commerce, topics Commercial Code, Sales; Debtor and Creditor, topic Pledges; Mortgages, topic Chattel Mortgages.

**Security for costs**, see category Civil Actions and Procedure, topic Costs.

**Self-proved wills**, see category Estates and Trusts, topic Wills.

**Separate estate**, see category Family, topic Husband and Wife.

**Separate examination**, see category Documents and Records, topic Acknowledgments.

**Separation**, see category Family, topics Dissolution of Marriage, Divorce, Husband and Wife.

**SEQUESTRATION**.—See category Civil Actions and Procedure; see also category Debtor and Creditor, topics Attachment, Executions, Garnishment, Receivers.

**Servants**, see category Employment, topic Labor Relations.

**Service**, see category Civil Actions and Procedure, topic Process.

**Set-off**, see category Civil Actions and Procedure, topic Pleading.

**Settlement**, see category Civil Actions and Procedure, topic Accord and Satisfaction.

**Severance**, see category Civil Actions and Procedure, topic Actions.

**Shares**, see Stock, this index.

**SHIPPING**.— See category Transportation, topic Shipping in International Digests only.

**Simultaneous death**, see category Estates and Trusts, topic Death.

**Small claims**, see category Courts and Legislature, topic Courts.

**Small estates**, see category Estates and Trusts, topic Executors and Administrators.

**Small loans**, see category Business Regulation and Commerce, topic Interest.

**SMOKING REGULATIONS**.—See category Health.

**Societies**, see category Business Organizations, topic Associations.

**Sovereign immunity**, see category Civil Actions and Procedure, topic Damages.

**Specialty certification**, see category Legal Profession, topic Attorneys and Counselors.

**Special fuels taxes**, see category Taxation, topic Gasoline and Special Fuels Taxes.

**Splitting of actions**, see category Civil Actions and Procedure, topic Actions.

**Spouses, division of property**, see category Family, topics Dissolution of Marriage, Divorce.

**STAMP AND SEAL TAXES**.—See category Taxation.

**Statute of frauds**, see category Business Regulation and Commerce, topic Frauds, Statute of.

**Statute of limitations**, see category Civil Actions and Procedure, topic Limitation of Actions.

**STATUTES**.—See category Courts and Legislature; in certain International Digests, see category Introduction, topic Government and Legal System; category Foreign Trade and Commerce.

**Stay**, see categories Civil Actions and Procedure, topics Actions, Appeal and Error, Judgments; Courts and Legislature, topic Courts; Debtor and Creditor, topic Executions.

**Stock**, see categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Securities; also category Business Regulation and Commerce, topic Commercial Code.

**Stockholders**, see categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Banks and Banking.

**Stock transfer**, see categories Business Organizations, topic Corporations; Taxation, topic Taxes; also category Business Regulation and Commerce, topic Commercial Code.

**Storage**, see category Business Regulation and Commerce, topic Warehousemen.

**Subdividers, registration of**, see Model Land Sales Practices Act, reproduced in Part III, and category Courts and Legislature, topic Statutes, subhead Uniform Acts, for states enacting.

**SUBMISSION OF CONTROVERSY**. —See category Civil Actions and Procedure; see also topic Actions; category Dispute Resolution, topic Arbitration and Award.

**Subpoenas**, see category Civil Actions and Procedure, topic Evidence, subhead Witnesses.

**Subscribing witnesses**, see categories Documents and Records, topic Acknowledgments; Estates and Trusts, topic Wills; Property, topic Deeds.

**Substituted service**, see category Civil Actions and Procedure, topic Process.

**Succession**, see category Estates and Trusts, topic Descent and Distribution.

**Succession tax**, see category Taxation, topic Taxes.

**Suits**, see category Civil Actions and Procedure, topic Actions.

**Summary judgment**, see category Civil Actions and Procedure, topic Judgments.

**Summary proceedings**, see category Property, topic Landlord and Tenant.

**Sunday**, see category Introduction, topic Holidays.

**Supersedeas**, see category Civil Actions and Procedure, topic Appeal and Error.

**Supplementary proceedings**, see category Debtor and Creditor, topic Executions.

**Support, enforcement of**, see category Family, topic Husband and Wife, subhead Desertion and Nonsupport.

**SURETY AND GUARANTY COMPANIES**. —See category Insurance; see also topics Insurance Companies; categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Bonds.

**Surety bonds**, see categories Civil Actions and Procedure, topic Bonds; Insurance, topic Surety and Guaranty Companies.

**Surrogates' courts**, see category Courts and Legislature, topic Courts.

**Survivorship**, see category Estates and Trusts, topic Death.

**Suspension of power of alienation**, see category Property, topic Perpetuities.

**Takeover Bids**, see categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Securities.

**Tax apportionment**, see category Taxation, topic Taxes.

**TAXATION [category]**

**TAXATION**.—See also categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Licenses, Business and Professional; Insurance, topic Insurance Companies; Mineral, Water and Fishing Rights, topic Mines and Minerals; Transportation, topic Motor Vehicles; in certain International Digests, see also category Foreign Trade and Commerce, topics Trade Zones, Investment Incentives.

**Tax sales**, see category Taxation, topic Taxes.

**Technology**, see this index under "Industrial property".

**Tenancy**, see category Property, topic Landlord and Tenant.

**Tenancy by entirety in personality**, see category Property, topic Personal Property.

**Tenancy by entirety in realty**, see category Property, topic Real Property.

**Tenancy in common**, see category Property, topic Real Property.

**Tender Offers**, see categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Securities.

**Termination of parental rights**, see category Family, topic Infants.

**Termination statement**, see categories Business Regulation and Commerce, topic Commercial Code; Mortgages, topic Chattel Mortgages.

**Testamentary capacity**, see category Estates and Trusts, topic Wills.

**Testamentary trusts**, see category Estates and Trusts, topic Trusts.

**Testaments**, see category Estates and Trusts, topic Wills.

**Testimony**, see categories Civil Actions and Procedure, topics Depositions and Discovery, Evidence, subhead Witnesses; Documents and Records, topic Affidavits.

**Third party claims**, see category Debtor and Creditor, topics Attachment, Executions.

**Third party practice**, see category Civil Actions and Procedure, topics Actions, Pleading.

**Title**, see category Property, topics Adverse Possession, Real Property.

**Tobacco taxes**, see category Taxation, topic Alcohol, Beverages and Tobacco Taxes.

**Torrens Act**, see category Documents and Records, topic Records.

**TORTS**.—In certain International Digests, see category Civil Actions and Procedure; see also categories Business Regulation and Commerce, topic Sales; Civil Actions and Procedure, topics Damages, Limitation of Actions; Estates and Trusts, topic Death; Family, topic Infants; Transportation, topic Motor Vehicles.

**Trade, restraint of**, see category Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition.

**TRADE SECRETS**.—See category Intellectual Property.

**TRADE ZONES (Certain International Digests Only)**.—See category Foreign Trade and Commerce; see also categories Business Organizations, topic Corporations; Business Regulation and Commerce; Taxation.

**TRADEMARKS AND TRADENAMES**.—See category Intellectual Property. For federal trademark law, see United States Trademark Law Digest.

**Transfer of decedent's title**, see category Documents and Records, topic Records.

**Transfer of stock**, see categories Business Organizations, topic Corporations; Taxation, topic Taxes; also Business Regulation and Commerce, topic Commercial Code.

**Transfer tax**, see category Taxation, topic Taxes.

**TRANSPORTATION [category]**

**Treaties**, in certain International Digests see category Treaties and Conventions, topic Treaties; see also category Taxation, topic Treaties and Agreements. See European Union Digest. See also Part VI, for Selected International Conventions to which U.S. is a party.

**TREATIES AND CONVENTIONS [category, International Digests only]**

**Trust companies**, see categories Business Organizations, topic Corporations; Business Regulation and Commerce, topic Banks and Banking.

**TRUSTS**.—See category Estates and Trusts; see also topic Executors and Administrators; categories Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition; Family, topic Guardian and Ward; Mortgages, topic Mortgages of Real Property; Property, topic Perpetuities.

**Trust deeds**, see category Mortgages, topic Mortgages of Real Property.

**Trustee process**, see category Debtor and Creditor, topic Garnishment.

**Trust receipt security**, see categories Business Regulation and Commerce, topic Commercial Code; Debtor and Creditor, topic Pledges.

**Tutors**, see category Family, topic Guardian and Ward.

**Unclaimed deposits**, see category Business Regulation and Commerce, topic Banks and Banking; also category Property, topic Absentees.

**Unclaimed dividends**, see category Business Organizations, topic Corporations.

**Unclaimed legacies**, see category Estates and Trusts, topic Wills.

**Unclaimed property**, see Escheat, this index.

**Undertakings**, see category Civil Actions and Procedure, topic Bonds.

**Unemployment compensation**, see category Employment, topic Labor Relations.

**Unemployment compensation taxes**, see category Taxation, topic Taxes.

**Unfair competition**, see category Business Regulation and Commerce, topic Monopolies, Restraint of Trade and Competition.

**Uniform Commercial Code**, see Commercial Code, this index.

**UNIFORM LAWS**.—See Courts and Legislature; see also topic Statutes. For Uniform Acts promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in force in each state, see specific topics, e.g., category Business Organizations, topic Partnerships, etc.; also category Courts and Legislature, topic

Statutes in each state Digest. For text of selected Uniform Acts of the NCCUSL within the scope of the Martindale-Hubbell Law Digests, see table of contents.

It should be noted that where local differences from a Uniform Act are very significant they may be omitted from the list of Uniform Acts for a particular state in order to avoid misleading readers. Furthermore, Uniform Acts that are not promulgated by NCCUSL are covered under the relevant topics.

**Unincorporated associations**, see category Business Organizations, topic Associations.

**Unsolicited merchandise**, see category Business Regulation and Commerce, topics Consumer Protection, Sales.

**Use tax**, see category Taxation, topic Sales and Use Taxes.

**UTILITIES TAX**.—See category Taxation.

**Usury**, see category Business Regulation and Commerce, topic Interest.

**Valuation**, see categories Debtor and Creditor, topic Executions; Taxation, topic Taxes.

**VALUE ADDED TAX**.—International Digests only. See category Taxation. See European Union Digest, category Taxation, topic Value Added Tax for member nations.

**VENUE**.—See category Civil Actions and Procedure. see also categories Estates and Trusts, topics Executors and Administrators, Wills; Family, topic Divorce.

**Vital Statistics**, see category Documents and Records, topic Records.

**Wages**, see categories Debtor and Creditor, topics Assignments, Exemptions, Garnishment; Employment, topic Labor Relations.

**Wards**, see category Family, topic Guardian and Ward.

**Warehouse receipts**, see category Business Regulation and Commerce, topic Commercial Code.

**WAREHOUSEMEN**.—See category Business Regulation and Commerce; see also topic Commercial Code.

**Warranties**, see category Business Regulation and Commerce, topics Commercial Code; Sales.

**Warranty deed**, see category Property, topic Deeds.

**Water pollution**, see category Environment, topic Environmental Regulation.

**Widow**, see categories Debtor and Creditor, topic Homesteads; Estates and Trusts, Topics Descent and Distribution, Executors and Administrators, Wills; Property, topic Dower.

**Wife**, see categories Civil Actions and Procedure, topic Evidence, subhead Witnesses; Debtor and Creditor, topics Exemptions, Homesteads; Documents and Records, topic Acknowledgments; Estates and Trusts, topics Descent and Distribution, Executors and Administrators, Wills; Family, topics Divorce, Husband and Wife, Marriage; Property, topics Deeds, Dower.

**WILLS**.—See category Estates and Trusts; see also topics Descent and Distribution, Executors and Administrators; category Taxation, topic Taxes.

**Wine**, see categories Business Regulation and Commerce, topic Licenses, Business and Professional; Taxation, topic Taxes.

**WITNESSES**.—See also categories Civil Actions and Procedure, topic Depositions and Discovery; Documents and Records, topics Acknowledgments, Affidavits; Estates and Trusts, topic Wills.

**Workers**, see category Employment, topic Labor Relations.

**Workmen's Compensation**, see category Employment, topic Labor Relations.

**Wrongful death**, see category Estates and Trusts, topic Death.







# TENNESSEE LAW DIGEST REVISER

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## Reviser Profile

**History:** With 160 lawyers in its offices in Tennessee, Mississippi and Pennsylvania, Butler Snow offers a full range of legal services in more than 45 practice areas to clients throughout the region and nationally. The firm was formed in 1954 from the merger of Butler, Snow & O'Mara and Stevens & Cannada.

**Areas of Emphasis and Growth:** For more than a half-century, Butler Snow has been recognized as a leading law firm dedicated to providing superior client service and unsurpassed legal representation. The firm has become a preeminent regional firm with national reach in select practices while remaining a leading force in local legal matters.

Butler Snow has been "at the table" in most significant transactional matters in its geographical area. Some of the industries we represent include healthcare, banking and finance, gaming, environmental, manufacturing, governmental, pharmaceutical, telecommunications and insurance.

In the litigation arena, we handle cases where the vital interests of the client are at stake in multi-million dollar matters, while we also handle our clients' routine litigation. Our trial lawyers bring a strategic focus and extensive litigation and trial experience and are noted for their commercial litigation, for defending pharmaceutical and medical device companies, and for the management and trial of mass tort cases involving asbestos, silica and other toxic tort cases. The firm also has substantial experience in a wide range of other products liability, white collar criminal and regulatory matters, healthcare providers, insurance and trucking accident cases.

**Client Base:** Butler Snow serves clients ranging from Fortune 100 companies to regional and local clients. The firm serves as national or regional counsel for several clients—for either particular products, geographic regions or as national trial counsel. Our attorneys have represented clients in 49 of the 50 states and in the District of Columbia and our international experience includes representation in more than 20 countries including Australia, Canada, China, Colombia, Europe, Kuwait, Mexico, Saudi Arabia and the United Kingdom.

**Firm Activities:** Butler Snow's attorneys have taken active roles in the organized bar. Members of the firm have served in various leadership positions in the American, Tennessee and Memphis Bar Associations. Firm members have served as President of the American Counsel Association, the Tennessee Bar Association, the Memphis Bar Association, the Hinds County Bar Association and the Young Lawyers Division of the Tennessee and Mississippi Bar Associations. Other legal and industry organizations to which firm attorneys belong or hold leadership roles are the Tennessee Intellectual Property Law Association, Tennessee Technology Development Corporation, Tennessee Governor's Task Force on Biotechnology, Memphis Area Technology Council, Technology Development Corporation, Tennessee Defense Lawyers Association, Defense Research Institute, American Immigration Lawyers Association, Association of Women Attorneys, Federal Bar Association, Memphis Estate Planning Council, American Health Lawyers Association, Medical Group Managers Association, Healthcare Financial Management Association, the IPA Association of America, Big Brothers Big Sisters, the Boys and Girls Clubs, Hands on Memphis and various other charitable and religious organizations.

**Management:** The firm is organized administratively into two departments—business and litigation, with more than 45 practice areas including commercial and health litigation, business services, public finance and government relations, intellectual property, labor and employment, telecommunications, and taxation. The firm is managed by an Executive Committee of seven attorneys, including the Chair of the firm.

**Significant Distinctions:** Butler Snow's culture includes a unique compensation system that puts the interests of clients first and encourages teamwork. Members of Butler Snow are not compensated based upon specific matter origination or billing attorney credits. Our culture might best be summed up by saying, "It is amazing what can be accomplished when you put the interests of others first and no one takes the credit." This culture attracts attorneys who could practice anywhere but choose Butler Snow. That talent level, in turn, has engendered the sophisticated law practice that we enjoy and from which our clients benefit. In fact, a survey of Butler Snow clients showed an extraordinarily high level of client satisfaction with the firm and the services provided by it.

Our firm is recognized regionally and nationally for its expertise and contributions to the profession. Our litigation attorneys include members of the Fellows of the American College of Trial Lawyers, the American Board of Trial Advocates, the *International Who's Who of Business Lawyers*, the *International Who's Who of Product Liability Defense Lawyers* and the Products Liability Advisory Council (PLAC). Our trial lawyers have directed and served on the faculty of the IADC Defense Counsel Trial Academy, the ABA's TIPS National Trial Academy and the National Advocacy Center for the United States Department of Justice.

A quarter of all of Butler Snow's attorneys are listed in *The Best Lawyers in America, 2007*<sup>®</sup> (Copyright 2006 by Woodward/White, Inc., of Aiken, S.C.) including 43 listings in 26 practice areas. 15 of our lawyers are recognized in Chambers & Partners, *America's Leading Lawyers for Business in America*. 36 Butler Snow attorneys were named to *Super Lawyers*<sup>®</sup> 2006, an honor bestowed upon less than 5 percent of attorneys nationwide.



# TENNESSEE LAW DIGEST

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# TENNESSEE LAW DIGEST

Revised for 2008 edition by

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC, of Memphis.

(References, unless otherwise noted, are to sections in official Tennessee Code Annotated [1956]. References to Rules are to Tennessee Rules of Civil Procedure unless otherwise noted. Parallel citations to Southwestern Reporter begin with 85 Tenn. and 16 Tenn. App. and end at 225 Tenn. and 63 Tenn. App., after which Southwestern Reporter is official and only citation.)

*Note: 2007 legislation includes session laws from c. 1 through c. 607, June 30, 2007. General assembly meets for an organizational session, not to last longer than fifteen consecutive calendar days, on the second Tuesday in January following the biennial election of members of the state house of representatives. The regular legislative session of the general assembly begins on the first Tuesday following conclusion of the organizational session, unless an earlier date is set by joint resolution of both houses.*

## INTRODUCTION

### GOVERNMENT AND LEGAL SYSTEM:

The State of Tennessee is a constituent state of the United States of America. For further discussion of the U.S. federal system, see Introduction to the Federal Government of the United States at the beginning of this volume. A great many laws are promulgated by the federal government of the United States and are not reflected in the topics below. See the Introduction to this volume for references to the federal law topics covered.

Like all but one of the United States, Tennessee has a common law legal system, with roots in English common law. For information on the courts and legislature of Tennessee, see category Courts and Legislature.

In 2002, Art. XI, §5 of Tennessee Constitution was amended to allow legislature to authorize: (1) State Lottery, net proceeds of which were allocated to provide for financial assistance to: Tennessee citizens to obtain post-secondary education within this State and public school teachers to obtain post-secondary education in math, science or certification in teaching math or science and, thereafter, excess to be allocated to capital outlay projects for K-12 educational facilities, early learning programs, and after school programs (49-6-702; 49-4-916); and (2) other lotteries, but only by  $\frac{2}{3}$  vote of each house of legislature and only for benefit of organizations qualified under §501(c)(3) of Internal Revenue Code. In 2003, general assembly enacted Tennessee Educational Lottery Implementation Law, providing for State Lottery. (4-51-101 et seq.). In 2004, by  $\frac{2}{3}$  vote of each house of legislature, organizations qualified pursuant to §501(c)(3) of Internal Revenue Code were authorized, subject to proper registration, approval, and copious limitations, to conduct annual events for their benefit involving certain defined games of chance. (3-17-101 et seq.).

The Local Government Modernization Act of 2005 was enacted to promote maintenance by local governments of adequate accounting records and compliance with Generally Accepted Accounting Principles. (9-3-401 et seq.).

The Comprehensive Governmental Ethics Reform Act of 2006 was enacted establishing rules for lobbyists and legislators, campaign finance guidelines and enforcement of both. (2006, c. 1). Act also established Tennessee Ethics Commission.

### HOLIDAYS:

Legal holidays are: Jan. 1; 3d Mon. in Jan. (M.L. King Birthday); 3d Mon. in Feb. (Washington Day); Good Friday; last Mon. in May (Memorial Day); July 4; 1st Mon. in Sept. (Labor Day); 2d Mon. in Oct. (Columbus Day); Nov. 11 (Veteran's Day); Thanksgiving Day; Dec. 25; days set for holding statewide county, state or national elections. Noon to midnight of Saturday is half-holiday. (15-1-101).

**Holiday Falling on Sunday or Saturday.**—If holiday falls on Sun., following Mon. substituted, and if on Sat., preceding Fri. substituted. (15-1-101).

**Bank transactions** on holiday or after noon on Saturday are valid. (15-1-103). Business activities may be suspended on Wednesdays, Thursdays or Saturdays. (15-1-104).

**Legality of Transactions on Saturday, Sunday or Holidays.**—Legal on Saturday or holiday. Generally, no restriction on private or business activity except adult-oriented establishments on Suns. (7-51-1112) and sale of alcoholic beverages by liquor stores on Suns., New Year's Day, Fourth of July, Labor Day, Thanksgiving and Christmas (57-3-406).

### OFFICE HOURS AND TIME ZONE:

Tennessee is in both the Central (GMT -06:00) and Eastern (GMT -05:00) time zones. Memphis, Jackson and Nashville areas are in Central time zone. Knoxville and Chattanooga areas are in Eastern time zone. Office hours are generally from 9 a.m. to 5 p.m.

## BUSINESS ORGANIZATIONS

### AGENCY:

The common law rules of agency apply to questions relating to principal and agent.

### ASSOCIATIONS:

Nonprofit, cooperative associations, with or without capital stock, may be formed to encourage orderly marketing of products of soil. (43-16-101 et seq.). See also topic Corporations, subhead Professional Corporations.

**Formation.**—No statutory provisions.

**Rights and Powers.**—No statutory provisions.

**Liabilities.**—While mere membership in association does not of itself impose liability for acts of associates, universal liability of members may arise from a public act of the association itself, or by the acts of officers, agents or members when such acts are known to membership and actively or passively approved. (181 S.W.2d 881 [1944]).

**Actions.**—No statutory authorization for actions by or against association in its own name. Class action appears necessary when members are too numerous to be joined. (181 S.W.2d 881 [1944]).

**Dissolution.**—No statutory provision.

**Professional Associations.**—Two or more persons licensed to practice a profession or engage in an occupation or trade permitted to form professional association under specified conditions. (61-1-105). See also topic Corporations, subhead Professional Corporations.

### CORPORATIONS:

**General Supervision.**—Secretary of State. Address for filings and inquiries: Secretary of State, 312 Eighth Avenue North, 6th Floor, William R. Snodgrass Tower, Nashville, TN 37243.

#### For Profit Corporations.—

**Purposes.**—Corporation may engage in any lawful business unless more limited purpose is set forth in charter. (48-13-101).

**Name.**—Must contain word "corporation", "incorporated", "company", or abbreviation thereof, except for insurance or banking companies. Domestic or foreign corporation authorized to transact business or making application to do so may elect to adopt assumed corporate name for use in state. Name must be distinguishable from corporate or assumed corporate name of corporation incorporated or authorized to transact business in state; corporate name or assumed corporate name reserved in office of Secretary of State; or, name of not for profit domestic or foreign corporation authorized to transact business in state. Name must not imply: Corporation has power to transact business when authorization is required by laws of this state unless appropriate written certified authorization has been obtained; affiliation with fraternal, veterans', service, religious, charitable, or professional organization unless so authorized; corporation is agency of U.S. or State of Tennessee unless so authorized; or that corporation is organized for purpose other than stated in charter. Reservation of name for nonrenewable four-month period allowed and right to use of reserved name assignable. (48-14-101; 48-14-103). Fee for reservation or assignment, \$20. (48-11-303).

**Term of Corporate Existence.**—Perpetual unless otherwise limited in charter. (48-13-102).

**Incorporators.**—One or more persons may act as incorporators by delivering charter to Secretary of State for filing. No restrictions on residency. (48-12-101).

**Charter of Incorporation.**—Must set forth: Name; number of shares authorized to be issued; street address of initial registered corporate office and county where located; name of registered agent at registered office; name and address of each incorporator; address of initial principal corporate office; class, preference, limitations and rights of each class of stock including voting rights and rights upon dissolution; and statement that corporation is for profit. Charter may contain additional provisions regulating conduct or affairs. (48-12-102). Charter must be signed by incorporator if directors not yet selected, or chairman of board, president or authorized officers. (48-11-301).

**Filing of Charter.**—File original copy with Secretary of State and certified copy with county register in county of principal office. (48-11-301-03).

**Incorporation Tax or Fee.**—See subhead Filing Fees, infra.

**Filing Fees.**—Filing charter, \$100; charter amendment, restated charter, articles of dissolution or termination, annual report, \$20; articles of merger or share exchange, \$100; application for reinstatement following administrative dissolution, \$70. County register may charge \$5 plus 50¢ per page in excess of five pages for filing of documents required to be filed locally. (48-11-303). See subhead Local Filing of Corporate Documents, infra.

**Local Filing of Corporate Documents.**—Following documents must be recorded in county register's office and in county of corporation's principal office if within state, and in county of principal office of surviving corporation in case of merger: Charter; charter amendment; restatement of charter; amended and restated charter, articles of merger or share exchange; articles of dissolution; and articles of revocation of dissolution. (48-11-303).

**License to Do Business.**—Corporate existence begins when charter is filed with Secretary of State unless delayed effective date is specified. Filing is conclusive proof that incorporators satisfied all conditions precedent to incorporation except in proceeding by state to cancel or revoke incorporation or involuntarily dissolve corporation. (48-12-103).

**Organization.**—After incorporation, directors named in charter must hold meeting to complete organization, appoint officers, adopt bylaws, etc. If no directors named in charter, incorporators must hold organizational meeting on call of majority of incorporators on two days notice. Actual meeting not required if all incorporators consent to act without meeting and action taken is set out in written instrument and signed by each incorporator indicating each incorporator's vote or abstention and included in minutes or corporate records. If corporate existence has begun pursuant to 48-12-103, failure to hold

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**CORPORATIONS . . . continued**

organizational meeting will not invalidate action of corporation solely on that basis. (48-12-105).

**Paid in Capital Requirements.**—No statutory provision.

**Amendment to Charter.**—Unless charter provides otherwise, directors may adopt amendments to corporation's charter without shareholder action to: Delete names and addresses of initial directors; delete name and address of initial registered agent or address of registered office if statement of change is on file with Secretary of State; designate or change address of principal office of corporation, change issued and unissued authorized shares of outstanding class of shares into greater number of whole shares if corporation has only shares of that class outstanding; change corporate name by substituting word "corporation", "incorporated", "company", or abbreviation "corp.", "inc." or "co." for similar word or abbreviation in name; designate street address, county, and zip code of corporation's registered office and name of current registered agent at that office; delete initial principal office, if annual report is on file with Secretary of State; or any other change permitted by law to be made without shareholder action. (48-20-102). Any other amendment requires recommendation by directors and approval by majority of votes entitled to be cast on amendment by any voting group with respect to which such amendment creates dissenter's rights and those votes required by 48-17-206-07, of every other voting group entitled to vote on such amendment, unless charter or board requires otherwise. (48-20-103).

**Increase or Decrease of Authorized Stock.**—If charter prohibits reissue of acquired shares, number of authorized shares is reduced by same number of shares acquired by corporation, effective upon amendment of charter. Directors may adopt articles of amendment for this purpose without shareholder action. Amendment must set forth: Name of corporation, reduction in number of authorized shares, itemized by class and series, and total number of authorized shares, itemized by class and series, remaining after reduction of shares. Amendment must be delivered to Secretary of State for filing. (48-16-302).

**Bylaws.**—Incorporators or directors must adopt initial bylaws which may contain any provision for managing business or regulating affairs of corporation not inconsistent with law or charter. (48-12-106). Directors or shareholders may amend or repeal bylaws unless: Charter reserves power to shareholders in whole or part or shareholders, in amending or repealing particular bylaw, expressly provide that directors may not amend or repeal that bylaw. (48-20-201). Shareholder amendments to bylaws requiring quorum or voting requirements greater than required by law must be adopted under greater of: Quorum or voting requirements then in effect or quorum or voting requirements proposed to be adopted. Such amendment may not be adopted, amended or repealed by directors. (48-20-202).

**Stock.**—Charter must prescribe number of shares of each class authorized to be issued. If more than one class issued, charter must prescribe distinguishing designation for each class and describe preferences, limitations and relative rights incident to that class. Charter must authorize one or more classes that together have unlimited voting rights and one or more classes that together are entitled to receive net assets upon dissolution. (48-16-101).

**Stock Certificates.**—Certificate must state at minimum: Name of corporation; statement that corporation is organized under law of state; name of person to whom issued and number; and class of shares and designation of series, if any. If issuing corporation is authorized to issue different classes or different series within class, designations, relative rights, preferences, and limitations applicable to each class and variations in rights, preferences, and limitations for each series must be summarized on certificate. Alternatively, certificate may state that corporation will furnish shareholder this information on request in writing, without charge. Each certificate must be signed by two officers designated in bylaws or by board of directors and may bear corporate seal or facsimile. (48-16-206). Shares need not be represented by certificates. (48-16-207).

**Issuance of Stock.**—Directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to corporation including cash, promissory notes and services performed or to be performed. Directors must determine if consideration is adequate before shares issue. Shares may be placed in escrow for promissory note or contract for future services until note paid or services performed. (48-16-202).

**Transfer of Stock.**—Charter, bylaws, agreement among shareholders, or shareholders and corporation may provide for restrictions on transfer or registration of transfer of shares. Restrictions are enforceable against holder and transferee if restriction noted on certificate. Restrictions on transfers and registration are authorized for any reasonable purpose. Restriction may obligate shareholder to offer corporation or other person first opportunity to acquire shares; obligate corporation or others to acquire shares; require corporation or others to approve transfer; or prohibit transfer to designated persons. (48-16-208).

**Uniform Securities Ownership by Minors Act** not adopted.

**Uniform Simplification of Fiduciary Security Transfers Act** has been adopted. (35-8-101 et seq.). Not repealed by Uniform Commercial Code. (47-1-109).

**Stock Transfer Tax.**—None.

**Stockholders.**—Unless charter provides otherwise, each outstanding share regardless of class is entitled to one vote on each matter voted on at shareholder meetings. (48-17-202). If charter provides without qualification that preemptive rights exist, shareholders having shares with general voting rights and preferred rights to distributions or assets have preemptive rights to acquire proportional amount of corporation's unissued shares upon decision of directors to issue shares, except for shares issued as compensation to directors, officers or agents or employees of corporation, shares issued to satisfy conversion or option rights to create such compensation, shares sold otherwise than for cash, or shares authorized in charter and issued within six months of date of incorporation. (48-16-301).

**Tender Offers.**—See category Business Regulation and Commerce, topic Securities, subhead Registration of Takeover Offers.

**Stockholders' Actions.**—Special procedural rule for derivative suits (23.06) patterned after Federal Rule 23.1. Derivative suits governed by 48-17-401 under which expenses and attorney's fees may be awarded to defendant if suit commenced without reasonable cause.

**Stockholders' Liabilities.**—Not personally liable for any debt or liability of corporation, other than obligations of complying with terms of subscription agreement, payment of consideration or other obligations expressly assumed. (48-16-203).

**Stockholders' Meetings.**—Annual meeting required. (48-17-101). Special meetings may be called by board or, unless charter or bylaws provide otherwise, by shareholders holding not less than 10% of votes entitled to be cast on issue proposed. (48-17-102). Notice of special and annual meeting required to be mailed or otherwise dispatched at least ten days and not more than two months before meeting. (48-17-105). Special meeting notice must include description of purpose(s) for meeting. (48-17-105). Shareholders may vote by proxy. Proxy may be transmitted by facsimile, telegram, or other means of electronic transmission to person who will be holder thereof, provided that facsimile, telegram, or other electronic transmission shall set forth or be submitted with information from which it can be determined that it was sent and authorized by shareholder. (48-17-203). Proxy, which states it is irrevocable, is irrevocable when appointment of proxy is coupled with interest. (48-17-203).

Cumulative voting permitted if authorized by charter and if notice requirements are met. (48-17-209).

**Voting Trusts.**—By signed written agreement, shareholders may create voting trust and transfer shares to trustee for period of ten years. Trust may be extended one additional ten year period. Trustee may issue transferable voting trust certificate to shareholders. Voting trust agreement and list of names and addresses of owners of beneficial interests in trust designating number and class of shares transferred to trust must be delivered to corporation's principal office. (48-17-301).

**Directors.**—Board may consist of one or more individuals as fixed by charter or bylaws who need not be residents of this state or shareholders unless charter provides otherwise. (48-18-102-03). Directors are elected at first annual shareholder's meeting and at each annual meeting thereafter unless terms are staggered or directors are elected for terms exceeding one year. (48-18-103). Unless charter provides otherwise, shareholders or directors may vote to fill vacancy on board. (48-18-110).

**Directors' Meetings.**—May be held in or out of state. Special meetings may be called by chairman, president or any two directors. (48-18-201). Regular meetings may be held without notice unless charter provides otherwise. Special meeting must be preceded by two days notice unless charter or bylaws provide otherwise. (48-18-203). Unless charter or bylaws provide otherwise, directors may conduct meetings through means of communication by which all directors participating may simultaneously hear each other, and such participation constitutes presence at meeting. (48-18-201). Charter or bylaws may authorize quorum to consist of no fewer than one-third of number of directors. Otherwise, quorum is majority of number of directors, regardless of whether number is fixed or prescribed. (48-18-205). Unless charter or bylaws provide otherwise, board action may be taken without meeting if all directors consent in writing setting out description of each director's position on action taken. (48-18-202).

**Powers and Duties of Directors.**—Corporate powers and business affairs exercised by or under authority of directors subject to any limitation in charter. Corporation of 50 or fewer shareholders may dispense with board or limit its authority by designating in charter who will perform normal board functions. Such person is subject to same standard of conduct imposed on directors. (48-18-101). Directors must discharge duties in good faith and with that degree of care ordinarily prudent person in like position would exercise under similar circumstances and in manner reasonably believed to be in best interests of corporation. (48-18-301).

**Liabilities of Directors.**—Directors must not participate in transaction involving conflict of interest without approval of shareholders or other directors unless transaction was fair to corporation. Corporation may not make loans to officers or directors without approval of majority of shareholders entitled to vote unless directors determine that loan benefits corporation; or vote for or assent to distributions in violation of law or charter. Personal liability attaches to director participating in unlawful distribution. (Foregoing may, in some instances, be affected, for some corporations, by impact of federal legislation popularly known as Sarbanes-Oxley). (48-18-301-04).

**Officers.**—Corporation must have president, secretary and other officers described in bylaws or appointed by directors. Unless charter or bylaws provide otherwise, officers are elected or appointed by directors. Duly appointed officer may appoint other officers if authorized by bylaws or by directors. (48-18-401). Same individual may simultaneously hold more than one office, except offices of president and secretary; however, if corporation has only one shareholder, such shareholder may act as president and secretary. (48-18-401).

**Liabilities of Officers.**—Standard of conduct is same as that of directors. (48-18-403). See subhead Powers and Duties of Directors, supra. (48-18-303).

**Indemnification of Directors and Officers.**—Corporation may indemnify director or officer made party to proceeding if director or officer conducted self in good faith and reasonably believed conduct in best interest of or not opposed to best interest of corporation; or in criminal proceeding, director or officer had no reason to believe conduct unlawful. Indemnification mandatory if director or officer successful in defense. Indemnification prohibited if director adjudged liable to corporation in proceeding by corporation or in its right or if adjudged liable in proceeding charging improper benefit to him. (48-18-501).

**Initial Principal Office.**—Must be designated in charter and is office where principal executive offices are located. (48-11-201; 48-12-102). Corporation must maintain registered office in state which may be same as any of its places of business. (48-15-101).

**Registered Agent.**—Corporation must continually maintain registered agent in state who may be individual resident having business office identical with registered office; or domestic or foreign, profit or not for profit corporation authorized to transact business within state and having business office identical with registered office. (48-15-101).

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**CORPORATIONS . . . continued**

Registered agent is corporation's agent for service of process, notice and demand. (48-15-104).

**General Powers of Corporations.**—(a) Sue and be sued, complain and defend in corporate name; (b) have corporate seal; (c) make and amend bylaws not inconsistent with charter or laws of state; (d) purchase, receive, lease and otherwise deal with property of all kinds, or any interest therein; (e) make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations and secure such interest; (f) lend, invest and reinvest funds; (g) purchase, receive, subscribe for or otherwise acquire and deal in shares or other interests in, or obligations of any other entity; (h) be promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or any other entity; (i) conduct its business, locate offices, and exercise powers granted by law within or without state; (j) elect directors and appoint officers, employees, and agents of corporation, define their duties, fix compensation and lend them money and credit; (k) pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans and benefit or incentive plans for current or former directors, officers, employees and agents of corporation or subsidiary; (l) make donations for public welfare or charitable, scientific or educational purposes; (m) make payments or donations or do any other act, not inconsistent with law, that furthers business and affairs of corporation; (n) procure for corporate benefit insurance on life of directors, officers or employees, insure life of any shareholder for purpose of acquiring at death shares owned by such shareholder and continue such insurance after relationship terminates; (o) accept gifts, devises, and bequests subject to conditions or limitations contained therein so long as conditions or limitations are not contrary to law or purposes for which corporation is organized. (48-13-102).

**Political Activities Prohibited.**—No corporation doing business in state may use any corporate funds or credit to aid in approval or defeat of any candidate in any national, state, county or municipal election. (2-19-132). Class C misdemeanor to direct or coerce any employee to vote for any measure, party or person in any election, or threaten to discharge any employee for voting or not voting in election. (2-19-134).

**Dividends** in form of distributions may be paid, subject to restrictions in charter, and unless corporation would be unable to pay its debts as they become due in usual course of business or corporation's total assets would be less than total liabilities plus amount needed to satisfy preferential rights of shareholders superior to those receiving distribution if corporation were to be dissolved at time of distribution. (48-16-401). Share dividends may be issued on pro rata basis without consideration therefor. (48-16-204).

**Unclaimed Dividends.**—See category Property, topic Absentees, subhead Escheat.

**Sale or Transfer of Corporate Assets.**—Corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property in regular course of business; mortgage, pledge or encumber its property whether or not in regular course of business; and transfer all property to another corporation, all shares of which are owned by transferring corporation. (48-22-101). Unless charter provides otherwise, sale, lease, exchange or other disposal of all, or substantially all, property other than in regular course of business requires proposal by directors and approval of majority of shareholders entitled to vote after notice to all shareholders regardless of whether all shareholders are entitled to vote. (48-22-102).

**Books and Records.**—Corporation must maintain records of minutes of meetings of shareholders and directors, and actions taken without meeting; record of actions taken by committees on behalf of directors for corporation; accounting records; and record of shareholders with addresses and type of shares held by each. (48-26-101). Following records must be kept at principal office: Charter; restated charter and amendments thereto, if any; bylaws; restated bylaws and amendments thereto, if any; resolutions of directors creating classes and series of shares; minutes and records of shareholder actions taken for past three years; written communications to shareholders, including financial statements for past three years; names and business addresses of current directors and officers; and most recent annual report. (48-26-101). Shareholder inspection allowed of specified records upon five days written notice that includes statement of reason for inspection. (48-26-102).

**Reports.**—Each domestic and foreign corporation must file with Secretary of State annual report setting forth: Name; state or country of incorporation; street address of registered and principal office and agent located at registered office; name and business address of directors and principal officers; and federal employee identification number of corporation, or its corporation control number assigned by Secretary of State. (48-26-203).

**Merger and Consolidation.**—One or more corporations may merge into for-profit or nonprofit corporation, limited liability company, or limited partnership or corporation may acquire shares of another corporation or units of another limited partnership upon directors adopting and recommending to shareholders and majority of shareholders who are entitled to vote approving plan of merger or share exchange with such plan setting forth: Name of merging and surviving entities; names of entity whose shares are acquired and acquiring entity (in share exchange); terms and conditions of transaction; and manner and basis of converting shares or units (in merger) or exchanging shares or units. (48-21-102-04). Articles of merger or share exchange must be sent to Secretary of State by surviving or acquiring corporation. (48-21-107).

Corporation owning 90% of outstanding shares of each class of subsidiary corporation or units of subsidiary limited partnership may merge subsidiary into itself or merge itself into subsidiary. Directors must adopt merger plan stating name of parent and subsidiary and name of surviving entity; terms and conditions of merger; manner and basis of converting shares or units of each entity into shares, units, obligations, or other securities of surviving entity or any other entity or into cash or other property in whole or in part; and any other provisions deemed desirable. Copy or summary of plan must be mailed to shareholders or partners of subsidiary unless waived in writing. Vote of shareholders or partners of subsidiary not required. If parent corporation is survivor, vote of its shareholders not required. If subsidiary corporation is survivor, approval of shareholders of parent in manner provided in 48-21-104 required. (48-21-105). Articles of merger must be sent to Secretary of State. (48-21-107). Merger of foreign corporation and domestic

corporation allowed by 48-21-109, and merger with foreign or domestic limited liability company allowed by 48-21-110.

**Conversion.**—Corporation may convert to limited liability company if plan of conversion is adopted by board of directors and approved by shareholders. (48-21-111). Effects of conversion from corporation to limited liability company are set forth in 48-21-112.

**Dissolution.**—Corporation may be dissolved by: Majority vote of incorporators or initial directors of corporation which has not commenced business or issued shares (48-24-101); written consent of shareholders; or recommendation by directors and approval by majority of shareholders entitled to vote on such proposal (48-24-102). Articles of dissolution must be filed with Secretary of State setting forth name of corporation, date dissolution authorized and statement that resolution was duly adopted by shareholders. (48-24-101, -103).

Corporate existence continues after dissolution for purpose of winding business up. (48-24-105). Following distribution of assets, articles of termination must be filed setting forth name of corporation, statement that all assets have been distributed to creditors and shareholders, and statement that dissolution has not been revoked. (48-24-108).

Secretary of State may commence proceeding to administratively dissolve corporation if: Corporation fails to deliver annual report within two months after due date; corporation is without registered agent or officer in state for two months or more; name of corporation fails to comply with requirements of 48-14-101; Secretary of State is not notified within two months of change or resignation of registered agent or change or discontinuance of registered office; corporation's period of duration has expired; or corporation submits to Secretary of State check, bank draft or other such instrument for payment of fee and it is dishonored upon presentation for payment. (48-24-201).

Judicial dissolution available in proceeding by attorney general if corporation: Obtained charter by fraud; exceeds authority conferred by law; violates any law resulting in forfeiture of charter; or participates in illegal business activities. (48-24-301, 112 S.W.3d 486 [2002]). Judicial dissolution by shareholders authorized if: Directors are deadlocked in management affairs, shareholders are unable to break deadlock and irreparable harm is threatened or occurring; directors or others under corporate control are acting in illegal or oppressive manner; shareholders are deadlocked in voting power and fail to elect directors for two consecutive annual meetings; or corporate assets are being misapplied or wasted. (48-24-301). Judicial dissolution by creditor authorized if: Creditor's claim has been reduced to judgment, execution is returned unsatisfied and corporation is insolvent; or corporation has admitted in writing that creditor's claim is due and corporation is insolvent. (48-24-301).

**Insolvency and Receivers.**—Court having equity jurisdiction may appoint receiver in proceeding to dissolve corporation for purpose of winding up affairs and liquidating corporate assets, or court may appoint custodian to manage affairs. Court will prescribe powers and duties of custodian which may include: Disposition of assets of corporation at court authorized sale; authority to sue and defend in personal name as receiver of corporation; or exercise of all powers of corporation in place of directors. (48-24-303).

**Close Corporation.**—No special statutory provisions.

**Appraisal.**—Dissent and receipt by shareholder of fair value for shares is available upon: (a) Consummation of plan of merger of which shareholder approval is required; (b) plan of share exchange; (c) sale or exchange of all or substantially all of property of corporation; (d) amendment to charter materially and adversely affecting rights in respect to shares; or (e) any other matter for which charter, bylaws or board resolution allows dissent. In case of merger, share exchange or sale of assets, only those shareholders entitled to vote on such actions are entitled to dissent and receive fair value. (48-23-102). Dissenter may not challenge corporate action giving rise to dissent unless action taken is unlawful or fraudulent with respect to shareholder or corporation. (48-23-102). Fair value is value immediately before effectuation of corporate action giving rise to dissent, excluding appreciation and depreciation occurring in anticipation of corporate action. (48-23-101). Dissenter may present estimate of fair value and demand payment of estimated value. (48-23-209). If dispute remains unsettled, corporation must commence proceeding within two months after receiving demand for purpose of determining fair value of shares and accrued interest. If corporation fails to do so, amount demanded must be paid. (48-23-301).

**Foreign corporations,** except insurance companies, may not transact business in state without certificate of authority. (48-25-101). Following acts do not constitute transaction of business: (a) Maintaining, defending or settling any proceeding, claim, or dispute; (b) holding meetings of directors or shareholders or other activities concerning internal corporate affairs; (c) maintaining bank accounts; (d) maintaining offices or agencies for transfer, exchange, or registration of corporation's securities or appointing and maintaining trustees or depositories for securities; (e) selling through independent contractors; (f) soliciting or obtaining orders if orders require acceptance outside state before becoming contracts; (g) creating or acquiring indebtedness, deeds of trust, mortgages and security interests in real or personal property; (h) securing or collecting debts or enforcing mortgages, deeds of trust, or security interest in property securing debts; (i) owning, without more, real or personal property (except for management and rental of real property) for reasonable time acquired in connection with enforcement of mortgage or deed of trust if owner is attempting to liquidate investment and there is no office or other agency present in state therefor other than independent agency; (j) conducting isolated transaction (completed within one month that is not one in course of repeated transactions of like nature; and (k) transacting business in interstate commerce. (48-25-101).

*Application for certificate of authority* must state name of corporation and, if different, name under which certificate of authority is to be obtained; state or country in which incorporated; date of incorporation and period of duration, if other than perpetual; street address and county of principal office; street address of registered office and name of registered agent at registered office; names and business addresses of current directors and officers; and statement that corporation is for profit. Corporation must deliver with completed application certificate of existence authenticated by Secretary of State or other official in state of incorporation. (48-25-103). \$600 fee for application of authority and \$20 fee for application for amended certificate of authority. (48-11-303).

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**CORPORATIONS . . . continued**

*Foreign corporation that fails to comply* is denied access to courts in this state until certificate obtained, and is liable for treble amount of fees, penalties, taxes and interest that would have been due. Validity of contracts not impaired and corporation may defend actions brought against it. (48-25-102).

See also category Taxation, topics Administration, Income Tax.

**Taxation of Corporate Property.**—Rules are generally same as for individuals (see category Taxation, topics Administration, Income Tax) except building and savings and loan associations (under 45-3-902-04) pay tax based on earnings adjusted by statutory formulas in lieu of local tax on intangible property such as cash value of capital stock, accounts, surplus, reserves.

**Income Tax.**—None as such, but excise tax (see subhead Excise Tax, *infra*) imposed on earnings, and privilege tax (see category Taxation, topic Income Tax) imposed on sales.

**Professional Corporations.**—Person or group of persons licensed to practice a profession may practice as a professional corporation governed by 48-101-401 through 407.

**Deeds.**—See category Property, topic Deeds.

**Model Non-Profit Corporation Act** has not been adopted. Nonprofit corporations governed by 48-51-101 et seq.

**Limited Liability Companies.**—See topic Limited Liability Companies.

**EXCISE AND FRANCHISE TAX:**

See category Taxation, topic Business Taxes, subheads Excise Tax, Franchise Tax.

**JOINT STOCK COMPANIES:**

No statutory provisions.

**Professional Associations.**—See topics Associations, subhead Professional Associations; Corporations, subhead Professional Corporations.

**LIMITED LIABILITY COMPANIES:**

In 2005, Tennessee Legislature adopted Tennessee Revised Limited Liability Company Act, Public Acts of 2005, c. 286 ("2005 Act"). Under 2005 Act, all LLCs formed under Tennessee Law from and after Jan. 1, 2006, and all LLCs formed prior to Jan. 1, 2006 which affirmatively elect to be governed by 2005 Act, will be governed by new Act. LLCs formed prior to Jan. 1, 2006, will continue to be governed by provisions of 48-201-101 through 48-248-606 ("1994 Act") unless they affirmatively opt into governance by 2005 Act.

**2005 Act.**—(48-249-101—48-249-1133).

**General Supervision.**—Office of Secretary of State.

**Purposes.**—Unless more limited purpose set forth in LLC documents, LLC deemed to have purpose of engaging in any lawful business. (48-249-104).

**Formation.**—LLC formed by filing articles of organization with secretary of state. Acceptance for filing by secretary of state conclusive proof of satisfaction of all conditions precedent to formation, unless deferred effective date specified in articles. If effective date deferred, additional filing of certificate of formation may be made. If certificate of formation is not filed within 120 days of filing of articles, presumed effective date of formation will be 90 days from date of filing of articles. (48-249-201).

**Powers.**—LLC has same powers as individual to do whatever necessary to conduct business, including, but not limited to, power to: (a) Sue and be sued in own name; (b) make and amend operating agreement not inconsistent with law or articles for managing business and regulating affairs; (c) acquire and possess or use real or personal property, or any legal or equitable interest in property, wherever located; (d) dispose of or grant security interest in any or all property; (e) acquire or dispose of, or grant security interest in, shares or other interests in, or obligations of, any entity; (f) make contracts, borrow money, issue debt instruments, and mortgage or otherwise pledge interests in property; (g) lend money, invest funds and take security interests; (h) participate as partner, member, associate, or manager of partnership, joint venture, trust, or other entity; (i) conduct business, locate offices and exercise powers inside or outside Tennessee; (j) elect governors, appoint directors, managers, employees, and agents, and establish terms of employment; (k) pay pensions and establish pension plans; (l) make charitable donation; (m) make any legal expenditure in furtherance of business; (n) purchase life insurance on members; (o) accept gifts if not inconsistent with purposes; (p) accept certain contributions; (r) exercise all powers necessary or convenient to effect business purposes of LLC. (48-249-104).

**Name.**—Domestic LLC name must contain words "limited liability company", or abbreviation "LLC." or "LLC" or words or abbreviations of like import in another language. Must not contain word "corporation" or "incorporated" or abbreviation of either or both. (48-249-106). Name may not state or imply: (a) That LLC transacts or may transact business for which authorization is required, unless such has been obtained; (b) any affiliation with fraternal, veterans', service, religious, charitable or professional organization unless certified in writing by organization with which affiliation claimed; or any agency or affiliation with U.S., any state thereof or subdivision or agency thereof, unless certified in writing by appropriate federal or state official. (48-249-107).

Name must be distinguishable in records of secretary of state from other registered LLC, corporate, or limited partnership names unless entities are under common control. (48-249-106).

Name may be reserved by delivery of application for filing with secretary of state, setting forth name and address of applicant and name proposed to be reserved. If proposed name otherwise meets statutory requirements, can reserve for up to four months. (48-249-107).

**Articles of Organization.**—Articles must set forth: (a) Name, satisfying requirements of 48-249-106; (b) street address, zip code and county of initial registered office and name of initial registered agent at that office; (c) address and county of principal executive office; (d) statement of whether LLC will be member-managed, manager-managed or director-managed; (e) if LLC will have more than six members at date of filing

of articles, statement of number of members at date of filing (LLC need have only one member); (f) if one or more members are personally liable for debts, obligations and liabilities of LLC, information required by 48-249-114(f); (g) future effective date; (h) if not to engage in business in Tennessee, specific statement that such is prohibited; and (i) duration of LLC, if applicable. (48-249-202).

**Filing of Articles.**—Filing with secretary of state effects formation of LLC. (48-249-201). See subhead Formation, *supra*.

**Amendment of Articles of Organization.**—Amendments to articles require approval of all of members; provided majority of members may amend articles to change name, registered agent and registered office, principal office or number of members. (48-249-204). Articles are amended by filing of articles of amendment with secretary of state. Articles of amendment must set forth: (a) Name of LLC; (b) date of each amendment's adoption; and (c) text of each amendment.

**Restated Articles of Organization.**—LLC may restate its articles at any time with or without member action. If restatement includes amendment, restated article must be designated as Amended and Restated Articles of Organization, and amendment must be adopted by LLC in same manner as any other amendment. (48-249-204).

**Registered Office and Registered Agent.**—Both foreign and domestic LLCs must continuously maintain registered office and registered agent within state. (48-249-109). Change of either may be made by filing statement of change to secretary of state. (48-249-110). Registered agent is non-exclusive agent for service of process, notice, or demand to be served on LLC. (48-249-112). Failure to appoint or maintain registered agent results in secretary of state being default agent for service of process. (48-249-112). Procedure for service on secretary of state set out at 48-249-113.

**Members.**—LLC need have only one member. (48-249-501).

**Membership Interest.**—Is personal property and carries no interest in specific LLC property. (48-249-502). Member or holder of financial rights entitled, upon request, to statement of membership interest, describing voting rights, if any, right to share in profits and losses and distributions as well as any transfer of member's rights then in effect. (48-249-502). Except for member of family LLC, member has power and right to terminate such member's membership interest at any time. (48-249-503). Member's membership interest is terminated upon occurrence of certain events set forth in 48-249-503. If membership interest of member is terminated in contravention of articles or operating agreement, then such member forfeits all governance rights and is liable for damages resulting from wrongful termination. (48-249-504). Effect of termination depends on reason for termination and whether or not business of LLC is continued. (48-249-505). Except for certain transfers and distribution of membership interests, member whose membership interest has been terminated is entitled to receive from LLC fair value of terminated membership interest as determined in accordance with 48-249-506. (48-249-505).

**Voting.**—All members, managers or directors, as applicable, of LLC have equal voting power per capita with each other member, manager or director.

**Procedures.**—Articles and operating agreement may set forth provisions relating to notice of time, place or purpose of any meeting at which any matter is to be voted on, consented to or approved by any members, managers or directors, as applicable; waiver of any such notice; action by consent without meeting; establishment of record date; quorum requirements; voting in person or by proxy; or any other matter with respect to exercise of any such right to vote. On any matter that under this Act or under articles or operating agreement is to be voted on, consented to or approved by members, managers or directors, as applicable, members, managers or directors, as applicable, may take such action without meeting, without prior notice and without vote if consent or consents in writing, setting forth action so taken, shall be signed: (a) In case of members or managers, by minimum number of members or managers that would be necessary to authorize or take such action at meeting; or (b) in case of directors, by all directors entitled to vote thereon.

**Management.**—LLC can elect in its articles to be member-managed, manager-managed or director-managed.

**Operating Agreement.**—All members of LLC may enter into operating agreement to regulate affairs of LLC and conduct of its business and to govern relations between or among members, holders, managers, directors, officers and LLC, as applicable. Except to extent articles of organization or written provision of operating agreement specifically require otherwise, operating agreement need not be in writing. Written provisions of operating agreement need not be set out in single integrated document. (48-249-203). Any amendment to operating agreement must be approved as provided in articles or operating agreement. If neither articles nor operating agreement provide for method by which operating agreement may be amended, all of members must approve any amendment to operating agreement. Enforceable in court of equity by injunction or other equitable relief. (48-249-204).

**Waivable and Nonwaivable Provisions of Act.**—To extent LLC documents do not otherwise provide, Act governs relations among members, holders of financial rights, managers, directors, officers and LLC, as applicable. (48-249-205). LLC may modify, alter or waive any provisions of Act except for nonwaivable provisions set forth in 48-249-205(b).

**Tax Classification.**—LLC can be treated either as partnership or association taxable as corporation for federal income tax purposes. This classification determines tax treatment for state and local Tennessee Tax purposes. (48-249-1003).

**Limited Liability.**—Member, holder of financial interest, director, manager, officer, employee or other agent of LLC not personally liable for acts, debts, liabilities, or obligations of LLC or for acts or omissions of other members, holders of financial interests, managers, officers, directors, employees or agents of LLC, whether in contract, tort or otherwise. (48-249-114). Limited liability continues regardless of dissolution, winding up, and termination of LLC. Articles may specify that one or more specified members will be personally liable for all of debts, obligations and liabilities of LLC; provided, that, each member identified must sign articles. (48-249-114).

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**LIMITED LIABILITY COMPANIES . . . continued**

**Records and Reports.**—LLC must maintain at principal executive office, or other place properly determined under Act: (a) List of each member, manager, director and officer, including their last known address, and for each member, such member's tax identification number; (b) list of each holder of financial rights including their last known address, description of financial rights held and taxpayer identification number; (c) copy of articles and all amendments thereto; (d) copy of effective operating agreement; (e) copy of federal, state, and local income tax returns for LLC for last three years; (f) financial statements and accounting records of LLC; (g) records of all member and holder proceedings; (h) written consents from members and holder; (i) records of all proceedings of managers or board of directors for last three years; (j) statement of capital contributions by members and agreed value thereof; (k) copy of all contribution agreements to which LLC is bound; and (l) copy of most recent annual report delivered to secretary of state. (48-249-406). Any member entitled to inspect and copy any above described records of LLC at principal office or other reasonable location specified in articles or operating agreement during regular business hours, upon written demand at least five business days before inspection. (49-249-308). All LLCs required to file annual report with secretary of state within four months of close of fiscal year. (48-249-101).

**Contributions** of member may consist of tangible or intangible property or other benefit, promissory note, or services rendered. (48-249-301). Written, signed contribution agreements and enforceability of same allowed. (48-249-301).

**Allocations and Distributions.**—Unless otherwise provided in articles or operating agreement, allocations of profits and losses and distributions shall be allocated among members and holders of financial rights in equal shares. (48-249-305).

**Transfers of Interest.**—Separate rights (financial rights and governance rights) comprise membership interest. Assignment, in whole or in part, of financial rights permitted, unless otherwise restricted by articles, operating agreement or written resolution or agreement among members. Assignee entitled to receive profits, losses and distributions to which assignor would have been entitled. Assignment does not dissolve LLC and confers no rights to cause dissolution or exercise governance rights. (48-249-507).

Membership interest may be assigned only by assigning both governance rights and financial rights. Sole member of LLC may freely assign governance rights and/or membership interests at any time. For LLCs with two or more members, assignment of governance rights restricted in that, unless consent in accordance with 48-249-508 permitted by articles or operating agreement, unanimous consent of members required to assign governance rights to person not already member at time of assignment. (48-249-508).

**Dissolution.**—LLC is dissolved upon first to occur of following: (a) Expiration of period fixed in articles for duration of LLC, if applicable; (b) occurrence of event specified in articles or operating agreement; (c) action of members in accordance with 48-249-603; (d) action of organizers under 48-249-602; (e) by order of court under 48-249-616 or 48-249-617; (f) by action of secretary of state under 48-249-608; (g) at any time there are no members if LLC files notice of dissolution as provided in 48-249-609 within 90 days after occurrence of event that terminated membership interest of last remaining member, or articles or operating agreement specify that termination of membership interest of last remaining member dissolves LLC. Articles or operating agreement may specify that any person may be substituted as member for last remaining member effective as of date of event that causes termination of membership interest of last remaining member. (48-249-601).

Termination, dissociation, death, incapacity, withdrawal, retirement, resignation, expulsion, bankruptcy or dissolution of any member or occurrence of any other event that terminates membership interest of any member shall not cause LLC to be dissolved or its affairs to be wound up, and upon occurrence of any such event, LLC shall be continued without dissolution. (48-249-601).

LLC dissolved shall be wound up and its existence shall be terminated as provided in this chapter. (48-249-601).

If terminated by members pursuant to nonjudicial termination procedures or if dissolution occurs for: (a) Expiration of period fixed in articles or operating agreement, (b) occurrence of events specified in articles or operating agreement, or (c) termination of membership interest of last remaining member under 48-249-601, LLC must file with secretary of state notice of dissolution. (48-249-609). Winding up procedures set out in 48-249-610 - 612. Upon completion of winding up, articles of termination to be filed with secretary of state. (48-249-612). Except for dissolution resulting from merger that is not properly abandoned, dissolution may be revoked at any time prior to filing of articles of termination. (48-249-613).

**Derivative Action.**—Member of manager-managed or director-managed LLC, who was member at time of complained of transaction (or became member or holder through transfer by operation of law from such member), may bring derivative action. Member or holder of financial rights, if member-managed LLC, may commence derivative action only if members or others in authority refuse to bring suit or efforts to cause such members or other persons to bring suit is unlikely to succeed. (48-249-801). Action commenced by filing complaint (48-249-802) and may not be discontinued or settled without court approval (48-249-803).

**Conversion to Limited Liability Company.**—Any other entity may convert to LLC by complying with 48-249-703 and filing with secretary of state certificate of conversion and articles of organization. Certificate of conversion shall state following: (a) Jurisdiction, date of formation, and type of entity of converting other entity; (b) name of converting other entity; (c) name of domestic LLC as set forth in its articles of organization; (d) that all required approvals of conversion have been obtained by converting other entity; and (e) future effective date or time of conversion, if applicable. (48-249-703). Conversion effective upon filing of certificate of conversion and articles or at later date as specified in certificate of conversion. (48-249-703).

**Merger.**—Agreement or plan of merger must be approved on behalf of domestic LLC by: (1) Majority of managers, if manager-managed, or majority vote of directors, if director-managed; and (2) majority of members. (48-249-702). In case of merger including any entity not domestic LLC, merger must be permitted under law of jurisdiction of foreign entity and foreign entity must comply with such laws. (48-249-702). Certificate

of merger must be filed with secretary of state and must set forth: (a) Name and jurisdiction of each constituent party to merger; (b) statement that agreement or plan of merger has been approved and executed by each constituent party to merger; (c) name and address of surviving constituent party and principal executive office of surviving entity; (d) in case of merger in which domestic LLC is surviving entity, such amendments, if any, to articles of surviving domestic LLC; (e) effective date or time of merger, if not date of filing of plan; (f) statement that plan is on file at place of business of surviving constituent; (g) statement that copy of plan will be provided by surviving constituent party to any person holding interest in constituent party to merger; (h) statement that surviving entity, if not domestic entity, will designate secretary of state as agent for service of process in lawsuit brought for enforcement of obligation of any entity involved in merger. (48-249-702). Unless future effective date or time is specified, merger is effective upon filing of certificate of merger with secretary of state, which acts as notice of dissolution and articles of termination of domestic LLC which is not surviving entity. Action pending against non-surviving entity may continue or may substitute surviving entity. (48-249-702).

**Contractual Appraisal Rights.**—Articles, operating agreement or plan of merger may provide that contractual appraisal rights with respect to membership interest, financial rights or another interest in LLC shall be available for any class or group of members or holders of financial rights in LLC in connection with any amendment of articles or operating agreement, any merger in which LLC is constituent party to merger, any conversion of LLC to another entity, any sale, lease, transfer or other disposition by LLC of all or substantially all of its property and assets not in usual and regular course of business or any other action or event affecting LLC. (48-249-706).

**Professional Limited Liability Companies.**—May form PLLC to render specified professional services. (48-249-1103). May elect PLLC status for purpose of rendering services within two or more professions only if combination of professional purposes is specifically authorized by licensing law applicable to each profession in combination. (48-249-1104). PLLC enjoys same powers as other LLCs. May be promoter, general partner, member, associate, or manager of PLLC, professional corporation, partnership, joint venture, trust or other entity only if other entity engaged solely in rendering professional services or in carrying on business authorized by PLLC's articles. (48-249-1105). May render professional services in Tennessee only through individuals licensed or authorized by Tennessee to render such services. Restriction does not apply if such actions not prohibited by licensing authority. (48-249-1106). PLLC may render only professional service or engage in business authorized by its articles, but may invest its funds in any type of investment. (48-249-1107). Domestic PLLC name must contain words "professional limited company", "professional limited liability company", "professional LLC", or "limited liability professional company", or abbreviations "P.L.C.", "P.L.L.C.", "L.L.P.C." or any of such abbreviations without punctuation. Foreign PLLC name subject to laws of jurisdiction under which it was formed. No PLLC may contain words "corporation" or "incorporated" or abbreviation of either or both. It may not contain language indicating that it is organized for any purpose other than authorized by 48-249-1104 and its articles. (48-249-1108). PLLC may have persons not licensed to practice profession described in articles as members or holders of financial rights only if licensing authority specifically authorizes. If permitted by licensing authority, PLLCs may have as members: (a) Individuals authorized by law to render professional service described in PLLC articles; (b) general partnerships in which all partners are qualified persons with respect to PLLC and in which at least one partner is authorized by law in Tennessee to render professional service described in articles; (c) professional corporations and professional associations authorized by law in this state to render professional service described in articles; or (d) PLLC authorized by law in Tennessee to render professional service described in PLLC articles. (48-249-1109). Licensing authority may restrict, condition, or revoke in part authority of PLLCs subject to its jurisdiction to have above described members. Membership interest held in violation of statute is void. (48-249-1109). Member of PLLC may transfer membership interest, governance rights or financial rights, as applicable, only to qualified individuals, but may pledge interest as collateral for loan. Transfer in violation of statute is void. (48-249-1110). If member of PLLC becomes disqualified to render professional services for which PLLC was formed, member or holder is deemed to have resigned and withdrawn from PLLC and may have no further interest as member other than right to receive distribution to which previously entitled. Member, manager, agent or employee of PLLC who becomes legally disqualified to render professional services for which PLLC was formed must sever all professional employment and professional relationships with, and financial interests in, PLLC. Failure to require compliance is grounds for forfeiture of PLLC's articles and dissolution or for revocation of foreign PLLC's certificate of authority. (48-249-1116). If persons other than qualified persons are permitted by licensing authority to serve as directors, managers or officers of PLLC, all officers except secretary and treasurer, all managers, if any, and at least one half of directors, if any, must be qualified persons with respect to PLLC. (48-249-1117). Foreign PLLC may not transact business in Tennessee unless it obtains certificate of authority from secretary of state. Foreign PLLC may not register unless: (a) Name complies with 48-249-1108; (b) foreign PLLC is organized for purpose referenced in and satisfies requirements of 48-249-1104; and (c) all of members, holders of financial rights (or their equivalent), if any, directors (or their equivalent), if any, managers (or their equivalent), if any, and officers (or their equivalent), if any, are licensed in one or more states to render professional service described in articles unless Tennessee licensing authority permits persons other than qualified persons to serve as directors, managers or officers of PLLC, in which case not less than one half of such persons shall be qualified persons with respect to foreign PLLC, except for secretary, assistant secretary and treasurer. (48-249-1123). Foreign PLLC is not required to obtain certificate unless it maintains or intends to maintain office in Tennessee. (48-249-1123). Application for certificate must contain information required in 48-249-904 (see subhead Foreign Limited Liability Companies, *infra*); must state that it is foreign PLLC; must state purpose is to render specified professional services; and must state that foreign PLLC is in compliance with 48-249-1123(6)(3). (48-249-1124). Certificate may be revoked administratively if licensing authority certifies that PLLC has violated statute. (48-249-1125). PLLC must deliver certified copy of articles and, if foreign, certified copy of certificate, to each licensing authority with jurisdiction over professional service

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**LIMITED LIABILITY COMPANIES . . . continued**

described in articles before rendering services. (48-249-1127). Licensing authority retains jurisdiction over individuals rendering professional service. (48-249-1130).

**Foreign Limited Liability Companies.**—Laws of jurisdiction under which foreign LLC is formed govern formation, internal affairs and dissolution, and liability of members and representatives. (48-249-901). Actions that do not constitute transacting business requiring foreign LLC to obtain certificate of authority include: (a) Participation in any proceeding, claim, or dispute; (b) holding meetings of members or representatives or conducting other internal affairs; (c) maintaining bank accounts; (d) maintaining offices to transfer, exchange and register foreign LLC's own securities or appointing and maintaining trustees or depositories with respect to those securities; (e) selling through independent contractors; (f) soliciting orders that require acceptance outside Tennessee before becoming binding; (g) creating or acquiring encumbrances in real or personal property; (h) securing or collecting debts; (i) owning property, including managing and renting real property acquired in connection with enforcing mortgage for reasonable time, if attempting to liquidate investment and if no office or agency, other than independent agency, is maintained in Tennessee; (j) engaging in isolated transaction which is completed within one month and is not repeated; (k) engaging in interstate commerce. (48-249-902). Name of foreign LLC governed by 48-249-106 - 48-249-108. (48-249-703).

Before conducting business, foreign LLC must obtain certificate of authority. Application filed with secretary of state must contain: (a) Name of foreign LLC; (b) jurisdiction and date of organization; (c) address of registered office in Tennessee and name of registered agent; (d) address of principal executive office of foreign LLC; (e) if provisions of 48-249-309(i) are applicable to foreign LLC, information required under 48-249-309(i); and (f) if foreign LLC has more than six members at date of filing of application for certificate of authority, number of members as of date of filing application for certificate. (48-249-904). Application must be accompanied by certificate of existence authenticated by secretary of state of jurisdiction of organization. (48-249-904). Secretary may revoke certificate if: (a) Foreign LLC does not deliver annual report within two months of due date; (b) foreign LLC is without registered agent or office in Tennessee for more than two months; (c) foreign LLC does not properly inform secretary of state that registered agent or office has changed, that registered agent has resigned, or that registered office has been discontinued within two months of change, resignation or discontinuance; (d) name fails to comply with provisions of 48-249-903; (e) member or representative signed document containing known false statement with intent that document be filed with secretary; (f) secretary of state of jurisdiction of organization delivers authenticated certificate stating that foreign LLC has terminated or disappeared by way of merger; (g) foreign LLC exceeds authority; (h) foreign LLC tenders instrument for payment of fee which is dishonored. (48-249-908). Secretary must notify foreign LLC of determination that grounds for revocation exist. Notice is waived if ground is knowingly false statement contained in filing. If LLC does not correct ground for revocation or demonstrate absence of existence of ground determined by secretary, secretary may revoke certificate. Authority to transact business ceases on date shown on certificate revoking certificate of authority. (48-249-909).

Foreign LLC may obtain reinstatement which relates back to date of revocation. (48-249-910).

**1994 Act.**—Tennessee Limited Liability Company Act adopted in 1994. (48-201-101—48-248-606).

**General Supervision.**—Office of Secretary of State.

**Purposes.**—Unless more limited purpose set forth in articles, LLC deemed to have purpose of engaging in any lawful business. (48-203-101).

**Formation.**—LLC formed by filing articles of organization with secretary of state. (48-203-102). Acceptance for filing by secretary of state conclusive proof of satisfaction of all conditions precedent to formation, unless deferred effective date specified in articles. (48-203-102). If effective date deferred, additional filing of certificate of formation required. If certificate of formation is not filed within 120 days of filing of articles, presumed effective date of formation will be 90 days from date of filing of articles. (48-203-102).

**Powers.**—LLC has same powers as individual to do whatever necessary to conduct business, including, but not limited to, power to (1) sue and be sued in own name; (2) make and amend operating agreement not inconsistent with law or articles for managing business and regulating affairs; (3) acquire and possess or use real or personal property, or any legal or equitable interest in property, wherever located; (4) dispose of or grant security interest in any or all property; (5) acquire or dispose of, or grant security interest in, shares or other interests in, or obligations of, any entity; (6) make contracts, borrow money, issue debt instruments, and mortgage or otherwise pledge interests in property; (7) lend money, invest funds and take security interests; (8) participate as partner, member, associate, or manager of partnership, joint venture, trust, or other entity; (9) exercise powers inside or outside Tennessee; (10) elect governors, appoint managers, employees, and agents, and establish terms of employment; (11) establish pension plans; (12) make charitable donations; (13) make any legal expenditure in furtherance of business; (14) purchase life insurance on members; (15) accept gifts if not inconsistent with purposes; (16) accept contributions subject to 48-232-101, enter into contribution agreements subject to 48-233-101, and enter into contribution allowance agreements subject to 48-234-101; (17) exercise all powers necessary or convenient to effect business purposes of LLC. (48-212-101).

**Name.**—Domestic LLC name must contain words "limited liability company", or abbreviation "LLC." or "LLC". Must not contain word "corporation" or "incorporated" or abbreviation of either or both. (48-207-101). Name may not state or imply (1) that LLC transacts or may transact business for which authorization required, unless such has been obtained; (2) any affiliation with fraternal, veterans', service, religious, charitable or professional organization unless certified in writing by organization with which affiliation claimed; (3) any agency or affiliation with U.S., any state thereof or subdivision or agency thereof, unless certified in writing by appropriate federal or state official; or (4) that LLC is organized for purpose other than that permitted by §48-203-101 and LLC's articles. (48-207-101).

Name must be distinguishable in records of secretary of state from other registered LLC, corporate, or limited partnership names unless entities under common control. (48-207-101).

Name may be reserved by delivery of application for filing with secretary of state, setting forth name and address of applicant and name proposed to be reserved. If proposed name otherwise meets statutory requirements, can reserve for up to four months. (48-207-102).

**Articles of Organization.**—Articles must set forth: (1) name, satisfying 48-207-101; (2) street address, zip code and county of initial registered office and name of initial registered agent at that office; (3) name and address of organizers; (4) statement of whether LLC will be board-managed or member-managed; (5) number of members at date of filing (LLC need have only one member); (6) deferred effective date if applicable; (7) address and county of principal executive office; (8) power to expel member, if such power exists; (9) duration of LLC, if applicable; (10) provisions regarding management of LLC's business and regulation of affairs; (11) enumeration of LLC powers not necessary; (12) preemptive rights, if any; (13) authority of one or more members, managers or governors to execute instruments for transfer of real property, if desired; (14) if board-managed, and dissolution events may be triggered by action approved by governors or subset of governors and/or right to transfer governor rights dependent on consent of governors or subset of governors, articles must set forth or state that operating agreement may so provide; (15) if not to engage in business in Tennessee, specific statement that such is prohibited; and (16) if pursuant to 48-27-101 one or more members or holders are liable for all debts, obligations and liabilities of LLC, information required in 48-217-101(f) required. (48-205-101).

**Filing of Articles.**—Filing with Secretary of State effects formation of LLC. (48-203-102). See subhead Formation, *supra*.

**Amendment of Articles of Organization.**—LLC has authority to amend articles at any time to add or change required or permitted provision in articles or to delete provision not required in articles as of date of amendment. (48-209-101). If LLC board-managed, board of governors may make limited amendments without member action, including changing designation of registered agent, principal office, and limited name change. (48-209-102). Amendments other than those enumerated in 48-209-102 must be proposed by board of governors, if LLC board-governed, and submitted for approval to members entitled to vote. All members must be notified of meeting and purpose thereof, and be provided copy or summary of amendment. Unless otherwise provided in articles or statute, approval by majority vote required to adopt amendment. Notwithstanding above, unless otherwise provided in articles or operating agreement, any member or group of members in board-managed or member-managed LLC entitled to call meeting can propose amendment to articles and call member meeting to consider. (48-209-103). Once adopted, LLC must deliver to Secretary of State articles of amendment. (48-209-104).

**Restated Articles of Organization.**—Board of governors may restate at any time with or without member action. If restatement includes amendment requiring member approval, must be adopted as provided in 48-209-103. Restated articles must be delivered to Secretary of State. (48-209-105).

**Registered Office and Registered Agent.**—Both foreign and domestic LLCs must continuously maintain registered office and registered agent within state. (48-208-101). Change of either must be registered by delivering statement of change to secretary of state. (48-208-102).

Registered agent is non-exclusive agent for service of process, notice, or demand to be served on LLC. (48-208-104). Failure to appoint or maintain registered agent results in secretary of state being default agent for service of process. (48-208-104). Procedure for service on secretary of state set out at 48-208-105.

**Membership Interest.**—Is personal property and carries no interest in specific LLC property. (48-215-101). Member entitled, upon request, to statement of membership interest, describing voting rights, right to share in profits and losses and distribution rights. (48-215-101).

Member has power, though not necessarily right, to terminate membership interest at any time. Result is dissolution and termination of LLC, unless continued by consent of majority of remaining members, if allowed in articles, or by unanimous consent of remaining members, within 90 days of termination. (48-216-101). If business continued, terminated member loses all governance rights and is considered assignee of financial rights owned prior to termination. If business not continued, terminated member whose membership has terminated except through wrongful withdrawal or wrongful termination retains governance rights through winding up and termination of LLC. (48-216-101). Unless otherwise provided by articles or operating agreement, if LLC continued, withdrawing member entitled to lesser of fair market value of member's interest on going concern or liquidation basis. If LLC terminated, withdrawing member entitled to distribution under §48-245-1101. Payment due for withdrawing partner's interest due within six months of determination of amount. Wrongfully terminating member may be liable to other members and LLC for damages, which may be offset against any amounts due wrongfully withdrawing or terminating member. (48-216-101).

**Membership Meetings.**—If member-managed, no membership meetings required unless by articles or operating agreement. If board-managed, must hold at least annual membership meetings to elect governors and conduct any other proper business. (48-222-101). Meeting of members may be called by chief manager, secretary or any member, if member-managed, or, if board-managed, also by any governor. (48-222-101). Business transacted at meeting limited to purpose stated in notice, except at annual meeting for board-managed LLC or as otherwise provided in articles or operating agreement. (48-222-101).

Except in certain circumstances, written notice of all meetings must be given to every member entitled to vote on matters to be considered. (48-222-102). Nonvoting members entitled to notice of meeting of members where items of business dissolution, liquidation, sale of all or substantially all assets of LLC, or merger. (48-222-102). Attendance at meeting may be by any means of electronic communication where participants may simultaneously hear each other during conference. (48-222-103).

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**LIMITED LIABILITY COMPANIES . . . continued**

**Voting.**—All members have equal voting power per capita with other members, unless otherwise provided in articles or operating agreement. (48-224-101). Members holding majority of voting interest entitled to vote at meeting constitutes quorum, unless larger proportion required in articles or operating agreement. (48-224-102).

Voting agreements between members or between parties to binding contribution agreements allowed if in writing and signed by parties. (48-226-101).

**Management.**—LLC can elect in its articles to be either board-managed or member-managed.

**Operating Agreement.**—Required for board-managed LLC, optional for member-managed. (48-206-101). Must be in writing. (48-206-101). May contain any rules, regulations, or provisions regarding management or governance of LLC, conduct of business, and rights and privileges of members, if not inconsistent with laws of state or LLC's articles. Shall contain statement of all membership interests, including: (1) identity of all members and their interests, as well as identity of all persons bound by contributions agreements and membership interest to be acquired upon satisfaction of terms of agreement; (2) capital contributions given in exchange for membership interest; (3) terms of contribution agreements; (4) any distribution rights of members; (5) time at which or events upon which dissolution will occur, to extent not identical to statutory events of 48-245-101; (6) terms of contribution allowance agreements; and (7) any other terms required by cc. 201-248 or which members wish to state in operating agreement. (48-206-101). Once adopted by agreement of all members or organizers, or by majority vote of members and persons or entities bound by contribution agreements as required in articles, operating agreement binding on LLC and its present and future members or parties to contributions agreements. (48-206-101, -102).

Amendment of operating agreement requires vote of members as is necessary to amend articles. (48-206-102). Enforceable in court of equity by injunction or other equitable relief. (48-206-102).

**Tax Classification.**—Tennessee Act flexible, such that LLC can be treated either as partnership or association taxable as corporation for federal income tax purposes, depending on features chosen. This classification determines tax treatment for state and local Tennessee tax purposes. (48-211-101).

**Limited Liability.**—Member, holder of financial interest, governor, manager, or other agent of LLC not personally liable for acts, debts, liabilities, or obligations of LLC or for acts or omissions of other members, managers, governors, employees or agent of LLC, whether in contract, tort or otherwise. (48-217-101). Limited liability continues regardless of dissolution, winding up, and termination of LLC. (48-217-101).

**Records and Reports.**—Board-managed LLC must maintain at principal executive office, or other place determined by board of governors: (1) list of chief manager, secretary, each member, and governors, including name, business, residence, and mailing address; (2) list of assignees of financial rights and what rights assigned; (3) copy of articles and all amendments thereto; (4) copy of effective operating agreement and any agreements regarding classes or series of membership interests; (5) copy of federal, state, and local income tax returns for LLC for last three years; (6) financial statements and accounting records of LLC; (7) records of all member proceedings; (8) written consents from members; (9) records of all board of governors proceedings for last three years; (10) statement of capital contributions by members and agreed value thereof; (11) copy of all contribution agreements and contribution allowance agreements; (12) copy of most recent annual report delivered to secretary of state. (48-228-101). Requirements for member-managed LLC same, except for financial statements and records regarding board of governors. (48-228-101).

Any member entitled to inspect and copy any above-described records of LLC at principal office during regular business hours, upon demand at least five business days before inspection. Right cannot be limited by articles or operating agreement. (48-228-102).

Board-managed LLC obligated to prepare annual financial statements, including balance sheet and income statement. (48-228-201). LLC to furnish such statements to each requesting member or holder of financial rights within one month after notice of request. (48-228-201).

No formal financial reports required by statute for member-managed LLCs, but each member or holder of financial rights entitled to access to true and full information regarding status of business and LLC's financial condition. (48-228-202).

All LLCs required to file annual report with secretary of state within four months of close of fiscal year. (48-228-203).

**Contributions** of member may be in form of cash, property, promissory note, or services rendered. (48-232-101). Promise to render services or contribute money at future time not appropriate consideration for current interest unless evidenced by written note.

Act provides for written, signed contribution agreements and contribution allowance agreements and enforceability of same. (48-233-101, 48-234-101).

**Allocations and Distributions.**—Unless otherwise provided in articles or operating agreement, distribution of LLC cash or assets equally allocated among members. (48-236-101).

**Transfers of Interest.**—Separate rights (financial rights and governance rights) comprise membership interest. Assignment, in whole or in part, of financial rights permitted, unless otherwise restricted by articles, operating agreement or written resolution or agreement among members. Assignee entitled to receive profits, losses and distributions to which assignor would have been entitled. Assignment does not dissolve LLC and confers no rights to cause dissolution or exercise governance rights. (48-218-101).

Membership interest may be assigned only by assigning both governance rights and financial rights. (48-218-102). Sole member of LLC may freely assign governance rights and/or membership interests at any time. (48-232-102). For LLCs with two or more members, assignment of governance rights restricted in that, unless approval in accordance with 48-232-102 permitted by articles or operating agreement, unanimous consent of members required to assign governance rights to person not already member at time of assignment. (48-218-102). Consent required to allow assignment also constitutes consent necessary to avoid dissolution that would otherwise occur upon assignor ceasing to be member if applicable. (48-218-102). Articles or operating agreement may provide

that governance rights may be transferred to nonmembers who will become members upon such transfer without requiring consent of members or governors. (48-232-102).

**Dissolution.**—Unless LLC elects otherwise upon occurrence of any of following events, LLC created prior to July 1, 1999 is dissolved: (1) expiration of period fixed in articles for duration of LLC; (2) termination by organizers pursuant to 48-245-201 or by members pursuant to 48-245-202; (3) by order of court in judicial termination pursuant to 48-245-901—902; (4) by action of secretary of state and administration dissolution pursuant to 48-245-302; (5) upon occurrence of any of following events unless limited or eliminated by articles or operating agreement: (a) death of member, (b) retirement from membership of member, (c) resignation or other withdrawal of member, (d) LLC's acquisition of complete membership interest, (e) assignment of member's governance rights, (f) expulsion of member, (g) bankruptcy of member, (h) dissolution of member, (i) insanity of member, or (j) any other event terminating continued membership of member. (48-245-101). If LLC formed on or after July 1, 1999, or if LLC formed before July 1, 1999 but elects by providing in articles to be governed by 1999 amendments regarding dissolution events, LLC shall be dissolved upon occurrence of: (a) notice and approval in accordance with 48-245-202; (b) any event specified in articles or operating agreement; or (c) merger in which LLC does not survive. Dissolution resulting from termination of continued membership of any member may be avoided if at least one member remains and existence and business of LLC continued by consent of majority vote of remaining members, or such vote interest as provided in articles. If not continued, LLC must be wound up and terminated. (48-245-101).

If terminated by members pursuant to nonjudicial termination procedures or dissolution resulting from termination of continued membership of member, LLC must file with secretary of state notice of dissolution unless existence in business continued pursuant to 48-245-101. Winding up procedures set out in 48-245-501—503. Upon completion of winding up, articles of termination to be filed with secretary of state. (48-245-503). Dissolution may be revoked at any time prior to filing of articles of termination. (48-245-601).

**Derivative Action.**—Member of board-managed LLC, who was member at time of complained of transaction, may bring derivative action. Member, if member-managed LLC, may commence derivative action under same terms as board-managed LLC, but only if derivative actions are provided for in LLC articles or operating agreement. (48-230-101).

Action commenced by filing complaint (48-230-102) and may not be discontinued or settled without court approval (48-230-103).

**Conversion to Limited Liability Company.**—General or limited partnership may convert to LLC, upon approval by general partners, in accordance with partnership agreement or, in limited partnerships formed before Dec. 31, 1993, by all partners, regardless of provisions to contrary in partnership agreement. (48-204-101). Articles of conversion to be filed with secretary of state, which satisfy statutory requirements for articles of organization and set forth (1) statement of conversion, (2) name and principal business address of former entity, (3) names of all general partners, (4) statement of approval by partners, (5) statement indicating in which county register of deeds office certificate of limited partnership filed, if applicable, and (6) number of members of LLC at date of conversion. (48-204-101). Conversion effective upon filing of articles of conversion or at later date as specified in articles. (48-204-101). Articles of conversion amended in same manner as articles of organization. (48-204-101).

**Conversion.**—Corporation may convert to limited liability company if plan of conversion is adopted by board of directors and approved by shareholders. (48-21-111). Effects of conversion from corporation to limited liability company are set forth in 48-21-112.

General partner becoming member of LLC remains liable for liabilities incurred by general or limited partnership prior to conversion. (48-204-101).

Converted limited or general partnership is deemed same entity as before conversion. When conversion effective, all partnership property vests in converted entity and all obligations and actions or proceedings pending against converting partnership continue against converted entity. (48-204-102). Winding up of partnership not required. (48-204-102).

**Merger.**—Plan of merger must be approved by (1) majority of board of directors, if board-managed, and (2) by members holding more than two-thirds of voting interest. Articles or operating agreement may modify approval requirements, but may not provide for approval by less than 50% of aggregate voting interest. In case of merger including any entity not domestic LLC, plan must be approved by majority of voting interest of such entity. In case of foreign entity, lower voting interest may approve if specifically provided by law of state or jurisdiction of foreign entity. (48-244-102).

Certificate of merger must be filed with secretary of state. Certificate must set forth: (1) name, jurisdiction, and date of formation of each entity involved in merger; (2) statement that plan of merger has been approved and executed by each entity involved; (3) name and address of principal executive office of surviving entity; (4) form of surviving entity; (5) effective date of merger, in accord with 48-247-109, if not date of filing of plan; (6) statement that plan is on file at place of business of surviving entity with address; (7) statement that copy of plan will be provided by surviving entity to holder of interest in any of entities involved in merger; (8) statement that surviving entity, if not domestic entity, will designate secretary of state as agent for service of process in lawsuit brought for enforcement of obligation of any entity involved in merger. (48-244-103).

Except as otherwise notified in accord with 48-247-109, merger is effective upon filing of plan and articles of merger with Secretary of State, which serves as notice of dissolution and articles of termination of domestic LLC which is not surviving entity. Action pending against non-surviving entity may continue or may substitute surviving entity. (48-244-104).

**Dissenter's Rights.**—LLC member entitled to dissent from and obtain payment of fair value of membership interest in event of certain enumerated actions. (48-231-201). Members must be given notice of LLC action creating dissenter's rights (48-231-202) and dissenters must give notice to LLC of intent to dissent and written notice of actual

**LIMITED LIABILITY COMPANIES . . . continued**

dissent if challenged action effectuated (48-231-203-04). Procedure for demanding payment, notification of LLC upon dissatisfaction with payment or offer for value of interest and for court action upon inability to settle demand for payment statutorily defined. (48-231-205—302).

**Professional Limited Liability Companies.**—May form PLLC to render specified professional services. (48-248-103). May elect PLLC status for purpose of rendering services within two or more professions only if combination of professional purposes is specifically authorized by licensing law applicable to each profession in combination. (48-248-104).

PLLC enjoys same powers as other LLCs. May be promoter, general partner, member, associate, or manager of partnership, joint venture, trust or other entity only if other entity is engaged solely in rendering professional services or in carrying on business authorized by PLLC's articles. (48-248-201). May render professional services in Tennessee only through individuals licensed or authorized by Tennessee to render such services. Restriction does not apply if such actions not prohibited by licensing authority. (48-248-202). PLLC may render only professional service or engage in business authorized by its articles, but may invest its funds in any type of investment. (48-248-203).

Domestic PLLC name must contain words "professional limited company", "professional limited liability company", "professional LLC", or "limited liability professional company", or abbreviations "P.L.C.", "P.L.L.C.", "L.L.P.C." or any of such abbreviations without punctuation. Foreign PLLC name subject to laws of jurisdiction under which it was formed. No PLLC may contain words "corporation" or "incorporated" or abbreviation of either or both. It may not contain language indicating that it is organized for any purpose other than authorized by 48-248-104 and its articles. (48-248-301).

PLLC may have persons not licensed to practice profession described in articles as members only if licensing authority specifically authorizes. If permitted by licensing authority, PLLCs may have as members: (1) Individuals authorized by law to render professional service described in PLLC articles; (2) general partnerships in which all partners are qualified persons with respect to PLLC and in which at least one partner is authorized by law in Tennessee to render professional service described in articles; (3) professional corporations authorized by law in this state to render professional service described in article; or (4) PLLC authorized by law in Tennessee to render professional service described in articles. (48-248-401).

Licensing authority may restrict, condition, or revoke in part authority of PLLCs subject to its jurisdiction to have above-described members. Membership interest held in violation of statute is void. (48-248-401).

Member of PLLC may transfer membership interest only to qualified individuals, but may pledge interest as collateral for loan. Transfer in violation of statute is void. (48-248-402).

If member of PLLC becomes disqualified to render professional services for which PLLC was formed, member is deemed to have resigned and wrongfully withdrawn from PLLC and may have no further interest as member other than right to receive distribution to which previously entitled. Member, manager, agent or employee of PLLC who becomes legally disqualified to render professional services for which PLLC was formed must sever all professional employment and professional relationships with, and financial interests in, PLLC. Failure to require compliance is grounds for forfeiture of PLLC's articles and dissolution or for revocation of foreign PLLC's certificate of authority. (48-248-403).

All managers except secretary and treasurer, and at least one-half of governors, if any, must be qualified persons with respect to PLLC. (48-248-404).

Foreign PLLC may not transact business in Tennessee unless it obtains certificate of authority from Secretary of State. Foreign PLLC may not register unless: (1) name complies with 48-248-301; (2) foreign PLLC is organized for purpose referenced in and satisfies requirements of 48-248-104; and (3) all of members, all of governors, if any, and all managers are licensed in one or more states to render professional service described in articles unless Tennessee licensing authority permits persons other than qualified persons to serve as governors, if any, or managers of PLLC, in which case not less than one-half of such persons shall be qualified persons with respect to foreign PLLC. (48-248-501). Foreign PLLC is not required to obtain certificate unless it maintains or intends to maintain office in Tennessee. (48-248-501). Application for certificate must contain information required in 48-246-301 (see subhead Foreign Limited Liability Companies, *infra*); must state that it is PLLC; must state purpose is to render specified professional services; and must state that foreign PLLC is in compliance with 48-248-501. (48-248-502). Certificate may be revoked administratively if licensing authority certifies that PLLC has violated statute. (48-248-503).

PLLC must deliver certified copy of articles and, if foreign, certified copy of certificate, to each licensing authority with jurisdiction over professional service described in articles before rendering services. (48-248-601). Annual statement is required. (48-248-602).

Licensing authority retains jurisdiction over individuals rendering professional service. (48-248-604).

**Foreign Limited Liability Companies.**—Laws of jurisdiction under which foreign LLC is formed govern formation and also internal affairs and also liability of members and representatives. (48-246-101).

Actions that do not constitute transacting business requiring foreign LLC to obtain certificate of authority include: (1) participation in any proceeding, claim, or dispute; (2) holding meetings of members or representatives or conducting other internal affairs; (3) maintaining bank accounts; (4) maintaining offices to transfer, exchange and register foreign LLC's own securities; (5) selling through independent contractors; (6) soliciting orders that require acceptance outside Tennessee before becoming binding; (7) creating or acquiring encumbrances in real or personal property; (8) securing or collecting debts; (9) owning property, including managing and renting real property, if attempting to liquidate investment; (10) engaging in isolated transaction which is completed within one month and is not repeated; (11) engaging in interstate commerce. (48-246-102).

Name of foreign LLC governed by 48-207-101 and -103. (48-246-201).

Before conducting business, foreign LLC must obtain certificate of authority. Application filed with secretary of state must contain: (1) name of foreign LLC; (2) jurisdiction and date of organization; (3) address of registered office in Tennessee and name of registered agent; (4) address of office maintained in jurisdiction of organization or of principal executive office; and (5) number of members as of date of filing application for certificate. (48-246-301). Application must be accompanied by certificate of existence authenticated by secretary of state of jurisdiction of organization. (48-246-301).

Secretary of state may revoke certificate if: (1) Foreign LLC does not deliver annual report within two months of due date; (2) foreign LLC is without registered agent or office in Tennessee for more than two months; (3) foreign LLC does not properly inform Secretary of State that registered agent or office has changed, that registered agent has resigned, or that registered office has been discontinued within two months; (4) name fails to comply with provisions of 48-246-201; (5) member or representative signed document containing known false statement with intent that document be filed with secretary; (6) secretary of state of jurisdiction of organization delivers authenticated certificate stating that foreign LLC has terminated or disappeared by way of merger; (7) foreign LLC exceeds authority; (8) foreign LLC tenders instrument for payment of fee which is dishonored. (48-246-501).

Secretary must notify foreign LLC of determination that grounds for revocation exist. Notice is waived if ground is knowingly false statement contained in filing. If LLC does not correct ground for revocation or demonstrate absence of existence of ground determined by secretary, secretary may revoke certificate. Authority to transact business ceases on date shown on certificate revoking certificate of authority. (48-246-502).

Foreign LLC may obtain reinstatement which relates back to date of revocation. (48-246-503).

**Nonprofit Limited Liability Companies.**—Tennessee has adopted "Nonprofit Limited Liability Company Act of 2001". (48-101-701 et seq.). Nonprofit Limited Liability Company Act of 2001 addresses filing requirements, membership restrictions, standards of conduct, indemnification rights, limitations of actions, immunity, tax treatment, and conversion of nonprofit corporations. To extent not inconsistent with specific provisions of Nonprofit Act, Tennessee Limited Liability Company Act (48-201-101 et seq.) shall apply to nonprofit limited liability companies as well.

**PARTNERSHIPS:**

Revised Uniform Partnership Act (61-1-101 et seq.) has been adopted with certain variations.

§103(b)(10) not adopted.

§104(c) is added, and provides that rule that statutes in derogation of common law are to be strictly construed shall have no application to this act.

§106(b) varies from Official Text to provide that if partnership agreement is governed by laws of another jurisdiction, laws of such jurisdiction shall govern relations among partners and between partners and partnership.

§301(a)(1)(iv) not adopted.

§301(b) not adopted.

§306 varies from Official Text by providing more specific standards regarding liability of partners.

§401(l) is added providing broad delegation powers for partners.

§407 is added allowing partnership agreement to provide for classes or groups of partners with different rights, powers and duties.

§801 modified to allow majority in interest of remaining partners to continue partnership.

§807(b) modified regarding obligations for which partner is not personally liable.

**Limited Partnerships.**—

Revised Uniform Limited Partnership (61-2-101 et seq.) Act has been adopted. Limited partner is not liable for obligations of limited partnership unless he is also general partner or takes part in control of business. If limited partner participates in control of business, he is liable only to persons who transact business with limited partnership reasonably believing, based on conduct, that limited partner is general partner. (61-2-302). Term shall be for 50 years unless certificate provides otherwise. (61-2-201).

**Limited Liability Partnership.**—

**Limited Liability Partnership.**—Partner in registered limited liability partnership is not liable for debts and liabilities of partnership or another partner arising from negligence or wrongful acts committed in course of partnership business. Partner in registered limited liability partnership is not proper party to proceeding by or against registered limited liability partnership. To become registered limited liability partnership, partnership shall file with Secretary of State following: application stating name of partnership; address of its principal office or registered agent; statement of business engaged in and that partnership described is to be registered limited liability partnership. Application shall be accompanied by fee of \$50 for each partner subject to minimum of \$250 and maximum of \$2,500. Fee must be paid annually. Partnership that registers as registered limited liability partnership shall not be deemed to have dissolved as result thereof and is for all purposes same partnership that existed before registration and continues to be partnership under laws of this state. Partner remains liable for obligations incurred by partnership before partnership registered as registered limited liability partnership. Each registered limited liability partnership must continuously maintain registered office and registered agent in state. Partnership engaged in rendering of professional services may register as registered limited liability partnership subject to laws governing professional services by partnerships and licensing authorities. Domestic or foreign name must contain words "registered limited liability partnership" or "LLP" or "L.L.P." (61-1-1001 - 1005).

**BUSINESS REGULATION AND COMMERCE****BANKS AND BANKING:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**BANKS AND BANKING . . . continued**

Regulated by Tennessee Banking Act (45-1-101 et seq.) and Bank Customer Dispute Resolution Act of 1981 (45-1-301 et seq.) and is subject to the Tennessee Business Corporation Act, 48-11-101 et seq. Conversion of intrastate banks and savings and loan institutions and mergers regulated by 45-11-101 et seq. Interstate mergers regulated by 45-3-1401 et seq. Tennessee branches of out-of-state state banks are subject to regulation under 45-2-1407 to 1412.

Uniform Fiduciaries Act has been adopted. (35-2-101 et seq.).

Organization, consolidation, and merger are subject to approval of Commissioner of Financial Institutions, Department of Financial Institutions, 4th Floor, John Sevier State Office Bldg., 500 Charlotte Ave., Nashville, TN 37243-0705, (615) 741-2236. (45-1-101 et seq.).

**Stockholders** of banking institutions are relieved of double liability to depositors. (45-2-307).

**Deposits.**—Whenever deposit made in trust for another, and further notice in writing of terms of trust not given to bank, deposit may be paid to person for whom deposit made on death of trustee. Owner of deposit account may designate to whom funds are payable on death of owner. (45-2-704). Joint deposits may be paid to either depositor or surviving depositor, and account is subject to assignment by, or claim of creditor of, either depositor subject to right of other to establish such rights to funds in appropriate action against creditor. (45-2-703). Deposit may be operated in name of minor or two or more persons, one or more of whom are minors, with same effect as if minors were of full age. (45-2-702).

**Unclaimed Deposits.**—Unclaimed funds remaining after liquidation retained by Commissioner of Banking, to be disposed of under 66-29-107-08. (45-2-1501 et seq.).

See also category Property, topic Absentees, subhead Escheat.

**Mergers** governed by Bank Structure Act. No bank holding company or out-of-state bank shall acquire or merge with Tennessee bank which has not been in operation at least three years (subject to certain exceptions). (45-2-1403). Bank or bank holding company is prohibited from acquiring any bank in Tennessee if, as result, such bank or holding company would control 30% or more of total amount of deposits in Tennessee. (45-2-1404). Any Tennessee chartered bank may establish or otherwise acquire and maintain branch office and branch facilities for conduct of its banking business. No branch at which deposits may be accepted shall be established by Tennessee chartered bank until approved by commissioner. (45-2-614). Only depository institution may own or establish one or more electronic cash dispensing devices. (45-2-619).

**Collections.**—Uniform Commercial Code governs. (47-4-101 et seq.).

**Trust Companies.**—Regulated by Commissioner of Banking under Tennessee Banking Act. (45-1-101 et seq.). Banks having paid up capital and surplus of \$120,000 may accept and execute trusts, etc. (45-2-1001). Trust companies have all powers as individual fiduciaries. (45-2-1002). Private trust companies are subject to regulation under Banking Act. (45-2-2001).

**Uniform Common Trust Fund Act**, as amended, in effect. (35-4-101-05).

**Unauthorized banking** is Class C misdemeanor. (45-2-1701).

**Foreign banks** are subject to examination by Commissioner. (45-2-1602). See categories Business Organizations, topic Corporations; Estates and Trusts, topic Executors and Administrators; Family, topic Guardian and Ward; Taxation, topic Property Taxes, subhead Assessment.

**Statements to Depositors.**—Depositors must object in writing to bank statements of account within six years from date of the rendition of such statement. (45-2-705).

See also topics Commercial Code; Interest, subhead Installment Loans; Consumer Protection, subhead Financial Records Privacy Act.

**BILLS AND NOTES:**

**Uniform Commercial Code** has been adopted. (47-1-101 et seq.).

**Judgment Notes.**—Any power of attorney or authority to confess judgment given before an action is instituted, and before service of process therein, is void, and any judgment based thereon is likewise void. (25-2-101).

**Attorney fee** and cost of collection clauses are enforceable if reasonable. (172 Tenn. 602, 113 S.W.2d 746).

See also topics Commercial Code, Contracts; category Family, topic Infants.

**Special Defenses.**—See topics Consumer Protection, and Interest, subhead Usury.

**BILLS OF LADING:**

See topic Carriers.

**BILLS OF SALE:**

See topic Sales.

**BROKERS:**

**Uniform Commercial Code** has been adopted. (47-1-101 et seq.).

**Real Estate Brokers.**—Must obtain license after application and written examination from Tennessee Real Estate Commission, 500 James Robertson Pkwy., Suite 180, Nashville, TN 37243-1151, (615) 741-2273. (62-13-201). Qualifications for applicants are set forth in 62-13-303. No bond is required. Commission has power to revoke, suspend or downgrade license. (62-13-312). Separate licensing requirements set out for real estate appraisers. (62-39-103 and 62-39-338). Upon recording statutory notice of commission sales agreements entered into after Oct. 1, 1997, broker who has earned fee or commission shall have cause of action against subsequent purchaser. Prevailing party in such litigation is entitled to court costs including attorney's fees. (62-13-501 through 505). Licensed broker must perform services unless waived in writing by client. (62-13-404).

See also topics Commercial Code, Consumer Protection, subhead Rental Location Agents.

**CARRIERS:**

**Uniform Commercial Code** has been adopted. (47-1-101 et seq.).

Common carriers are under control of Tennessee Regulatory Authority, 460 James Robertson Pkwy., Nashville, TN 37243-0505, (615) 741-2904. Vehicles required to obtain certificate of convenience and necessity or contract hauler permit shall be regulated by Tennessee Regulatory Authority. Tennessee regulatory authority shall register all such vehicles operating in intrastate and interstate commerce in Tennessee solely for demonstration of compliance with registration and insurance requirements. (65-1-101 and 65-5-102).

**Rates** are fixed both as to freight and passenger service by Tennessee Regulatory Authority. (65-5-101, et seq.).

**Discrimination.**—Unjust discrimination is subject to regulation by Authority. (65-5-101 et seq.). Any corporation which charges more than reasonable rate for service in state commits extortion. It is unlawful for any corporation to give undue or unreasonable or prejudice preference to any person or locality. (65-4-122).

**Limiting Liability.**—Common carrier may contract for limited liability for loss of freight from causes other than its own negligence, provided contract is supported by bona fide consideration and is fair and reasonable and assent of shipper is fairly obtained. (12 S.W. 1018 [1889]). Common carrier cannot contract to limit its liability for negligence. (42 S.W. 451 [1897]).

**Bills of Lading.**—Uniform Commercial Code governs. See topic Commercial Code.

**Liens.**—After written notice from the carrier to the consignee within three days after arrival of goods, failure of the consignee to receive same for 30 days thereafter gives the carrier authority to advertise and sell the goods for charges. Above is not applicable to perishable goods. (65-2-102).

See also topic Commercial Code; category Transportation, topic Motor Vehicles.

**COMMERCIAL CODE:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.). Arts. 1, 2 and 5 generally conform to Official Text as amended in 1972, except for following material variations:

§1-102(1) In any dispute as to proper construction, Official Comments to UCC, Official Text adopted by National Conference of Commissioners on Uniform State Laws and American Law Institute shall constitute evidence of purposes and policies underlying such sections unless sections applicable to dispute differ materially from sections of Official Text and Official Comments are inconsistent with plain meaning of applicable sections.

§2-315 provides that there is no implied warranty that cattle, hogs, sheep, and horses are free from disease.

§2-316(5) is added, providing that implied warranties of merchantability and fitness not applicable regarding human tissue, blood, plasma, blood products and derivatives.

Art. 2A generally conforms to Official Text as amended in 1990.

Art. 4A generally conforms to Official Text as amended in 1989.

Art. 6, Bulk Sales, repealed.

Art. 7 generally conforms to Official Text as amended in 1962.

Art. 3 generally conforms to Revised Art. 3 (1990) except as follows:

§3-103 "Good faith" definition not adopted in Tennessee.

§3-312 not contained in Official Text but adopted by Tennessee, relating to lost, destroyed or stolen checks.

§3-404(d) not adopted.

§3-405(b), as adopted in Tennessee, omits second sentence.

§§3-411(c)(1) and (c)(2) and 3-411(d) added by Tennessee.

§3-420(c), as adopted in Tennessee, extends protection of that subsection to include depository banks.

Art. 4 generally conforms to Amended Art. 4 of UCC (1990), except as follows:

§4-106(a) adopted by Tennessee; for (b) and (c) Tennessee adopted Alternative B.

§4-406 modifies clause (d)(1) to read: "Such payment or missing or incorrectly credited deposit, if bank also proves that it suffered loss by reason of failure; and".

§4-406(e) partially adopted.

§4-406(f) not adopted in entirety.

Art. 8 has adopted Official Text of Revised Art. 8. Investment Securities (1994 Revision) (47-8-101 et seq.).

Under 67-5-513, discussed in topic Taxation, subhead Assessment, unless statutory procedure followed, purchaser, whether or not at bulk sale, may be liable for personal property tax obligations of seller.

Art. 9 generally conforms to Revised Art. 9 (1998) but with number of variations:

§9-102(a)(5)(11) and (36), as adopted in Tennessee, vary from Official Text.

§9-103(e), as adopted in Tennessee, varies from Official Text.

§9-108, as adopted in Tennessee, includes subsection (f) not included in Official Text.

§9-320(a), as adopted in Tennessee, varies from Official Text.

§9-334(j) not adopted in Tennessee.

§9-406, as adopted in Tennessee, includes subsections (f) and (j) not included in Official Text.

§9-516, as adopted in Tennessee, varies from Official Text.

§9-519, as adopted in Tennessee, varies from Official Text.

§9-520, as adopted in Tennessee, varies from Official Text.

§9-523, as adopted in Tennessee, varies from Official Text.

§9-525, setting filing fees, as adopted in Tennessee, varies substantially from Official Text.

§9-612(b), as adopted in Tennessee, applies to both consumer and nonconsumer transactions.

§9-625(e), as adopted in Tennessee, provides unauthorized filer ten days to file termination statement after receiving authenticated demand.

§9-626, as adopted in Tennessee, applies to both consumer and nonconsumer transactions.

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**COMMERCIAL CODE . . . continued**

**The Code**, as adopted in Tennessee, does not require use of specific forms but provides forms which, if used, cannot be refused by Secretary of State (see forms attached at conclusion of this Digest). (47-9-521).

**Following options and alternatives in 1962 Official Text** have been exercised:

- §3-121, Alternative B adopted;
- §4-106, Optional phrase adopted;
- §4-202(1)(b), Optional phrase adopted;
- §4-212, Optional subsection (2) adopted;
- §7-204, Tobacco Warehousemen Law (43-19-101-305) referred to;
- §7-403(1)(b), Optional clause omitted;

For offices for filing and fees under Article 9, see category Documents and Records, topic Records, subhead Filing Under Commercial Code—Place; Fees and Taxes.

**Permanent Editorial Board's Recommendations for Amendments.**—

- §2-702, 1966 Official Amendment not enacted.
- §3-501, 1966 Official Amendment not enacted.
- §7-209, 1966 Official Amendment not enacted.

**Permanent Editorial Board's Recommendations for Optional Amendments.**—

- §1-209, 1966 Official Optional Amendment not enacted.
- §2-318, 1966 Official Optional Amendment not enacted, thus retaining Alternative A.
- §9-105, 1966 Official Optional Amendment not enacted.
- §9-106, 1966 Official Optional Amendment not enacted.

**1972 Official Amendments.**—Adopted for Arts. 1, 2, 5 and 9.

**1973 Official Amendments** not adopted.

**1977 Official Amendments.**—Adopted for Arts. 1, 5, 8, and 9.

**1987 Official Amendments.**—Adopted for Art. 2A.

**1989 Official Amendments.**—Adopted for Art. 4A, except that 4A-203(a)(2) differs from Official Amendments.

**1994 Official Amendments** adopted for Art. 8.

**Forms.**—See category Mortgages, topic Chattel Mortgages, and end of Digest.

See also topics: Banks and Banking, Bills and Notes, Brokers, Carriers, Consumer Protection, Contracts, Factors, Frauds, Statute of, Interest, Sales, Securities, Warehousemen; categories Business Organizations, topic Corporations; Civil Actions and Procedure, topic Limitation of Actions; Debtor and Creditor, topics Assignments, Fraudulent Sales and Conveyances, Liens, Pledges; Documents and Records, topics Records, Seals; Mortgages, topic Chattel Mortgages.

**CONDITIONAL SALES:**

See topic Sales.

**CONSIGNMENTS:**

See topics Carriers, Factors.

**CONSUMER PROTECTION:**

**Advertising.**—Fraudulent advertising punishable by fine up to \$100 and six months imprisonment. (39-3-910).

**Unfair Trade Practice and Advertising Act** prohibits misrepresentation that retailed household goods are being sold at wholesale (47-25-901) and use by retailer of words "manufacturer", "broker", or "wholesaler" in describing business unless such is case (47-25-904). Buyer may rescind within 12 months from sale (47-25-905) or have injunctive relief (47-25-906). Violation misdemeanor punishable by fine up to \$50. (47-25-907).

**Bait-and-switch** advertising for meat and meat products prohibited by 53-7-206; for other products, by 47-18-103 through 104 amended, and 47-18-104 (34). Violation is Class C misdemeanor against commission of which Commissioner of Agriculture may obtain injunction. (53-7-210).

**Motor vehicle** dealer or salesman license revocable for false or misleading advertising. (55-17-114, am'd 2006, cc. 580, 613, 667). Unlicensed dealers and cooperatives composed of such dealers must likewise comply with advertising requirement. (47-18-121).

**Commodity in Package Form.**—Use of Weights and Measures is governed by 47-26-901 et seq.

**Securities.**—See topic Securities, subhead Advertisements.

**Buying Clubs.**—Club owner obligations, membership enrollment and cancellation, advertising, etc., regulated. (47-18-501 et seq.).

**Health Maintenance Organizations.**—Subject to same requirements regarding prompt payment and bad faith denial of claims as insurance companies under 56-7-105. HMO's must maintain written documentation regarding grievances. Procedure for maintaining and reporting grievances is controlled by 56-32-210.

**Health Clubs.**—Club owner obligations, contracts, charges, etc. regulated. (47-18-301).

**Salvaged Building Materials.**—Those who buy, sell, exchange, trade, or deal in surplus or used building materials of any sort must keep record of source of those materials. Dealers must also obtain proper identification of sellers of used or salvaged building materials. (62-44-101 et seq.).

**Rental Location Agents.**—Must be licensed by state real estate commission and bonded and are liable to prospective tenants for damages, costs and attorney fees for certain deceptive or unfair practices. Violation of license requirements, misleading tenant as to quality, etc. of rental property Class C misdemeanor. (62-25-101 et seq.).

**Employment Agencies.**—Certain practices regulated. (47-18-1701 et seq.).

**Fast Food Delivery Establishments.**—Vehicles generally required to be clearly marked by logo of such establishments and must meet requirements for proof of financial responsibility set forth in §55-12-102(12)(C). Such establishment must keep record of proof of financial responsibility for each delivery employee. (68-14-701 et seq.).

**Foreign Foods.**—Manufacturers must mark such articles in accordance with 19 U.S.C. §1304 prior to selling or distributing in Tennessee. Willful or knowing violations result in treble damages. (53-15-101 et seq.).

**Commonsense Consumption.**—Tennessee Commonsense Consumption Act provides limited immunity from civil liability to manufacturers, packers, distributors, carriers, holders, sellers, marketers, and advertisers of food for claims based on weight gain, obesity, and associated health conditions, except those claims based on adulteration and violation of misbranding requirements and knowing violations of various state and federal laws. (29-34-205).

**Door-to-Door Sales.**—Buyer (including lessee) has right to cancel home solicitation sale or lease of goods (other than farm equipment or motor vehicles) or services (other than insurance or securities) until midnight of third business day after sale. (47-18-703). Excluded are sales of farm animals or produce or similar perishable items, transactions done pursuant to preexisting revolving charge account or prior negotiations, and cash sales of value less than \$25. (47-18-702).

Seller (including lessor) must issue receipt if cash or credit card sale or obtain buyer's signature on written instrument if credit sale. Receipt or instrument must designate transaction date as when buyer makes partial or whole payment or signs. Also must contain readily legible statement of right to cancel. Failure of seller to comply entitles buyer to cancel by notice of intent to seller in any manner. (47-18-704).

Seller must tender to buyer payments made, note or other evidence of indebtedness within ten days after valid cancellation. (47-18-705). Seller entitled to fair market value for services done prior to cancellation. Buyer must take reasonable care of goods in possession before cancellation and for reasonable time thereafter. (47-18-706).

If seller fails to demand goods within 20 days after cancellation, they become property of buyer without obligation to pay. (47-18-706).

**Cemetery merchandise and services** are regulated. (46-1-101 et seq.). Delivery of interment or commemorative merchandise or services generally must be within 60 days of payment therefor. (46-2-402). Pre-need sales contracts are valid only if within 60 days of seller's receipt of funds, procurement cost of merchandise or services, subject to minimums, plus 20% is deposited in bank trust account. (46-2-403). Cemetery companies engaging in such sales must file financial reports concerning trust fund accounts. (46-2-410). Burial ground or mausoleum construction must be begun within 36 months and substantially completed within five years of first sale of burial space. (46-2-405). Contracts for future funeral services are void unless all monies paid for such contract are deposited in trust account for benefit of purchaser. (62-5-401). Contract must state whether or not account is revocable. (62-5-403). Party proving fraud in pre-need and future services contracts is entitled to receive treble damages, attorney's fees, costs, and interest. (62-5-409). Advertisement by funeral director or embalmer for sale of merchandise or services which indicates price must include itemized listing and price of each item or service. (62-5-106). Seller must offer purchaser option to pay any applicable sales or use tax at time contract is entered into. (46-2-403).

**Coupon Sales Promotions.**—Special provisions apply to coupons (and coupon books) to be offered for sale and which are represented as entitling holder to obtain goods or services at reduced price upon presentation to sponsor. Excluded from coverage are coupons appearing in periodicals; those attached to or within container; coupons offered for sale directly by sponsor where proceeds from sale are returned to him, etc. Act specifies terms which must be included in written contract between promoter and sponsor, and appear on face of coupon, and prohibited acts, which constitute Class C misdemeanor and give rise to civil action by any person suffering ascertainable loss. (47-25-801 et seq.).

**Waiver of Rights.**—Sales contract cannot waive buyer's rights to exemplary, punitive or treble damages; if it does, it is deemed unconscionable. (48-18-708).

**Wireless Telecommunications Device and Service.**—Contract must have separate acknowledgment of any minimum service period. (47-18-1801).

**Facsimile Advertisements.**—Special provisions apply to unsolicited facsimile advertisements, including specific information which must appear on first page thereof, and prohibition of certain acts, which may constitute violation of Tennessee Consumer Protection Act, result in civil penalties, and give rise to any additional civil remedy otherwise allowed by law. (65-4-501 et seq.).

**Invention development services** regulated by 47-25-1201 et seq. Developer must make specified disclosures in first oral communication with customer or first written response to customer inquiry, other than for primary purpose of arranging appointment. (47-25-1204). Development contract must be written (47-25-1205), must contain provisions specified by 47-25-1206-08 and must be cancelable within seven days after date signed by developer and customer (47-25-1206). Developer must obtain and file or deposit with Secretary of State bond or cash in amount of greater of \$25,000 or 5% of developer's gross income for development services in Tennessee during prior fiscal year. (47-25-1217-18).

**Penalties.**—Civil damages of greater of \$3,000 or three times actual damages, plus attorney's fees, permitted. (47-25-1221). Injunctive relief available. Willful violation is misdemeanor. (47-25-1222).

**Referral Sales Schemes.**—Buyer or lessee induced to enter into consumer sale, credit sale, or lease by seller or lessor offering rebate or discount for names of prospective customers may rescind agreement or retain goods delivered and benefits performed without obligation to pay, if earning of rebate or discount contingent upon occurrence of event subsequent to sale or lease. Seller or lessor guilty of misdemeanor punishable by fine up to \$1,000 and three months imprisonment. (39-6-626).

**Motor Vehicle Warranties.**—Special provisions apply to new and leased vehicles, commercial and replacement vehicles. If manufacturer or dealer is unable to correct defect that substantially impairs use or fair market value after reasonable number of attempts, refund or replacement must be made. Refund is determined by statutory formula. (55-24-201 et seq.).

**Credit Cards.**—Card holder not liable for unauthorized use if he promptly notifies issuer of loss or theft. Liability for failure to notify limited to \$100, unless guilty of fraud,

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**CONSUMER PROTECTION . . . continued**

misrepresentation, gross negligence or collusion. (47-22-103). Caveat: 15 U.S.C.A. §1643 limits liability to \$50.

**Unsolicited Credit Card.**—One not deemed to have accepted, not subject to terms of agreement governing use of, and not liable for unauthorized use of such card by failure to return to issuer; however, use or retention with intent to use creates liability. (47-22-102).

**Unsolicited Merchandise.**—Intended recipient of such of value less than \$50 delivered by U.S. Mail or United Parcel Service may refuse delivery, has no duty to return or preserve, or may deem as gift. (47-21-101-02). Unsolicited mail resembling check which is actually loan must be clearly noted as loan in order to be enforced. (47-18-2401).

**Discrimination** by creditor or credit card issuer on basis of sex, handicap, or marital status forbidden. (47-17-102).

**Federal Consumer Credit Protection Act** compliance satisfies Tennessee statutes relating to disclosure in credit transactions. (47-14-125).

**Financial Records Privacy Act** prohibits disclosure (with exceptions listed) by financial institution of financial records unless authorized by customer or in response to subpoena in compliance with Act. (45-10-101 et seq.). Financial institution not complying with all requirements of subpoena need not file motion to quash but shall notify issuer of grounds of its refusal. (45-10-107). Upon application of governmental authority, customer notice required under 45-10-106 may be delayed by order of Chancery Court of Davidson County in accordance with provisions of statute. When access to financial records is obtained pursuant to 45-10-107, unless court has authorized delay of notice, as soon as practical after such records are obtained upon application of government authority, authority must serve upon customer copy of subpoena or other documents rating judicial proceedings. (45-10-117).

**Revised Uniform Deceptive Trade Practices Act** not expressly adopted, but 47-18-101 et seq., includes provisions substantially identical to §§2(a), 3 and 4 of Revised Act, except that: (1) Willful violation is not condition for awarding attorney fees to prevailing consumer (47-18-109[e]); (2) exemptions include retailers disseminating in good faith manufacturer's or wholesaler's claims without knowledge that such are deceptive practices (47-18-111[a][4]); and (3) deceptive practices, defined in 47-18-104, include not only those in §2(a) of Revised Act but also: falsely representing rights, remedies or obligations under consumer transactions; falsely representing that service, replacement or repair needed; causing confusion as to authority to negotiate final contract terms; failing to disclose that servicing charge based on predetermined rate or charge or guaranty or warranty rather than value of services rendered; disconnecting or resetting motor vehicle odometers; falsely advertising sale as going out of business sale; using chain referral sales plan; falsely representing guarantee or warranty rights; selling or offering to sell pyramid distributorship; assessing penalty for prepayment of charge for utility services; discriminating against handicapped individual; advertising business as "going out of business" more than 90 days before business ceases to operate; misrepresenting geographical location of florist in telephone directory; advertising that person is electrician for hire when not properly licensed; and unreasonably raising price or unreasonably restricting supplies of essential goods, commodities, or services in direct response to crime, act or terrorism, war or natural disaster in Tennessee advertising that contains reference to living trust or revocable living trust without proper disclosures, and also falsely representing that person, person's agent, authorized designee or designee for hire has conducted foreclosure on real property (47-18-104[b], am'd 2006, cc. 628, 746, 671).

Telemarketing consumer protection is provided by 47-18-1501 et seq. Practice of contests, sweepstakes, and other similar giveaways used in promoting or selling products is regulated. (47-18-124).

**Enforcement.**—Consumer Affairs Division of Department of Agriculture may: promulgate regulations (43-1-203); subpoena persons and information (47-18-106); and seek injunctive relief, damages for injured consumers, revocation of violator's license or certificate and, for willful violations, fine up to \$1,000. (47-18-108).

Injured consumer may bring action individually, but not in representative capacity, for damages and, unless Consumer Affairs Division has acted, injunction. Treble damages may be awarded for willful violations. (47-18-109).

Corporation has standing to bring action for treble damages. (47-18-109[a][4]; 18 S.W.3d 626 [2002]).

Actions under 47-18-101 et seq., must be commenced within earlier of one year from discovery of deceptive practice and five years from date of transaction. (47-18-110).

**Structured settlements** are governed by 47-18-2601 et seq.

**Plain Language.**—Life, health and credit life policies must comply. See category Insurance, topic Insurance Companies, subhead Policies.

See also topics Interest, Licenses, Business and Professional, subhead Collection Agencies, Sales; categories Debtor and Creditor, topic Liens, subhead Mechanics' Lien; Insurance, topic Insurance Companies.

**Access to Criminal History Records.**—In connection with issuance of licenses, permits and registrations, and investigation of consumer complaints, Department of Commerce and Insurance may query Tennessee Bureau of Investigation's Tennessee criminal history records system for certain historical data. (56-1-107).

**CONTRACTS:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.). See topic Commercial Code.

Written contracts signed by the party to be bound are prima facie evidence of consideration. (47-50-103). All contracts, including notes, security agreements, trust deeds and installment sales contracts, if in writing and signed by party to be bound, constitute prima facie evidence that same expresses true intention of parties and shall be enforced as written. If contract provides that no waiver of terms shall be valid unless in writing, court shall enforce such clause. (47-50-112).

Married woman has capacity to contract as if not married. (36-3-504).

Person procuring or inducing breach of lawful contract is liable for treble damages. (47-50-109). For contract actions against state, see category Courts and Legislature, topic Courts, subhead Chancery Courts.

**Intended Third Party Beneficiaries.**—Requirements for enforcement by third party are: parties to contract have not otherwise agreed; intent by parties for right of enforcement by beneficiary; and terms or circumstances indicate performance will satisfy obligation owed by promise to beneficiary or promise intended to benefit beneficiary. (59 S.W.3d 63).

See also categories Documents and Records, topic Seals; Family, topic Infants.

**FACTORS:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

**License Requirements.**—None.

**Consignment Agreements.**—No provision for filing or recording consignment agreements to protect the right of the consignor.

See also topics Commercial Code and Contracts.

**FRANCHISES:**

Franchising in general is dealt with in 47-25-1301 et seq. (repurchase of terminated franchise inventory), 47-25-1401 (disposal of dies, molds, and forms), and 47-25-1501 et seq. (franchise terminations, nonrenewals, or modifications). In addition, there is special legislation relating to certain aspects of following industries: Petroleum Products (47-25-601—621; 47-25-621—624); Farm Implements and Equipment and Motorcycles (47-25-1301—1310); Motor Vehicles (55-13-103); Alcoholic Beverages (57-3-301; 57-6-104); and Beer (57-5-501—512). See also, topic Securities.

**FRAUDS, STATUTE OF:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

Except in case of certain electronic messages (see topic Information Technology, Internet and New Media), unless promise or agreement or some memorandum or note thereof, upon which action is sought, is in writing and signed by party to be charged therewith or by someone lawfully authorized thereto by him, no action may be brought: (1) Against any executor or administrator upon any promise to answer any debt out of his own estate; (2) upon any special promise to answer for debt, default or miscarriage of another person; (3) upon any agreement made upon consideration of marriage; (4) upon any agreement for sale of lands, tenements or hereditaments or making of any lease thereof for longer term than one year; (5) upon any agreement which is not to be performed within space of one year from making thereof; (6) against any lender or creditor upon any promise or commitment to lend money or to extend credit, or to alter, amend, renew, extend, or otherwise modify or supplement any written promise, agreement, or commitment to lend money or extend credit, provided, however, that such promise or commitment need not be signed by lender or creditor if it is in form of promissory note or other writing that describes credit or loan and by its terms is intended by parties to be signed by debtor but not by lender or creditor, has actually been signed by debtor, and delivery of such has been accepted by lender or creditor. (29-2-101, am'd 2006, c. 810). In sale of land, "party to be charged" means owner of property, not purchaser. Tennessee is in minority of states that protect those who own title to real estate. (30 TAM 14-10 [Tn. Ct. App., E.S. Susano, Feb. 22, 2005]).

**Sales of Personal Property.**—Uniform Commercial Code governs.

**INFORMATION TECHNOLOGY, INTERNET AND NEW MEDIA:**

**E-Commerce.**—Uniform Electronic Transactions Act has been adopted with minor variations including: creation of information systems council to determine whether and to what extent state and state agencies will create, retain, accept and distribute electronic records; right of local government officials to determine whether and to what extent local governmental entities will create, retain, accept and distribute electronic records; additional requirements on governmental entities for creation, retention, acceptance and distribution of electronic records; pre-implementation and post-implementation review for local governmental entities; intention to supersede §101 of Electronic Signatures in Global and National Commerce Act, United States Public Law 106-229; and provision for determining when Official Comments to Uniform Electronic Transactions Act adopted by National Conference of Commissioners on Uniform State Laws can be used as evidence in dispute as to proper construction of Act.

Uniform Computer Information Transactions Act not adopted.

Uniform Commercial Code has been adopted. (47-1-101 et seq.). See topic Commercial Code.

**Advertising.**—See topic Consumer Protection.

**Automated Teller Machines.**—See topic Banks and Banking.

**Electronic Signatures.**—Courts may implement procedures for use of electronic signatures for signing of pleadings and other court documents. (16-1-115).

**Criminal Offenses.**—See category Criminal Law, topic Criminal Law.

**Taxation.**—See category Taxation, topic Sales and Use Taxes, subhead Electronic Commerce.

**E-Sign Act.**—Tennessee has adopted "E-Sign Act" provisions in 15 U.S.C. §§7001-7006 and 7031, providing for validity of electronic signatures in commerce. (47-10-101 et seq.).

See also topics Commercial Code and Contracts.

**INTEREST:**

Legal rate of interest is 10%. (47-14-103).

**Maximum Rate.**—Generally, for written contract signed by party to be charged, four percentage points above average prime loan rate as published by Federal Reserve System, or 24% per annum, whichever is less. (47-14-103). Exceptions: Installment loans, discussed infra this topic; single payment loans of less than \$1,000, where maximum is fixed by rule of Commissioner of Banking, not exceeding 10% (47-14-104); and home loans



**INTEREST . . . continued**

amortized over more than 181 months, where maximum is 2% above most recent weighted average yield of accepted offers of Federal National Mortgage Association auction for commitments to purchase conventional home mortgages, not exceeding 18%, as determined by Commissioner of Insurance and published in Tennessee Administrative Register (47-15-102).

Under general statute, variable rate permitted, and contract may provide for any rate permitted when loan contract executed, loan made, or loan or note evidencing same renewed or extended, where original contract so provides. (47-14-106).

Under home loan statute, variable rate permitted, and contract may provide for any rate permitted when mortgage loan application made, loan commitment made, or mortgage loan contract executed. (47-15-104).

Time-price differentials and certain loan charges, broker commissions and commitment fees, defined and limited by statute, are not interest. This also applies to adjustments for trade-ins on automobile transactions. (47-14-120). Interest does not include discount or fee charged on commercial account purchase transactions. (47-14-102). Principal and interest are defined terms. (47-14-102, am'd 2006, c. 565).

**Judgments** bear interest at 10% or, where based on note, contract or other writing fixing permissible higher rate, at that rate. Interest runs from date jury or court returned verdict without regard to motion for new trial. (47-14-121-122).

**Open Accounts.**—Liquidated and settled accounts bear interest from due date, unless specifically expressed otherwise. Interest on instrument accrues according to terms thereof or as provided in Commercial Code. Interest in other cases is computed from date debt payable, unless otherwise provided by contract. (47-14-109).

**Installment Loans.**—

*Banks and trust companies* may charge 6% per annum, deducted in advance or added to principal, on installment loans. (45-2-1106). Upon prepayment, partial interest refund must be made, under statutory formula. (45-2-1106). Additional charges permitted for: (1) Insurance premiums, official fees, taxes, appraisal, title examination, attorney documenting or closing loan, inspection or control of collateral; (2) lender's direct cost in originating, making, securing, processing, servicing and collecting loan, based on lender's actual average costs, not exceeding 4% of loan amount or \$25 in lieu thereof; and (3) late charge of 5% of installment in default over 15 days. (45-2-1106). On loans of more than \$300, may require: (1) Hazard insurance on tangible personal property and (2) credit life insurance on one borrower. Insurance must meet statutory requirements, and proof of coverage and costs must be given borrower within 30 days. (45-2-1106). Disclosure of loan terms and conditions must be made as required by Federal Consumer Credit Protection Act whenever credit extended. (45-2-1107). Credit card state bank or domestic lender may charge and collect interest at annual rate not exceeding 21%, in addition to various fees and charges as agreed in writing. (45-2-1904).

*Savings and loan associations* may charge 6% per annum, deducted in advance or added to principal, on home improvement installment, mobile home or other installment loans. Under statutory formula, partial interest refund required on prepayment. Additional charges permitted: (1) Late charge of 5% of installment in default over 15 days; (2) premiums on insurance required or obtained as security; (3) fees and taxes paid public officials for filing, recording or releasing any instrument or lien; (4) reasonable expenses of title investigation on realty security, including title insurance and closing costs; (5) reimbursement of necessary expenses in securing and collecting loan not exceeding 4% of gross loan amount, or in lieu of 4%, greater of \$10 per loan or \$1 per monthly installment. At closing, borrower must be given written statement of: (1) Original principal; (2) insurance premiums; (3) fees and taxes paid or to be paid public officials; (4) total of interest and securing and collecting charges, expressed in dollars per \$100 per year; (5) any other charges; (6) unpaid balance; and (7) number, amount and due dates of repayment installments. (45-3-705).

**Retail Installment Sales.**—Interest under retail installment contract, as defined in 47-11-102, may not exceed \$11.75 per \$100 per year on principal balance of each transaction. (47-11-103). Interest rate under retail charge agreement, as defined in 47-11-102, may not exceed 17½¢ per \$10 per month. (47-11-104).

**Industrial loan and thrift companies, industrial investment companies and industrial banks** regulated by, and must register with, Commissioner of Financial Institutions. (45-5-103). On loans less than \$100, may charge 7½% per annum interest, deducted in advance, on loan total for full term, but maximum effective rate is 18%. On loans more than \$100 and those made under open end credit plans, rate may not exceed 24%. (45-5-301, -401). May charge 4% of loan total, deducted in advance, for all services, expenses (other than recording fees and taxes paid public officials), detriments and commitments directly incident to loan. In lieu of 4% fee, may make flat service charge of \$2 on loans up to \$20, plus 50¢ per \$5 thereafter on loans in excess of \$20 but not exceeding \$100, and flat service charge of \$10 on loans of more than \$100. Flat service charge must be refunded if loan repaid in three business days, and if loan renewed, rescheduled or refinanced within 45 days, flat service charge limited to ½ of regular charge on new money advanced only. 4% and flat service charges prohibited on loan amount used to pay off loan to same borrower or spouse by same lender or affiliate. In addition to 4% or flat service charge, on loans of 90 days or more with monthly installments of at least \$15, may charge installment maintenance fee of \$2.50 per month on loans of \$100 or less, \$3.50 on loans of \$100-750, \$3 on loans of \$750-1,250, and \$2.50 on loans over \$1,250, for period not exceeding original term of loan contract, but no lender can charge such fee on multiple loans existing at same time to any one borrower. May also charge late charge of 5% of installment in default over five days and \$15 bad check charge. (45-5-403). May require hazard insurance at borrower's expense. (45-5-301-305). May accept but not require credit life, unemployment and disability insurance. (45-5-305). Insurance must meet statutory requirements. (45-5-305).

**Alternative Charges on Certain Loans.**—As alternative to charges described above, registrant may charge (on loans of not more than \$1,000 with term of 3-12 months) acquisition fee not in excess of 7.5% of principal amount. In addition to acquisition fee, registrant may charge installment account handling charge not to exceed \$12/month on loans of \$100-\$300: \$14/month on loans of \$301-\$400: \$16/month on loans of \$401-\$500: \$17/month on loans of \$501-\$800: \$20/month on loans of \$801-\$1,000. No

insurance charges are permitted on loans established pursuant to these provisions. (45-5-403).

**Equity Participations.**—Where initial advance or contemplated series of advances is \$500,000 or more, in addition to interest on loan, lender may take equity participation in borrower's enterprise under written agreement with borrower and such participation shall not be deemed to be interest, loan charges, commitment fees or brokerage commissions. (47-24-102).

**Usury.**—Any contract on its face requiring payment of usury or excess loan charges, commitment fees or broker commissions is unenforceable, but original lender may sue to recover principal plus lawful interest, charges, fees and commissions. Where usury, etc., does not appear on face of contract, but is proved, only principal plus lawful interest, charges, fees and commissions are recoverable. However, if unconscionable conduct, defined in statute, is found, no interest, charges, fees or commissions are recoverable, and lender must refund charges, fees and commissions and twice interest and pay borrower's reasonable attorney fees. (47-14-117).

Usury and excess loan charges, commitment fees and broker commissions are recoverable. (47-14-114). Usury is recognized defense, but burden is on party claiming same. (47-14-110). Equitable remedies for usury, etc., will be given only if principal plus lawful interest, etc., is paid or tendered into court, except that contract reformation suit as to loan charges, broker commissions or commitment fees may be brought on cost bond or pauper's oath and successful reformation plaintiff may be awarded reasonable attorney fees. (47-14-115).

Actions must be brought within three years, as to usury claims from earlier of date of last usury payment or foreclosure or court action, and as to excess loan charges, commitment fees and broker commissions, from date of payment. (47-14-118).

**Small Loans.**—See subhead Installment Loans, *supra*.

**LICENSES, BUSINESS AND PROFESSIONAL:**

Practically all pursuits are licensed in this state.

**State lottery**, authorized by constitutional amendment in 2002. See category Introduction, topic Government and Legal System.

**Athlete Agents.**—Uniform Athlete Agents Act (2000) has been adopted with certain variations including following: requirements for registration; grace periods; expiration of registration; suspension or revocation of registration; agency contracts; notice requirements; and criminal and civil liability of athlete agents and student-athletes. (49-7-2122 et seq.).

**Collection Agencies.**—Regulated by 62-20-101 et seq. License required. (62-20-105). Licensing and supervision by Department of Commerce and Insurance, 500 James Robertson Pkwy., Nashville, TN 37219. (62-20-104). Person placing account for collection is responsible for determining that agency is licensed. (62-20-118).

Courts hold that collection agency cannot bring suit for its principals, cannot give them legal advice, cannot employ attorney to bring such suits for it or to give such clients advice, and cannot select attorney to represent clients where agency receives fees and pays attorney fixed salary. (43 S.W.2d 918 [1931]).

**Deferred Presentment Services.**—Must be licensed. (45-17-101 et seq.).

**Check Cashing.**—Check Cashing Act of 1997 requires licensing for operation of business of cashing payment instruments. (45-18-101 et seq.).

**Pledge Lenders.**—Licensing and regulation of pledge lenders was significantly revised in 2005. (45-15-102 et seq.).

**Access to Criminal History Records.**—See topic Consumer Protection, subhead Access to Criminal History Records, *supra*.

**MONOPOLIES, RESTRAINT OF TRADE AND COMPETITION:**

Business trusts in restraint of trade are unlawful. (47-25-101). Vertically integrated petroleum producer presumed to restrain trade under certain circumstances if it cancels dealer franchise or imposes on dealer unreasonable operation requirements or supply quotas. (47-25-601-07). Violation is Class E felony. (47-25-103). Violator forfeits charter or right to do business in state. (47-25-104).

**Unfair Trade Practices.**—Advertising, offering to sell or selling by retailer or wholesaler, at less than cost, with intent or effect of inducing purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, is unfair competition and contrary to public policy. Violation is Class C misdemeanor. (47-25-201 et seq.).

**Financing Sales of Motor Vehicles.**—Manufacturer or wholesale distributor of motor vehicles may not: (1) Sell or contract for sale of motor vehicles on condition or agreement that dealer shall finance purchase or sale thereof through a designated finance company; (2) pay or give a subsidy to any finance company; or (3) discriminate against any finance company. Finance company may not accept any such subsidy or benefit of discrimination. (55-13-101).

**Resale Price Agreements.**—See category Intellectual Property, topic Trademarks and Tradenames.

**SALES:**

**Uniform Commercial Code** has been adopted. (47-1-101 et seq.).

**Contracts of Sale.**—See topic Frauds, Statute of. There is no statutory limitation as to type size in printed contracts. Government purchases from and payment requirements to private businesses governed by 12-4-701 et seq.

**Bills of sale** are not required.

**Product Liability.**—Controlled by 29-28-101 et seq., under which liability of manufacturers partially limited, liability of nonmanufacturers for sealed container products substantially limited, and strict liability of nonmanufacturers substantially limited. Manufacturer may be held liable to consumer in absence of privity of contract for commercial loss from defective product under tort misrepresentation doctrine. (398 S.W.2d 240 [1966]). Strict liability in tort for defective product causing personal injury or property

**SALES . . . continued**

damage has been adopted. Manufacturer may be liable to consumer for negligence. (272 S.W.2d 479 [1954]). Actions for personal injury or property damage based on negligence, strict liability, or breach of warranty, including those brought under Tennessee Uniform Commercial Code require no privity of contract. (29-34-104).

**Conditional sales** governed by Uniform Commercial Code. (47-9-101).

**Rental-Purchase Agreements** governed by 47-18-601 et seq.

**Retail Installment Sales.**—An act has been adopted regulating such sales in detail. (47-11-101 et seq.). For interest limitations, see topic Interest, subhead Installment Loans.

**Consumer Protection.**—See topic Consumer Protection.

**Bulk Sales.**—See topic Commercial Code and category Taxation, topic Property Taxes, subhead Assessment.

**Sales of Motor Vehicles.**—See category Transportation, topic Motor Vehicles.

See also topic Commercial Code; category Civil Actions and Procedure, topic Limitation of Actions, subhead Product Liability.

**SECURITIES:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

Statute governing sale of securities is Tennessee Securities Act of 1980. (48-2-101 et seq.). Act applies to persons who buy or sell securities from, in or into this state, or who give or receive advice concerning such sale or purchase. Also covered are acts done within this state that are instrumental in effecting prohibited conduct. (48-2-124).

**Supervision.**—Commissioner of Commerce and Insurance, 500 James Robertson Pkwy., 5th Floor, Nashville, TN 37243-0565, (615) 741-2241, acting through Director of Securities.

**Regulatory Powers of Supervising Authority.**—Permit for sale not required. Commissioner has power to promulgate rules, forms and orders to further purposes of Act. (48-2-116). He may also apply to chancery court to enjoin acts that are or may constitute violations (48-2-119), may deny, suspend or revoke registration of securities and broker-dealers, agents and investment advisers and, when authorized to issue stop order, may impose fine of \$5,000 on issuer (48-2-108; 48-2-112). Proceeds of offerings may be required to be placed in escrow for cause. (48-2-107). Final orders subject to review by Chancery Court of Davidson County pursuant to State Uniform Administrative Procedures Act. (48-2-120).

Any applicant for registration and issuer of securities to be offered in state must file irrevocable consent that Commissioner act as attorney-in-fact to receive any lawful process in any proceeding arising under Act. Plaintiff must, however, send notice of service and copy to defendant by registered mail at his address on file. Conduct in violation of Act deemed equivalent to such appointment if personal jurisdiction cannot otherwise be obtained in state. (48-2-124).

**Prerequisites to Sales or Offerings.**—Securities, except exempt classes and those sold in exempt transactions, must be registered, and broker-dealers, agents and investment advisers must register annually. (48-2-104).

**Securities to Which Act Applicable.**—For purpose of Act governing registration of securities, dealers and salesmen, security means, in general, any interest or instrument commonly known as security, or any certificate of interest or participation in, temporary certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase same, but does not include drafts, bill of exchange, bank letter of credit, evidence of indebtedness issued in mercantile or consumer, as opposed to investment, transaction, interest in deposit account or insurance or endowment policy or annuity contract under which insurance company promises to pay money in lump sum, periodically for life, or for some other specified period. See 91 S.W.3d 314 (2002) wherein Tennessee Supreme Court ruled that definition of "investment contract" contained in *State v. Brewer* is Tennessee standard for determining whether "security" exists.

**Exempt Securities.**—Registration of securities under Act does not apply to: (a) securities issued by U.S. or state public body, political subdivision or agency (but see 9-21-151, am'd 2006, c. 874, providing for disclosure procedures in connection with primary offering of municipal securities); (b) securities issued or guaranteed by: (1) certain foreign governments, (2) any bank organized under laws of U.S., (3) bank, savings or trust institution organized under laws of any state, (4) any federal or federally insured state savings and loan association authorized to do business in Tennessee, (5) certain industrial loan and thrift companies organized under laws of this state, (6) any federal or other credit union supervised under Tennessee law, (7) railroad, common carrier, public utility or holding company which is regulated or supervised by governmental authority of U.S. or any state or, in respect to security, by governmental authority of Canada or its provinces; (c) securities issued by person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes and not for pecuniary profit (certain material must be filed, however, with Commissioner at least ten days prior to any sale of such security); (d) any security which meets all of following requirements: (1) if issuer is organized under law of foreign country, agent for service of process designated in prospectus or circular, (2) class of issuer's securities has been registered for three years prior to offering under §12 of Securities Exchange Act of 1934 and he has filed during preceding 12 months all reports required by §§13 or 15(d) of that Act, (3) issuer or significant subsidiary has not had material default in past five years in payment of principal, interest, dividends or sinking fund installment on preferred stock, loans or material leases with term of three or more years, (4) issuer has had consolidated net income of at least \$1,000,000 during four of last five fiscal years, including last, (5) if offering is of interest bearing securities, issuer had net income during last fiscal year of at least 1½ times its annual interest expense including present offering, (6) if offering is of stock other than preferred stock, such securities have specified voting rights and, as of date within last six months before offering, at least 750,000 shares of same class were outstanding, with aggregate market value on such date of at least \$3,750,000 and owned of record or beneficially by at least 1,200 persons, (7) compliance with special provisions if offering is of interest bearing securities of companies primarily engaged directly (or through consolidated subsidiary) in mortgage, industrial or consumer financing, banking or factoring; (e) securities listed

or approved for listing on New York, American or Midwest Stock Exchanges if in compliance with current listing requirements and have not been suspended within last two years for failure to meet requirements of such exchange (Commissioner may at any time for cause remove exchange from this exemption, and he may also approve other stock exchanges); (f) promissory notes, banker's or trade acceptances of at least \$50,000 denomination which are payable on demand or mature or are renewed for not more than nine months after date of issuance or renewal, if not offered for sale by advertisement; (g) any security exchanged by issuer exclusively with its existing securities holders if no remuneration given for soliciting such exchange; (h) securities of corporations organized pursuant to Tennessee Cooperative Marketing Law, 43-16-101 et seq.; (i) issuance and delivery of securities of bank holding company to bank or another bank holding company in exchange for all or substantially all of assets or voting securities or in connection with lawful consolidation or merger of entities; and (j) any security issued by bank holding company, or savings and loan holding company, which is registered with Federal Reserve Board or Office of Thrift Supervisor and has filed certain specified transaction literature with Commissioner at least ten days prior to any sale in this state. (48-2-103).

**Exempt Transactions.**—Requirements for registration of securities and filing of sales and advertising literature do not apply to following transactions: (a) any transaction by person acting as executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator; (b) any bona fide pledge transaction; (c) sale to institutional investor or broker-dealer; (d) transaction involving sale, by or on behalf of issuer or affiliate, or its securities if all of following are met: (1) aggregate number of persons in state purchasing such securities from issuer and affiliates in nonexempt transactions 12 months prior to sale does not exceed 15, (2) such securities are not offered in sales literature or public advertisements, and (3) each such purchaser acquires securities for investment and not distribution (holding for two years is prima facie evidence); (e) transaction in outstanding shares of issuer by affiliate if following conditions are met: (1) affiliate is not acting as underwriter, (2) affiliate sells securities through registered broker-dealer in "broker's transactions" as defined by SEC Rule 144, (3) there is no solicitation of orders to purchase, and (4) no payments are made other than to broker-dealer who executes order to sell; (f) certain offerings by issuer in which aggregate amount sold in this state does not exceed \$250,000 in any 12 month-period; (g) transactions in outstanding securities at price reasonably related to market price by or on behalf of person not affiliated with issuer if issuer has filed current reports with SEC pursuant to §§13 and 15 of 1934 Act if required to do so or, if not required to make such filings, if information required by SEC Rule 15c2-11 is publicly available or issuer is investment company with current reports on file pursuant to Investment Company Act of 1940; (h) isolated transaction not involving issuer, affiliate or underwriter of such securities; (i) issuance of securities in connection with certain stock bonus, pension, profit sharing, savings, thrift or retirement plans for employees or persons self-employed; (j) transactions exempted by rule or order of Commissioner; (k) transaction pursuant to offer to existing security holders of issuer, including persons who at time of transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of issuance if no commission or other remuneration (other than stand-by commission) is paid for soliciting any security holder in Tennessee; (l) transaction in units in unit investment trust registered under Federal Investment Company Act of 1940 if: (1) Units are subject to effective registration statement or exemption from registration, (2) units are sold by registered broker dealer, and (3) units are sold by or on behalf of sponsor or depositor of unit investment trust or affiliate of such sponsor or depositor; (m) transaction in which (1) sales of securities are made only to persons who are, or who issuer reasonably believes are accredited investors (accredited investor status is established upon written certification of purchaser), and (2) issuer reasonably believes that each purchaser is acquiring securities for investment and not distribution (any resale of security within 12 months of sale shall be presumed to have been acquired for distribution and not for investment unless such sale is (A) pursuant to effective registration statement, (B) to accredited investor, or (c) to institutional investor); (n) transaction involving sale of charitable gift annuity; (o) transaction effected by Canadian broker dealer if such Canadian broker dealer has qualified for exemption from registration; (p) non-issuer transaction through registered or exempt broker-dealer in security rated by nationally recognized statistical rating organization in one of its four highest rating categories, or has fixed maturity or fixed interest or dividend, if issuer has not defaulted in payment of principal, interest or dividends on security in previous three years, and not development stage company or in bankruptcy or receivership; (q) non-issuer transaction through broker-dealer in security of foreign issuer that is margin security as defined in regulations of Board of Governors of Federal Reserve System; and (r) non-issuer transaction by investment advisor registered under Investment Advisors Act of 1940 with investments under management in excess of \$100 million, acting in exercise of discretionary authority in signed record for account of others. (48-2-103).

**Registration of Securities.**—Securities are registered by issuer or registered broker-dealer by filing with Commissioner registration statement and related material in accordance with following alternative procedures.

**Registration by coordination** of securities for which registration statement has been filed under Securities Exchange Act of 1933 (or notification under Regulation A thereof) in connection with same offering is automatic (if no stop order, denial, suspension or revocation of registration is in effect) when statement declared effective by SEC if such statement is on file with Commissioner for at least five days and is accompanied by latest prospectus or circular filed with SEC (with undertaking to forward promptly amendments) and, if required by Commissioner: charter and by-laws of issuer, underwriter's agreements, indenture or other document governing issuance, specimen of security, other documents filed with SEC under Act of 1933, and any other information as is necessary to determine accuracy of statement. Statement of maximum and minimum proposed offering prices and underwriting discounts and commissions must be on file for two full business days, but Commissioner may shorten or waive this requirement and may also waive five day filing of statement above. Registrant must notify Commissioner promptly and by electronic means of date and time SEC declares statement effective and contents of price amendment, if any, filed with SEC. He must then promptly file post-effective amendment containing information and documents included in price amendment. (48-2-105).

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**SECURITIES . . . continued**

**Registration by qualification** of securities is accomplished by filing with Commissioner registration statement including copies of prospectus or circular containing financial statements and information relative to securities, offering, issuer, promoters, directors, officers, security holders and personnel, material contracts, litigation, transactions and remuneration; specimen of security; charter and by-laws of issuer; indenture or other instrument governing offering; signed opinion of counsel that security offered is legal and will be, when sold, legally issued, fully paid, nonassessable and, if debt security, binding obligation of issuer; written consent of attorney, accountant or other private professional if such person is named as having prepared or certified report or valuation used in connection with registration; any advertisement, literature or communication, containing such information as Commissioner may prescribe, to be used in offering; and such additional information as may be necessary to determine accuracy of statement. Registration statement filed under this procedure shall become effective 20 days after filing, but Commissioner may shorten this period or defer effectiveness for cause. (48-2-106).

**All Registrations.**—Unless omission is permitted by Commissioner, registration statements filed under either procedure above shall specify (with regard to offering) amount of securities to be offered in Tennessee, states where registration statement or similar document has been or will be filed, and any adverse order or decree by SEC, any court or regulatory authority of any state. Statements are also subject to standards of fairness and reasonableness as may be declared by Commissioner. Period of effectiveness of statement is one year unless sooner terminated by order or notification to Commissioner of completion of offering. During this period there is ongoing obligation to file such reports as Commissioner may by rule require as well as keep statement information reasonably current and disclose progress of offering. Special provisions govern amendment of statements to increase number of securities to be offered. (48-2-107).

**Filing fee** of 1/10 of 1% of maximum aggregate offering price in this state must be paid by person filing statement. Maximum fee is \$1,000; Commissioner authorized to establish minimum fee by rule. (48-2-107).

**Registration of Broker-Dealers, Agents and Investment Advisers.**—Unlawful to transact business as broker-dealer, agent, or investment adviser (with certain exceptions) from or into this state unless registered under Act. (48-2-109). When agent begins or terminates connection with broker-dealer, both are required to promptly notify Commissioner. Agent's registration ineffective during any period he is not associated with registered broker-dealer. Unless timely renewed, registrations expire annually, on Dec. 31 for agents, broker-dealers and investment advisers. (48-2-109).

**Procedure.**—Above persons must file registration application on Commissioner's form containing information relative to applicant's organization, qualifications and business history, including affiliates, officers, directors, etc.; proposed method of doing business; felony convictions; injunctions, orders and misdemeanor convictions involving any aspect of securities business; and financial condition and history. Publication of application may be required. (48-2-110).

**Issuer-dealers** who create for sale fractional interests in oil, gas or other mineral rights must register (with certain limited exceptions) but will not be deemed broker-dealers and are subject to limited regulation as long as their securities business is restricted to sale of undivided fractional interests. (48-2-110).

**Filing fee** of \$200 must accompany application or renewal for broker-dealer and investment advisers (\$50 for agents). (48-2-110).

**Denial, Suspension or Revocation of Registration.**

**Of Securities.**—Commissioner may not take action on facts or transactions known to him at time registration became effective unless proceedings are instituted within one year after such time. Otherwise, he may at any time by stop order deny, revoke or suspend registration if such order is in public interest and one or more of following grounds exist: (1) statement contains untrue statement or omission to state material fact necessary to make statements therein not misleading in light of circumstances under which they were made; (2) willful violation of Act, order or rule by person filing statement, issuer or underwriter; (3) security is subject of stop order, injunction or similar proceeding issued not more than one year previously under any other state or federal Act relative to offering if such was based on facts which would currently constitute violation in Tennessee; (4) issuer is engaged in activities illegal where performed; (5) offering has or would tend to operate as fraud upon purchasers. Notice, reasons and opportunity for hearing must be afforded, and Commissioner may vacate or modify order for good cause or compelling amendment. (48-2-108).

**Of Broker-Dealers, Agents or Investment Advisers.**—Order may be issued under same general circumstances as set forth in previous paragraph. Grounds include: (1) conduct enumerated in (1) and (2) above; (2) conviction of any felony, or within last ten years, convicted of misdemeanor involving any aspect of securities or investment related business; (3) pending injunction by court of conduct as to any aspect of securities or investment related business; (4) U.S. Post Office fraud order or pending stop order by Commissioner or any order issued within past ten years by SEC or securities administrator of another state or other federal or state agency having jurisdiction over investment related businesses, denying or revoking registration or suspending applicant from national stock exchange, if such was based on facts which would currently constitute violation in Tennessee and if Commissioner institutes proceeding within one year from date of order relied upon; (5) dishonest or unethical securities practices; (6) insolvency; (7) failure to reasonably supervise agents or employees; (8) lack of qualification (subject to special provisions). Commissioner may, as alternative to revocation or suspension, impose \$5,000 fine for all violations arising from any single transaction. (48-2-112).

**Licenses.**—None required as such of dealers and agents, but see subhead Registration of Broker-Dealers, Agents and Investment Advisers, supra.

**Bond.**—Unless registrant's net capital exceeds \$100,000, Commissioner may by rule require broker-dealers, agents and investment advisers to post surety bond up to \$10,000. Fidelity bonds or deposits of cash or securities may be accepted. Special provisions and such conditions as may be imposed by Commissioner apply to bonds. (48-2-110).

**Advertisements.**—Unless security or transaction is exempt, Commissioner may by rule require that any prospectus, circular, form letter, advertisement or other sales literature or advertising communication intended for prospective investors, clients, etc. be

filed. (48-2-113). It is unlawful to represent that effective registration constitutes approval or finding that any filed documents are complete and not false or misleading. (48-2-114).

**Registration of Takeover Offers.**—Regulated by Tennessee Investor Protection Act, 48-35-101 et seq.

No person who directly or indirectly beneficially owns or controls 5% or more of any class of equity securities of corporation, any of which were purchased within one year of proposed takeover offer, shall make any offer or purchase securities pursuant thereto if such might result in offeror's direct or indirect beneficial ownership of 10% or more of any class of that corporation's equity securities until offeror has made full, fair and effective disclosure to public and offerees of offeror's intentions as to changing or influencing management or control of offeree corporation, has filed with Commissioner statement of such intentions, and has on file with Commissioner effective registration statement. (48-35-102-03).

For purposes of Act, offeror deemed to own securities of offeree corporation directly or indirectly beneficially owned by: (1) person controlling, controlled by or under common control of offeror; (2) entity of which offeror is officer or partner or direct or indirect beneficial owner of 10% or more of any class of such entity's equity securities; (3) any person directly or indirectly beneficially owning 10% of any class of offeror's equity securities; (4) any trust or similar estate in which offeror has substantial beneficial interest or is trustee or fiduciary; (5) offeror's spouse and relatives of offeror or spouse living in offeror's home. (48-35-102).

Offer must be made on same terms to all holders of record or beneficial owners of equity securities of offeree company residing in state, such terms to be substantially same as offered to nonresident owners of such securities. Offer must allow tenders to be withdrawn for at least seven and up to 60 days after effective date of offer. If within ten days after later of effective date of offer or date of notice of increased consideration thereunder, more securities are tendered than offeror has agreed to accept, tenders must be accepted on pro rata basis. If consideration offered for securities is increased after effective date, such increased consideration must be paid to all offerees regardless when securities tendered. (48-35-103).

Offer cannot be effective until ten days after registration statement and consent to service of process on official forms have been filed with Commissioner, or later if Commissioner so orders, and after offeror (no later than date statement filed) has sent by certified mail to offeree company at its principal office copy of statement and has publicly disclosed material terms of offer. (48-35-104).

Filing fee for registration statement is \$100. Additionally, \$100 fee must be paid if offeree corporation requests Commissioner to conduct hearing on offer. (48-35-109).

Copies of all advertisements, circulars, letters and other materials of offeror or offeree corporation soliciting or requesting acceptance or rejection of offer must be filed with Commissioner and offeror or offeree corporation, respectively, no later than time when copies of such materials are first published or used or sent to offerees. (48-35-105).

**Exempt Transactions.**—48-35-101 et seq. does not apply to: (1) broker-dealer transactions in ordinary course of business not entered into for purpose of, and not having effect of, changing or influencing control or management of offeree company; (2) exchange offers for equity securities of another issuer if made in good faith for sole account of offeror, if exempt under §4 of 1933 U.S. Securities Act and not involving any public offering; (3) good faith offers made in isolated transactions for sole account of offeror to not more than 15 persons in state during any 12 month period; (4) offers on substantially equal terms to holders of class of equity securities of offeree company, if there are no more than 50 such holders; (5) offers pursuant to full disclosure on substantially equal terms to all shareholders, as to which directors of offeree company have recommended acceptance; (6) offers to acquire company's own equity securities or those of subsidiary at least 2/3 beneficially owned by company; (7) offers involving merger, consolidation or sale of assets for securities of offeror or involving sale of securities for cash or securities of offeror, where shareholder vote held pursuant to charter or statute; (8) banks and bank holding companies, building and savings and loan associations, insurance companies and public utilities and public utility holding companies, where regulated by state or federal law. (48-35-102[10]; -113).

**Liabilities.**—Seller in violation of Securities Act liable for consideration paid, plus interest and less income received, upon tender of security. Purchaser in violation is liable to seller for return of security plus income received upon tender of consideration received. Any person who willfully employs fraudulent act or device within meaning of Act shall be liable to any person who purchases or sells security at price which was affected by such conduct for damages sustained as result unless plaintiff knows of violation. Any person who makes false or misleading statement in any document required to be filed under Act or in advice given as investment adviser, as to any material fact, liable to any person who, in reliance and without knowledge, has purchased or sold security at price affected by such statement for damages caused by reliance unless defendant sustains burden of proof to establish good faith, lack of knowledge and that he could not have had notice in exercise of reasonable care. Costs, including reasonable attorneys' fees, may be assessed against either litigant. There is joint and several liability against persons who control, directly or indirectly, violator and other persons who materially aid transaction and knew or should have known of violation. (48-2-112). See also category Civil Actions and Procedure, topic Limitation of Actions.

Takeover offeror purchasing security in violation of statute may be sued in law or equity for rescission plus income received by offeror in connection with security, or for damages equal to greater of value of security at time of suit or sale to offeror, less value at time of suit of consideration received by offeree. Officers and directors of offeror, persons directly or indirectly controlling offeror, and offeror's employees and broker-dealers and agents who materially assist illegal purchase, are liable jointly and severally with offeror, unless proved that such persons did not know and could not reasonably have known of facts upon which liability based. Prior to rescission suit arising out of takeover offer, offeree must tender or give notice of willingness to tender consideration received for security. Two-year statute of limitations on rescission or damages suits under takeover statute. (48-35-112).

Violation of Securities Act is Class D felony. (48-2-123). Violation of Investor Protection Act is Class A misdemeanor. (48-5-112).

**Subdivision Offerings.**—No special provisions.

See note at head of Digest as to 2007 legislation covered.

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**SECURITIES . . . continued**

**Franchising, Pyramid Sales, Etc.**—Under 47-25-1301, et seq., upon termination of franchise, franchisee may require franchisor to repurchase part of franchisee's inventory. Under 47-18-104 et seq., discussing Consumer Protection, certain chain referral and pyramid sales plans are prohibited.

**Taxation.**—Every corporation, company, partnership or individual writing, issuing, servicing and/or collecting installments on income reserve contracts or installment investment trusts (including investors' syndicates, investment associations and the like) is subject to an annual privilege tax of 2% of its gross receipts or income attributable to business done in Tennessee. On or before Sept. 1, return must be made and tax paid to Commissioner of Insurance and Banking for previous fiscal year ended June 30. This tax is in lieu of all other taxes except ad valorem taxes on real property and tangible personal property in the state. All members, etc., are exempt from income tax and privilege taxes on profits, dividends or interest, or income in the nature thereof, received from such company. (56-4-301-09).

**Uniform Simplification of Fiduciary Security Transfers Act** adopted. (35-12-101 et seq.).

**Uniform Transfer on Death Security Registration Act** adopted. (35-12-101).

**Uniform Securities Ownership by Minors Act** not adopted.

See also topic Commercial Code.

**STATUTE OF FRAUDS:**

See topic Frauds, Statute of.

**TRUST RECEIPT SECURITY:**

See topic Commercial Code.

**WAREHOUSEMEN:**

**Uniform Commercial Code** has been adopted. (47-1-101 et seq.).

See topic Commercial Code.

**Grain warehousemen** are regulated. License, surety bond and fire and extended coverage insurance are required. (43-26-101 et seq.).

**CITIZENSHIP****ALIENS:**

**Property.**—An alien, resident or nonresident, may take and hold property, real or personal, in this state and dispose of and transmit same as native citizen. (66-2-101). Heirs or devisees of alien may take any lands so held by descent or otherwise, as if citizen. (66-2-102).

See also category Employment, topic Labor Relations, subhead Employment of Illegal Aliens.

**CIVIL ACTIONS AND PROCEDURE****ACCORD AND SATISFACTION:**

To constitute accord and satisfaction, offer (with intent to satisfy obligation) and acceptance (with intent that it shall operate as satisfaction) are essential. (330 S.W.2d 578 [1959]).

**Contract.**—Accord and satisfaction in writing as to right of action in contract is given effect according to intention of parties. (24-7-106).

**Pleading.**—Defense of accord and satisfaction must be set forth affirmatively in pleading to a preceding pleading. (Rules of Civil Procedure 8.03).

See also category Business Regulation and Commerce, topic Commercial Code.

**ACTIONS:**

Tennessee Supreme Court has adopted Rules of Civil Procedure patterned after Federal Rules of Civil Procedure. Rules are codified separately from Code, and references herein are to Rule Number, unless otherwise indicated.

**Equity.**—Distinction between legal and equitable remedies is still observed, but chancery and law courts have broad area of concurrent jurisdiction.

**Forms of Action.**—Common law distinctions as to forms of action have been abolished. (8.01).

**Commencement.**—See topic Process.

**Parties.**—Federal Rules obtain. (17.01 et seq.).

**Class Actions.**—Federal Rules obtain. (23.06 et seq.).

**Intervention.**—Federal Rules obtain, except that intervention allowed as a matter of right by stipulation of all parties. (24.01 et seq.).

**Interpleader.**—Federal Rules obtain. (22.01, 22.02).

**Third Party Practice.**—Federal Rules obtain. (14.01, 14.02).

**Joinder of Causes of Action.**—Federal Rules obtain. (18.01 et seq.). In addition, plaintiff may institute claim for money, and to discover and subject to satisfaction of claim for money property of defendant not subject to execution, without first obtaining money judgment. (18.02). Tennessee Rules specify that joint tortfeasors and obligors on joint and several obligations may be sued jointly or severally. (19.01).

**Splitting Causes of Action.**—All damages resulting from single wrong, whether tort or contract, constitute but one indivisible cause of action and must be sued for in same action; a second suit for omitted damages is barred by the first judgment. (214 Tenn. 371, 380 S.W.2d 793).

**Consolidation of Actions.**—Federal Rules obtain, except that, in jury trials (other than those in which all parties have waived right to jury trial on certain issues) all material issues must be tried to jury. (42.01 and 42.02).

**Severance of Actions.**—Federal Rules obtain. (42.02).

**Stay of Proceedings.**—No statutory provisions. Federal Rules on sanction for refusal to make discovery and failure to pay costs of old action when action refiled have been adopted. (37.02, 41.04).

**Abatement and Revival.**—Causes of action for tort causing injury, death or property damage, except causes of action for wrongs affecting character, survive death of tortfeasor and may be prosecuted against personal representative (20-5-103), and causes of action for tortious injury resulting in death survive death of injured person (20-5-106). Rights of action based on wrongful act or omission of another shall not abate but shall pass as in wrongful death actions. (20-5-102).

**Actions already commenced** whether contract or tort, with exception of actions for wrongs affecting character, do not abate upon the death, disability or transfer of interest of either party, if the cause of action survives. (20-5-101-02). Such actions may be revived by or against appropriate representative, heir or assign. (20-5-116). No appeal or writ of error is abated by death of either party but may be revived by or against personal representative, heir or assign. (20-5-101-02). See category Estates and Trusts, topic Death.

**Limitation of.**—See topic Limitation of Actions.

**Small Claims.**—See category Courts and Legislature, topic Courts.

**Prohibited Actions.**—Person rendering free emergency care at accident or disaster or rendering emergency care at public gathering not liable to person treated except for gross negligence. (63-6-218). Counselor (other than state employee) at nonprofit counseling center operated at least partially with volunteers not liable for suicide or attempted suicide by counseled person. (33-3-201). Product liability controlled by 29-28-101 et seq., under which liability of manufacturers partially limited, liability of nonmanufacturers for sealed container products substantially limited, and strict liability of nonmanufacturers substantially limited.

**Administration.**—See category Estates and Trusts, topic Executors and Administrators.

**Direct Actions Against Insurer.**—See category Transportation, topic Motor Vehicles, subhead Direct Actions.

**APPEAL AND ERROR:**

Rules of Appellate Procedure adopted by Supreme Court of Tennessee under statutory authority (16-3-402), and govern appellate procedure in civil and criminal proceedings. Rules supersede previous statutory sections where inconsistent. (16-3-406). Rules are codified separately from Code, and references herein are to Rule number unless otherwise indicated. Appellate Rules correspond only roughly with Federal Rules of Appellate Procedure.

**From Administrative Agencies.**—Appeal from final state agency decision in contested case, or from preliminary, procedural or intermediate state agency decision in contested case where appeal of final decision will not provide adequate remedy, must be filed in appropriate chancery court within 60 days of decision. (4-5-322). Direct review of agency order by Court of Appeals where otherwise authorized by statute may be had by filing and service of petition for review. (12).

**From Minor Tribunals.**—Appeals from judgments of officer of municipality or recorder lie to circuit court. Party appealing has ten days in which to perfect appeal by giving good and sufficient bond. (27-5-101 et seq.). General Sessions courts supersede justices of peace in most counties. (16-15-101 et seq.). Appeals from these courts lie to circuit court, with ten days allowed for perfecting appeal. (27-5-108). Appeal of cases from general sessions court shall be de novo, including damages. (16-15-729).

**From County Court.**—Appeals from the county court lie to the circuit court except where the county court has concurrent jurisdiction with circuit and chancery courts, in which cases appeal lies direct to appellate court of review. (27-4-101 et seq.).

**From Juvenile Court.**—Appeals from juvenile court of final order or judgment for unruly child proceedings or dependent and neglect proceedings lie to circuit court. Any appeal from any final order or judgment in delinquency proceeding may be made to court having criminal jurisdiction. All other appeals governed by Rules of Appellate Procedure. (37-1-159).

**From Circuit and Chancery Courts.**—Appeals of final decisions are to Court of Appeals, Court of Criminal Appeals and Supreme Court, and are of right. (3). Appeal by permission and at discretion of both trial and appellate court may be taken within prescribed time limits from interlocutory orders. (9). Extraordinary appeal of interlocutory orders may be permitted by appellate court in certain narrowly defined circumstances. (10).

**Court of Appeals** has appellate jurisdiction only over civil or criminal contempt arising out of civil matter and over all civil cases except those involving: (1) Constitutionality of statute or ordinance as sole determinative question; (2) right to hold public office; (3) workers' compensation; and (4) state revenue. In such cases, appeal is directed to Supreme Court. (16-4-108). Court of Appeals may hear appeal of order denying or granting class certification if appeal is filed within ten days of entry of order in trial court. (27-1-125).

**Court of Criminal Appeals** has appellate jurisdiction only in criminal cases, cases arising under Post-Conviction Procedure Act (40-30-101 et seq.), and civil or criminal contempt arising out of criminal matter and extradition cases (16-5-101 et seq.). Where sole question is constitutionality of statute or ordinance, appeal is directed to Supreme Court. (16-5-108).

**Supreme Court** has appellate jurisdiction only. It also has jurisdiction over interlocutory appeals arising out of matters over which court has exclusive jurisdiction and discretionary jurisdiction on its own motion over undecided cases of compelling public interest for which notice of appeal or application for interlocutory or extraordinary appeal

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**APPEAL AND ERROR . . . continued**

is filed with intermediate appellate court. (16-3-201). Appeal from final decision of Court of Appeals or Court of Criminal Appeals is by permission and at discretion of Supreme Court. (11). Appeal from final decision of trial court in civil cases excepted from Court of Appeals jurisdiction (16-4-108, see subhead Court of Appeals, *supra*) and in criminal cases excepted from Court of Criminal Appeals jurisdiction (16-5-108, see subhead Court of Criminal Appeals, *supra*) is directly to Supreme Court and as of right (3), as is review of death sentence (39-13-206). Any case appealed by mistake to wrong court must be transferred to proper court. (17).

**Appeal Bond.**—Bond with “sufficient surety” for costs on appeal must be filed in trial court, with notice of appeal unless bond for stay (which includes security for costs on appeal) has been filed. (6). Appellee may raise by motion objections to trial court to form of bond and sufficiency of surety. Appeal by poor persons is allowed without security for costs or prepayment of fees where appellant was permitted to proceed as poor person in trial court. (18). See topic Costs.

**Stay of Proceedings.**—Initial stay of execution of judgment automatic until 30 days following entry except in injunction, receivership and custody cases, actions that remove public officer, and where defendant endangers satisfaction of judgment. (Rules of Civil Procedure 62.01). Additional stay of 30 days occurs after entry of order on timely motion for new trial, amendment of judgment, additional findings of fact, or judgment in accordance with motion for directed verdict. (Rules of Civil Procedure 62.02). Other relief in certain cases discretionary with trial court. (Rules of Civil Procedure 62.03, 62.07). Stay on appeal effective when bond with sufficient surety to secure judgment, interest, damages for delay, and costs on appeal approved by trial court. Upon motion, and based on such factors as appellant’s financial condition and amount of insurance coverage, trial court may set bond in lesser amount. (Rules of Civil Procedure 62.04, 62.05).

All actions awarding, changing or affecting custody, interlocutory or final judgment, by any court of state shall not be stayed after entry unless ordered by that court. (36-6-111).

**Time.**—Appeal to Supreme Court and Court of Appeals initiated by filing with clerk of trial court notice of appeal specifying appellant, judgment appealed from and court to which appeal taken (3) within 30 days from later of entry of judgment or entry of order disposing of timely motions in civil cases (4). Copy of notice of appeal in civil cases must be served on counsel within seven days of filing and proof of service must be filed with clerk of trial court within seven days of service. (5).

**Extent of Review.**—Any question of law may be presented for review except certain issues regarding conduct of court or parties at trial, unless those matters were specifically stated in motion for new trial. (13; 3). Unless otherwise required by statute, review of trial court’s findings of fact is de novo upon trial record accompanied by presumption of correctness. Findings of fact by civil jury disturbed only if no material evidence to support verdict. (13). Concurrent findings of fact by master and chancellor and by chancellor and Court of Appeals binding on appellate court. (27-1-113).

**Character of Hearing.**—Appeals from minor tribunals, county court and juvenile court to the circuit court are tried de novo. (27-4-108; 37-1-159).

See also topic Practice.

**BONDS:**

**Sureties.**—Fidelity and bonding companies regulated by 56-15-101 et seq. See also topic Appeal and Error, subhead Appeal Bond.

**Enforcement.**—Where costs are adjudged against party, judgment may on motion be against him and his sureties. Execution must issue first against party. (20-12-136). Bonding companies subject to bad faith penalty as provided in 56-7-105.

**CERTIORARI:**

Common law writ of certiorari is available under proper circumstances. The writ may be used upon proper showing, instead of an appeal, in cases begun before a justice of the peace or general sessions court. (27-8-104).

**Jurisdiction** is in the judges of trial courts of law to remove causes from any inferior jurisdiction. (27-8-104).

**Grounds.**—The writ may be granted where an inferior tribunal has exceeded its jurisdiction or is acting illegally, or when in the judgment of the court there is no other plain, speedy, or adequate remedy. (27-8-101).

**Proceedings.**—The petition must be sworn to (27-8-106) and bond must be given in double amount of judgment complained of (27-8-110).

**Review.**—Suits are triable before the appellate court. (27-8-115). Final judgment is awarded there. (27-8-117).

**CHARITABLE IMMUNITY:**

See topic Damages.

**COMMISSIONS TO TAKE TESTIMONY:**

See topic Depositions and Discovery.

**COSTS:**

Liability for costs in civil cases is discretionary with the court. The amount is fixed by statute and taxed as directed by the court. (20-12-119).

**Security for costs** must be given upon issuance of all leading process, except that pauper’s oath and filing of accompanying affidavit of indigency may be given by resident of state in all cases unless for false imprisonment, malicious prosecution, slander or absolute divorce, provided that in suits for absolute divorce, women unable to give bond deposit with clerk of court \$10 to be applied to partial payment of costs. (20-12-120-26; 20-12-127).

**DAMAGES:**

Common law prevails as to compensatory damages. Punitive damages are awarded only if court finds defendant acted intentionally, fraudulently, maliciously, or recklessly when wrongful act was done. As to damages for frivolous appeal, see topic Appeal and Error.

**Comparative Negligence Rule.**—Supreme Court of Tennessee adopted modified form of comparative negligence in 1992. (833 S.W.2d 52 [1992]). Plaintiff recovers if negligence of plaintiff is less than combined negligence of all tortfeasors. All tortfeasors need not appear in case. Uniform Comparative Fault Act not adopted.

Fault may not be assessed against patient in medical malpractice action in which patient’s negligent conduct provides only occasion for medical attention, care or treatment which is basis for action. (134 S.W.3d 121 [2004]).

**Charitable Immunity.**—Abrogated as defense, but trust funds used solely for charitable purposes are exempt from execution. (95 S.W.2d 917 [1935]).

**Sovereign Immunity.**—Controlled generally by 29-20-101 et seq. Immunity of sheriffs and counties for acts or omissions of deputies and special deputies controlled by 8-8-301-03. Immunity abolished for governmental entities in tort cases. (29-20-201 et seq.). Circuit courts have jurisdiction over actions under statute. Judgment may not exceed insurance limits of defendant. (29-20-311).

**No-Fault Insurance.**—See category Transportation, topic Motor Vehicles, subhead No-Fault Insurance.

**Uniform Contribution Among Tortfeasors Act (Revised).**—Adopted. (29-11-101 et seq.).

**Wrongful Death of Pet.**—In counties with population in excess of 75,000, limited monetary recovery allowed for wrongful death of pet. (44-17-403).

See also category Estates and Trusts, topic Death, subhead Action for Death.

**DEPOSITIONS AND DISCOVERY:**

Tennessee Supreme Court has adopted Rules of Civil Procedure patterned after Federal Rules of Civil Procedure in effect immediately prior to July 1, 1970. Rules are separately codified from Code, and references herein are to Rule Number, unless otherwise indicated.

**Uniform Foreign Depositions Act** adopted. (24-9-103).

**Videotape Depositions.**—Depositions may be taken on audio videotape according to procedures outlined in Rules of Civil Procedure, 30.02. Notice of deposition and subpoena for attendance must state deposition will be recorded by audiovisual means. (30.02).

**Medical Records.**—Unless otherwise specified in records subpoena, whether for trial or deposition, hospital licensed in Tennessee not party or location of injury may, within five days of subpoena service, deliver or send by certified or registered mail to court clerk (or judge if for trial or to officer before whom deposition taken) copy of records subpoenaed in lieu of original, and hospital’s custodian of records need not appear. Copy of subpoena for records must be delivered to adverse party or his attorney at least ten days prior to trial. (68-11-402). Copy of subpoenaed records must be in sealed envelope and accompanied by custodian’s certification as provided by statute. (68-11-403; -405). Envelope may not be unsealed without authorization or consent by patient or his agent, unless (1) subpoenaed by patient or his attorney, (2) subpoenaing attorney provides copy to patient or his agent, or (3) subpoena is for criminal proceeding. (68-11-404). Copy is admissible in evidence as original. (68-11-406).

No liability for disclosing medical information in response to subpoena, court order or request authorized by state or federal law. (68-11-1503).

Medical records may be used at trial for any purpose without witness testimony provided that: (1) Records are certified by custodian of records or physician, (2) records are true and correct copy, and (3) records were prepared by person whose duty to do so in ordinary course of business. Person using records under c. 842 must give 60 days notice. (24-7-122).

**Within State for Use Within State.**—May be taken upon notice to other parties at least five days beforehand if taken in county where suit is pending or seven days if taken outside county. Notice must state time and place and identity of witness. Court may on cause enlarge or shorten time for notice. (30.02).

**Within State for Use Elsewhere.**—Uniform Foreign Depositions Act adopted. (24-9-103).

**Outside of State for Use Within State.**—Notice requirements identical to those for depositions taken within state. It is customary to have commission issued to officer before whom deposition will be taken by judge, clerk or deputy clerk, unless waived by parties.

**Perpetuating Testimony.**—Federal Rules obtain. (27.01-27.03).

**Before Whom Taken.**—Federal Rules obtain, except that depositions may not be taken before certain related or interested parties. (28.01, 28.02, 28.03).

**Compelling Attendance of Witnesses.**—Deposition subpoena may be issued by officer authorized to take depositions or clerk of court, and may require production of tangible things. Resident of this state can be required to give deposition only in county where he resides or works, unless otherwise ordered by court. (45.04). Physicians, dentists, attorneys and psychologists are not required to testify other than by deposition. (24-9-101).

*Nonresident motorist* served with process under 20-2-203-07 (see category Transportation, topic Motor Vehicles, subhead Actions Against Nonresidents) may be required to give deposition in county where action pending. (20-2-203).

Senior psychological examiners may be subpoenaed to testify at deposition but not trial. (24-9-101[6]).

**Examination of Witnesses.**—Patterned after Federal Rules, except that identity of expert consulted by other party in anticipation of litigation or preparation for trial and who is not expected to be called as witness at trial is discoverable only upon showing that facts or opinions on same subject can not be obtained by other means. (26).

**Return.**—Patterned after Federal Rules. (30.06).

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**DEPOSITIONS AND DISCOVERY . . . continued**

See also topic Practice; and category Courts and Legislature, topic Courts, subhead Courts of General Sessions.

**EVIDENCE:**

**Witnesses.**—Conviction of felony does not disqualify but only goes to credibility. (40-20-112). See also topic Depositions and Discovery.

**Privileged Communications.**—Confidential communications to one's attorney are privileged (23-3-105), even after death (118 S. Ct. 2081 [U.S. 1998]).

Ministers, priests, rabbis, etc., who have reached majority, are neither allowed nor required to testify as to information communicated in confidence, in professional capacity and necessary to enable him or her to discharge functions of office, if communicant was seeking spiritual counsel relative to such information. (24-1-206). Testimony before committee of state legislature regarding paternity is inadmissible in civil proceeding. (24-7-113). Communications between patient and physician acting as psychiatrist are privileged except when statutory exceptions exist. (24-1-207). Communications between licensed marital or family therapists and clients are privileged except where statutory exceptions exist. (63-22-114; 33-3-114). Communications between client and registered nurse nationally certified as, and practicing as, psychiatric or mental health specialist receive equivalent privilege as patient-psychiatrist communications. (63-7-125).

Communications between accountant and client are privileged in civil actions but not criminal actions. (62-1-116; Atty. Gen. Opinion 97-028).

Communications between attorney and private detective or investigator, hired by such attorney while acting in their respective professional capacities, are privileged. (24-1-209).

**Child Abuse.**—Courts have recognized existence of evidentiary privilege to protect anonymity of reporters, victims, and perpetrators of child abuse pursuant to 37-1-409 and 37-1-612. However, this privilege may be overcome by plaintiffs' need for disclosure during discovery in claim of false allegation of abuse. (952 F. Supp. 1232 [1997]).

**Husband and Wife.**—In either civil or criminal proceeding, no married person has privilege to refuse to take witness stand solely because that person's spouse is party to proceeding. In civil proceeding, confidential communications between married persons are privileged and inadmissible if either spouse objects, except in proceedings between spouses or concerning abuse of one of spouses or abuse of minor in custody or control of either spouse. (24-1-201). In criminal proceeding, confidential communications between married persons are privileged and inadmissible, except in proceedings concerning abuse of one of spouses or abuse of minor in custody or control of either spouse, if: (1) communications originated in confidence that they will not be disclosed; (2) element of confidentiality is essential to full and satisfactory maintenance of relation between parties; (3) relationship is one which ought to be sedulously fostered; (4) injury to relation by disclosure of communication outweighs benefit gained for correct disposal of litigation; and (5) either spouse objects. (24-1-201).

**Communications or Transactions with Persons Since Deceased or Incompetent.**—In actions by or against executors, administrators or guardians in which judgment may be rendered for or against them, neither party is allowed to testify against the testator as to transaction with the testator, intestate or ward unless asked by the opposite party. This disqualification extends to officers and directors of corporations. (24-1-203).

It is unlawful for a party to any action to testify as to any transaction or conversation with any opposite party in interest if such party cannot testify because of idiocy, lunacy or insanity unless called by the opposite party and then only in the discretion of the court. The exemption applies to officers or directors of corporations. This does not apply to divorce proceedings. (24-1-202).

**Self-incrimination.**—Accused in criminal case cannot be compelled to give evidence against himself. (Const., Art 1, §9).

**Compelling Attendance.**—See topic Depositions and Discovery.

**INJUNCTIONS:**

Injunctive relief may be obtained by (1) restraining order, (2) temporary injunction, or (3) permanent injunction in final judgment. Restraining order may only restrict doing of act. Injunction may restrict or mandatorily direct doing of act. (Rules of Civil Procedure, 65.01).

Tennessee Supreme Court has adopted Rules of Civil Procedure patterned after Federal Rules of Civil Procedure. Rules are separately codified from Code, and references herein are to rule number, unless otherwise indicated.

The chancery courts have liberal power to grant injunctive relief. (29-1-102; 16-11-102).

**Jurisdiction.**—Injunctions are granted by the chancellors, circuit judges, and judges of criminal and special courts, in accordance with the general rules of equity. (29-1-106).

**Prerequisites.**—Restraining order and temporary injunction may only be granted upon verified complaint alleging immediate and irreparable damage. (65.03).

**Procedure.**—Application made by complaint to judge before whom case is pending. Restraining order and temporary injunction must be signed by judge and endorsed by date and time of issuance. (65.03, 65.04).

**Bond** required on granting restraining order or temporary injunction in amount set by court, unless action brought on pauper's oath. (65.05).

**Temporary Injunction.**—Notice to adverse party required. Court must make findings of fact and conclusions of law in granting, denying or modifying temporary injunction. Restraining order may be granted without notice. (65.03, 65.04). Temporary restraining order granted without notice expires by its terms within time set by court, not to exceed 15 days, unless extended for good cause shown or by consent. (65.03).

**Workplace Violence.**—Under certain circumstances, employer may obtain temporary restraining order and injunction prohibiting certain violent acts or threats at workplace, by employee. (20-14-101 to 20-14-109).

**JUDGMENTS:**

Tennessee Supreme Court has adopted Rules of Civil Procedure patterned after Federal Rules of Civil Procedure. Rules are separately codified from Code, and references therein are to rule number, unless otherwise indicated.

**Judgments by Confession.**—Power of attorney to confess judgment before action commenced and process served is void. Any judgment based thereon is void. (25-2-101).

**Judgments by Consent.**—No statutory provision.

**Judgments on Pleadings.**—Follows Federal Rule. (12.03).

**Summary Judgments.**—Follows Federal Rule, except that motion for summary judgment may not be filed by claimant until 30 days after commencement of action; adverse party entitled to 30 days notice of hearing on motion. (56.01 et seq.).

Any motion for summary judgment must be accompanied by separate concise statement of material facts as to which moving party contends there is no genuine issue for trial. Each fact must be set forth in separate, numbered paragraph and be supported by specific citation to record.

**Declaratory Judgments.**—Uniform Act adopted. (29-14-102).

**Default Judgments.**—Default judgment entered upon application to court. No default judgment can be entered against persons under disabilities unless represented by guardian or other representative. Effective July 1, 2000, parties against whom judgment is sought shall be served with written notice of application for judgment at least five days before hearing on application, regardless of whether party has made appearance in action. Court may take such evidence as is necessary to determine amount of damages. (55.01).

**Offer of Judgment.**—Follows Federal Rule, except such is available under Tennessee rules to party prosecuting, as well as defending claim. Tennessee does not provide for offer of judgment after determination of liability and before determination of amount of damages, as do Federal Rules. (68).

**Docketing.**—Judgment entered of record when signed by judge and signed by or served upon parties or counsel and filed with clerk. (58).

**Vacation or Modification.**—Follows Federal Rule, except newly discovered evidence and satisfaction, release or discharge of judgment or reversal or vacation of prior judgment upon which judgment based not included as ground for relief from final judgment. (60.01, 60.02).

**Lien.**—Judgment of court of record and judgment of General Sessions Court or justice of peace over \$500 becomes a lien upon debtor's lands from time certified copy of judgment is registered in county where land is located. (25-5-101). Lien extends to lands acquired after its inception and continues for one year. (22 Tenn. 177 [1842]).

Judgment lien created by registration as provided in 25-5-101(6), will last for time remaining in ten year period beginning on date of entry of final judgment in court clerk's office. (25-5-105).

Judgment lien, where valid execution was taken out only prior to May 17, 2000, will expire three years from date judgment was rendered; where valid execution was taken out on or after May 17, 2000, lien will expire ten years from date judgment was rendered. (25-5-105).

Judgment for \$500 or less of General Sessions Court or justice of peace is not a lien on land; (25-5101[b]); levy of execution is necessary to create lien on such judgments (16-15-804).

When requested, clerk shall mail copy of judgment to all parties or counsel within five days after entry. (58).

Judgment is not a lien on equity in lands or other property, until certified abstract thereof is registered in office of register of deeds in county where land is situated, and unless suit in equity is filed within 30 days after return unsatisfied of original execution issued at least within time provided for mandatory issuance by clerk. (25-5-102; -104; 50 S.W. 771 [1898]). See category Debtor and Creditor, topic Executions.

**Revival.**—At any time within ten years after rendition, judgment may be revived by scire facias or action on judgment. After ten years, it may be revived only by scire facias, and the ten year statute of limitations (see topic Limitation of Actions), if pleaded, is bar to such revival.

**Satisfaction.**—Any legal satisfaction produces permanent and irrevocable discharge after which judgment cannot be restored. (69 Tenn. 447 [1878]).

**Foreign Judgments.**—May be evidenced by copy of judgment attested by officer having custody of judgment record, or his deputy, and certified as provided under Federal Rules. (Tenn. Rules of Evidence 803[8], 902[4]).

Certified copy of final judgment or decree of any court of record may be used as evidence without being supported by record on which judgment or decree based. Copy has same force as if record had been filed with copy. However, use of copy does not preclude direct attack on or challenge to validity of judgment or decree or use of record upon which same based. (24-6-101).

When creditor has exhausted legal remedies as to judgment recovered in another state against resident thereof, debtor's real or personal property in Tennessee may be subjected to satisfaction of debt, by bill stating facts under oath filed in court of county where property situated. (16-11-107).

See also subhead Revised Uniform Enforcement of Foreign Judgments Act, *infra*.

**Revised Uniform Enforcement of Foreign Judgments Act** adopted. (26-6-101-07). Judgment filed in office of circuit or chancery court clerk. (26-6-104). No execution or enforcement of judgment until 30 days after debtor notified of filing by service of summons issued by clerk. (26-6-105).

**LIMITATION OF ACTIONS:**

Except as discussed *infra* this topic, actions are barred unless commenced within following periods after respective causes of action accrued. (28-2-111[a]-[c]; 28-3-101-09).

**Ten years:** On demand note (28-3-109); on judgment of court of record (28-3-204); to enforce mortgage, deed of trust, vendor's lien reserved in deed or assignment of realty

**LIMITATION OF ACTIONS . . . continued**

to secure debt (foreclosure available although debt barred by six years statute) (28-2-111); against guardian, executor, administrator, sheriff, clerk or other public officer on his bond; any action not otherwise provided for (28-3-110). Aforementioned liens on realty may be extended for any period agreed on by written instrument duly executed and recorded within ten year period after maturity. (28-2-111[c]). Delinquent taxes on realty uncollectible if realty not sold within ten years. (67-5-1806).

**Seven years:** To recover real property. (28-2-101).

**Six years:** On bond, note other than demand note, bill of exchange or other written contract, sealed or unsealed; on oral or implied contract; on account (in case of mutual and reciprocal accounts between merchants, time runs from date of last item); against sureties of guardian, executor, administrator, sheriff or other public officer. (28-3-109).

See also 45-2-710, which contains special provisions related to action to enforce obligation of bank to pay all or part of balance of deposit account or certificate of deposit.

**Four years:** For breach of any contract for sale, unless limitation reduced by agreement of parties to specified period, not less than one year. (47-2-725). Actions to recover damages for deficiency in design, planning, supervision, observation of construction or construction of improvement to real property, for injury to property or person or wrongful death arising out of such deficiency shall be brought against person performing or furnishing improvement within four years after substantial completion, unless occurring in fourth year after substantial completion, then within one year from date of occurrence. (28-3-201-05). Actions for damages against persons engaged in surveying, including determination and description of boundaries, distances and direction for purposes of furnishing legal description thereof, shall be brought within four years of date survey is recorded on plat. (28-3-114).

**Three years:** For injury to real or personal property; for detention or conversion of personal property; for civil action on statute creating monetary liability for personal services when statute fixes no other limitation. (28-3-105). For usury or excess loan charges, commitment fees or broker commissions. (47-14-118). For action to contest lapse of mineral interest. (66-5-108). See also category Business Regulation and Commerce, topic Interest, subhead Usury.

**Two years:** For civil action based on violation of securities laws. Proceeding must be instituted within five years after act or within two years after person discovers, or should have discovered in exercise of reasonable diligence, facts constituting violation, whichever occurs sooner. (48-2-122). See also category Estates and Trusts, topic Wills, subhead Contest, catchline Limitation of Actions.

**One year:** For injury to the person, death, libel, false light invasion of privacy by written statement (53 S.W.3d 640 [2001]), malicious prosecution, false imprisonment, or breach of promise to marry, actions and suits against attorneys or licensed or certified public accountants for malpractice; for statutory penalty; civil actions under federal civil rights statutes (28-3-104).

**Six months:** For slander and false light invasion of privacy by oral statement (53 S.W.3d 640 [2001]). (28-3-103). No action or levy on bulk transfer, unless concealed, after six months. (47-6-111).

**Uniform Commercial Code** adopted. (47-1-101 et seq.).

**Product Liability.**—Cause of action for personal injury from defective product accrues from date of injury or date injury should have been discovered by reasonable person and is not barred until one year from that date (28-3-104), except that no action for personal or property injury from product may be brought after later of six years from date of injury, ten years from date of first purchase of product for use or consumption, or one year from legally required anticipated life expiration date placed on product by manufacturer. As to actions for injury caused by silicone gel breast implant, no action may be brought after 25 years from date of implant or four years from date plaintiff knew or should have known of injury. (29-2-103).

**Comparative Negligence.**—In suits where comparative fault is issue and defendant names in answer or amended answer person or persons not party to suit as causing injury or damage for which plaintiff seeks to recover, and plaintiff's cause of action would otherwise be barred by applicable statute of limitations, plaintiff is granted additional 90 days from filing answer or amended answer to amend complaint and add such person as defendant. (923 F. Supp. 1032 [1996]).

**Action to recover money or goods lost at gambling** must be commenced within 90 days after payment or delivery thereof if brought by the loser, but action brought for use of wife, children or next of kin of loser may be brought within one year after expiration of the 90 days and action by creditor of loser within two years after such expiration. (28-3-106).

**New action** may be brought within one year from failure to execute process (Rules of Civil Procedure, 3) or inconclusive judgment, dismissal, arrest or reversal (28-1-105) or from dismissal of action by Federal court for lack of jurisdiction (28-1-115).

**Foreign Causes of Action.**—When statute of limitations of another state or country has created bar to action upon cause accruing therein, while party to be charged was resident in such state or under such government, bar is equally effectual in this state. (28-1-112).

**Disabilities of Plaintiff.**—If person entitled to commence action is, at time cause of action accrued, under age of 18 or of unsound mind, such person or his representatives and privies, as case may be, may commence action after removal of disability, within time of limitation of particular cause of action, unless it exceeds three years, and in that case within three years from removal of disability. (28-1-106).

**Counterclaims cross-claims and third party complaints** as to issues arising out of transaction or occurrence which is subject of opposing party's claim are barred only if barred at time claims asserted in complaint were interposed. (28-1-114).

**Absence of Defendant.**—If cause of action accrues against person who is out of this state, action may be commenced within time limited therefor, after such person comes into state. If after cause of action has accrued, person against whom it has accrued is absent from or resides out of state, time of his absence of residence out of state is not taken as any part of time limited for commencement of action. (28-1-111).

**Silica Compensation Fairness Act** enacted to establish specific medical criteria in order to bring asbestos or silica related lawsuit. (29-34-301).

**Revival of Barred Claims.**—No statute exists prescribing what promise or act will revive cause of action barred by statutes. Partial payment of debt is acknowledgment of debt and implies promise of payment which operates to keep debt alive for statutory period from that time. (588 S.W.2d 542 [1979]).

**Contractual limitations** are valid, except that ordinary life insurance policy may not provide for any limitation less than five years. (66-29-105).

**Pleading.**—Statute of limitations defense must be set forth affirmatively in responsive pleading. (Rules of Civil Procedure, 8.03).

**PARTITION:**

Any person having an estate of inheritance, or for life, or for years, in lands, and holding or being in possession thereof, as tenants in common or otherwise, with others, is entitled to partition thereof, or sale for partition. (29-27-101).

**Jurisdiction.**—The county, circuit, or chancery courts have concurrent jurisdiction of partition cases. (29-27-106).

**Venue.**—The petition may be filed in the court of the county in which the land or any part of it lies, or in which the defendant resides. If all claimants join in the petition, or assent to the partition, it may be filed in any county in the state, whether any of the land lies therein or not. (29-27-107).

**Proceedings.**—Partition is made according to the respective rights of the parties, setting apart to such as desire it their shares in severalty, and leaving the shares of others, if desired, in common; and if there are minors, the court may, in its discretion, leave their shares in common, or set them apart in severalty, as may appear to be just and right, upon the proof introduced. (29-27-104).

**Partition in Kind or by Sale.**—Partition may be in kind (29-27-101) or by sale when property is such that it cannot be partitioned or that sale would be to manifest advantage of parties (29-27-201).

**PLEADING:**

Tennessee Supreme Court has adopted Rules of Civil Procedure patterned after Federal Rules of Civil Procedure. Rules are codified separately from the Code, and citations herein are to Rule Number, unless otherwise indicated. See also topic Practice.

**Pleadings Permitted.**—Federal Rules obtain. (7.01, 7.02).

**Complaint.**—Federal Rules obtain, except that jurisdictional allegations not required. (8.01). Product liability complaint must state amount of damages sought from any defendant. (29-28-107).

**Answer.**—Federal Rules obtain except that affirmative defense of comparative fault must be accompanied by identification or description of any other alleged tortfeasors. (8.02, 8.03).

**Counterclaim.**—Federal Rules obtain, except that as to compulsory counterclaims, tort claims are excluded. Counterclaims not mandatory if jurisdiction of court limited by subject matter or monetary amount to preclude claim. (13.01-13.09).

**Reply.**—Federal Rules obtain. (7.01).

**Demurrer.**—Abolished. (7.03).

**Amended or Supplemental Pleadings.**—Federal Rules obtain, except that time within which any pleading may be amended as a matter of right is changed to 15 days and amendment after verdict to increase amount sued for is not permitted. Federal relation back rule adopted. (15.01, 15.02, 15.03). Ability to amend complaint to reflect defendant's correct name under relation-back provision of Rule 15.03. (954 S.W.2d 36 [1997]).

**Verification.**—Federal Rules obtain and federal amendments removing mandatory sanctions and providing for notice and response period adopted. (11).

**Signature.**—Each pleading must state signer's address, telephone number, and Tennessee Board of Professional Responsibility number, if any. (11.01).

**Service.**—Federal Rules obtain; Tennessee, however, does not permit service by electronic means. (5.01, 5.02, 5.03, 5.04). Waiver of service to avoid unnecessary costs of service provided for and encouraged. (5.07). T.R.C.P. 3 and 4 were amended July 1, 1998 removing requirement that return of summons must occur within 30 days from issuance.

**Filing.**—Federal Rules obtain. (5.05, 5.06).

**Time.**—Defendant allowed 30 days to file answer after service and plaintiff 30 days to reply to counterclaim after service of answer, unless otherwise provided by statute. (12.01).

**Proof of Claims.**—Claims are proved either by deposition or by oral testimony in open court. An account on which action is brought, coming from another state or another county of this state or from the county where suit is brought, with the affidavit of the plaintiff or his agent to its correctness, is conclusive against the party sought to be charged, unless he shall on oath deny the account. Upon denial, in interest of justice, judge to continue action to date certain for trial. (24-5-107).

**Form for Proof of Claim.**

State of . . . , County of . . . , ss. Personally appeared before me . . . , a . . . in and for said State and county, duly commissioned, and qualified according to law, . . . , who, being duly sworn by me, deposes and says he is . . . of the firm of . . . , that the foregoing account against . . . is correct, due and unpaid; that there are no other credits to be given said account; that said account is for goods and merchandise sold and delivered to the said . . . by the said . . . that the said . . . is justly indebted to . . . in the sum of . . . dollars, together with interest and charges. (Signed).

Sworn to and subscribed before me, at . . . , this . . . day of . . . , 20. . . . (Official seal). (Signature and title).

**Small Claims.**—See category Courts and Legislature, topic Courts.

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**PLEADING . . . continued**

**Frivolous Claims.**—Penalty for bringing frivolous claims is imposition upon attorney, represented party, or both, of appropriate sanction, including order to pay other party reasonable expenses and attorney fees incurred due to frivolous claims. (11).

**PRACTICE:**

Pursuant to statutory authority (16-3-402-07, -601), Tennessee Supreme Court has adopted Rules of Civil Procedure. Rules, as amended, are patterned after Federal Rules of Civil Procedure as in effect immediately subsequent to Dec. 1, 2000. Material variations from Federal Rules are set forth under topics Pleading, and Process.

**Discovery.**—Substantially identical to Federal Rules as in effect immediately subsequent to July 1, 1975 with material differences noted herein. Rule 26(b)(2) not enacted. Five days notice of deposition required when deposition to be taken in county where action is pending; if to be taken in another county, seven days notice required. (30.02[1]).

**Demand for Admission of Facts.**—Identical to Federal Rules as in effect immediately subsequent to July 1, 1975. (36.01, 36.02).

**Direct Actions Against Insurer.**—See category Transportation, topic Motor Vehicles, subhead Direct Actions.

**Small Claims.**—See category Courts and Legislature, topic Courts.

See also topics Actions, Appeal and Error, Depositions and Discovery, Injunctions, Judgments, Pleading, Process; category Debtor and Creditor, topics Attachment, Executions, Garnishment.

**Profiling Procedures for Claims Based on Construction Defects.**—Certain profiling procedures must be complied with prior to maintenance of actions against contractors, subcontractors, suppliers or design professionals based on design defects in residential or commercial property. (66-36-103).

**PROCESS:**

Tennessee Supreme Court has adopted Rules of Civil Procedure patterned after Federal Rules of Civil Procedure. Rules are codified separately from Code, and citations herein are to Rule Number, unless otherwise indicated.

Civil actions are commenced within meaning of any statute of limitations upon filing a complaint, whether process is returned served or unserved. If process is not served or not returned within reasonable time frame from issuance, plaintiff must either prosecute and continue action by applying for and obtaining issuance of new process periodically, each new process to be obtained within six months of issuance of previous one, or plaintiff must recommence action within one year from issuance of initial process not served or not returned. (3).

In action arising out of ownership or operation of motor vehicle if owner or operator cannot be served personally or through secretary of state, upon return of process unserved, plaintiff may demand that liability insurer disclose any information in its possession as to whereabouts of owner or operator. Demand must be served by certified mail, return receipt, and must be accompanied by certified copy of return of process. Service on foreign insurer must be through Commissioner of Insurance. Failure to disclose demanded information subjects insurer to liability in damages. (56-7-1103 through 1105). See also category Transportation, topic Motor Vehicles, subhead Direct Actions.

**General Requisites.**—Upon filing complaint, clerk issues summons in name of State of Tennessee, dated and signed by clerk, with name of court and county, title of action and file number. Summons is directed to defendant stating time within which he must appear and defend and notifying him that in case of his failure to do so, judgment by default will be rendered against him. Summons must state name and address of plaintiff's attorney, or, if none, plaintiff's address. (4.02).

**By Whom Issued.**—Clerk of court. (4.01).

**Who May Serve.**—Sheriff, deputy, or lawfully appointed civil process server. (8-8-201). However, service may not be made by salaried or commissioned employee of any party to action. (8-8-216). When process is returned unserved, sheriff may appoint in writing adult citizen of state to serve papers after posting bond and in manner otherwise in accordance with law. (8-8-220). Service may be made by plaintiff or his attorney by mailing certified copy of complaint and summons by registered or certified return receipt mail. (4.04). Personal service of summons may be made by person over 18 not party to action. (4.01).

**Service on Sunday.**—Process may be issued and served on Sunday upon application and oath that defendant is removing, or about to remove, himself beyond jurisdiction of court. (20-2-104).

**Personal Service on Individual.**—Federal Rules obtain, except that service by leaving copies is available only if defendant evades service. (4.04).

**Personal Service on Infant.**—By delivering copy of summons and complaint to resident guardian or conservator if known to plaintiff; if not known, by delivering copies to parent having custody within this state; if no such parent within this state, by delivering to person within this state having control of individual. If no such person exists, court shall appoint practicing attorney as guardian ad litem to whom copies shall be delivered. Service shall also be made on unmarried infant 14 years of age or more, not otherwise incompetent. (4.04).

**Personal Service on Incompetent Person.**—Same as service on infant. (4.04).

**Personal Service on Partnership.**—By delivering a copy of summons and complaint to a partner or managing agent of partnership, or to an agent authorized by appointment, or by law to receive service on behalf of partnership. (4.04).

**Personal Service on Domestic Corporation.**—By delivering copy of summons and complaint to an officer or managing agent, or chief agent in county wherein action is brought, or by delivering copies to any other agent authorized by appointment or by law to receive service on behalf of corporation. (4.04).

**Personal Service on Association.**—Same as service on partnership. (4.04).

**Personal Service on Joint Stock Company.**—No special provision.

**Personal Service on Foreign Corporation.**—Same as service on domestic corporation. (4.04).

**Personal Service Outside the State.**—Nonresidents and residents outside state who cannot be personally served within state are subject to jurisdiction of Tennessee courts in actions arising from: (1) transaction of any business within state; (2) any tortious act or omission within state; (3) ownership or possession of any interest in property located within state; (4) entering into any contract of insurance, indemnity, or guaranty covering any person, property or risk located within state at time of contracting; (5) entering into contract for services or materials to be furnished in state; (6) divorce, annulment or separate maintenance action where parties lived in marital relationship within state, and one party still residing in state, as to alimony, custody, child support and property settlement obligations; (7) any basis consistent with constitutions of state or U.S. (20-2-214). Service may be obtained by forwarding summons to Secretary of State with \$20 fee for registered or certified mailing to defendant. Upon filing affidavit by Secretary of State of receipt of defendant's return-receipt, service shall be consummated. Service may also be made by any person over 21 not party to action, who shall file affidavit stating manner, time and place of service. (20-2-215-19).

**Publication.**—In the chancery court, personal service on defendant may be dispensed with and service made by publication in the following cases: (1) where defendant is nonresident of state; (2) when, upon inquiry at his usual place of abode, defendant cannot be found so as to be served and there is just ground to believe that he has gone out of state; (3) when sheriff makes return that defendant is not to be found; (4) when name or residence of defendant is unknown and cannot be ascertained on diligent inquiry; (5) when domestic corporation defendant has ceased to do business and has no known officers, directors, trustees or other legal representatives on whom personal service may be had; (6) when attachment will lie against defendant's property. (21-1-203). Publication must be in newspaper designated by court for four consecutive weeks. (21-1-204[a]-[e]). Court clerk (or referee in divorce cases with referee) must send copy of complaint or of publication to defendant at last known address by certified or registered mail and must file mail return receipt in record and note return receipt on docket. (21-1-205).

**Long Arm Statute.**—See subhead Personal Service Outside the State, *supra*.

**Proof of Service.**—Person serving summons must promptly and within time during which person served must respond, make proof to court and identify person served and describe manner of service. When process is served by mail, person making service must endorse upon signature on original summons date of mailing certified copies of summons and complaint and date of receipt of return receipt. Receipt and affidavit setting forth compliance with rule must be sent to clerk for filing. If summons not served within 30 days after issuance, it must be returned with reasons for failure to serve stated thereon. (4.03).

**Nonresident Motorists.**—See category Transportation, topic Motor Vehicles.

See also topic Practice.

**REPLEVIN:**

Replevin lies for recovery of goods or chattels wrongfully seized or detained. (29-30-101).

**Venue** is in county where any part of property is located where contract executed, where any defendant resides, or where address of any defendant was stated to be in any writing on which claim is founded. (29-30-102).

**Action** is commenced by filing complaint in Circuit or Chancery Court or warrant in General Sessions Court. If claim is founded upon writing, same shall be attached as exhibit. Complaint or warrant must be sworn to, or have attached sworn affidavit. Following facts must be sworn to: (1) plaintiff is entitled to possession of described property and reasons therefor; (2) description reasonably identifying property; and (3) value of property. (29-30-103).

**Process** must show on face that possessory hearing will be held at specific date and time, not less than five days nor more than 20 days after service. Plaintiff is allowed possession only after possessory hearing which, however, may be waived by defendant. General Sessions Court replevin process for motor vehicle must have statutory form attached. (29-30-104). Writ of possession directs officer after hearing to take possession of property and deliver to plaintiff. (29-30-107). If requested by plaintiff and upon his posting bond in amount set by court, but not exceeding value of property, court may issue concurrent order restraining defendant from concealing, damaging, or removing property from jurisdiction. (29-30-105).

**Alternative procedure** is available to expedite proceeding. Application for writ of possession may be made at beginning of first session of court or at other time established by local rule. Plaintiff must file verified complaint and copy of any writing upon which claim is founded. Upon application, court hears parties and orders writ of possession whenever court finds either: (1) that at least five days prior to application plaintiff mailed by certified mail or delivered to defendant notice of time and place of application and that: (a) such notice has been received by defendant or was directed to defendant at address stated in any writing, signed by defendant, on which claim is founded, and (b) notice was accompanied by copy of complaint and copy of any writing on which claim was founded, and, (c) plaintiff is entitled to possession. If at time plaintiff makes application pursuant to (1) defendant fails to appear, writ of possession is issued directing officer to take possession of property, deliver it to plaintiff, and summon defendant to appear and answer within ten days if in General Sessions Court or within 30 days if in any other court. Whenever defendant appears and resists application for writ of possession, court shall at that time either try action or set times for defendant's answer and trial and determine which party is entitled to possession pending trial. Such temporary possession requires posting of bond in amount set by court; or (2) (a) property was obtained by fraud, misrepresentation or theft; or defendant is (b) concealing property, (c) likely to remove property from jurisdiction, (d) likely to dispose of property, (e) endangering property, or (f) seriously impairing plaintiff's security interest either by use other than that contemplated by parties or by failing to maintain hazard insurance on property whenever written instrument on which claim is founded requires such insurance. Writ of possession pursuant to (2) necessitates plaintiff's posting of bond in amount, fixed



**REPLEVIN . . . continued**

by court, not less than value of property. Writ directs officer to take possession of property, deliver it to plaintiff, and summon defendant to appear and answer within ten days if in General Sessions Court and within 30 days if in any other court. (29-30-106).

If property is perishable or threatens to decline speedily in value, court may issue such orders as necessary to preserve same. (29-30-107).

**SEQUESTRATION:**

In chancery writ of sequestration may issue to compel obedience to decree. (21-1-801).

**SUBMISSION OF CONTROVERSY:**

Any parties in interest, executor, administrator, trustee, or assignee for creditors, with or without action brought, may agree upon a case containing the facts upon which the controversy depends and submit the same to the circuit or chancery court of the county in which either party resides or in which a suit might have been brought to determine such a controversy. Parties must give bond for costs or pay them in advance. Unless otherwise agreed costs paid equally by both sides. Judgment will be entered as in other cases and no objection will lie to jurisdiction of either court whether the matter be of legal or equitable cognizance. Parties to such cases are entitled to all benefits of the proceedings for correction of errors. It must appear by affidavit of parties or attorneys that the controversy is real and in good faith to determine rights of parties. (29-4-101-05).

**VENUE:**

**Transitory actions** may be brought in county where cause of action arose or where defendant resides, or is found. If plaintiff and defendant reside in same county, then action must be brought in common county or in county where action arose. When action is brought either in county where action arose or where defendant resides, process may be sent to another county as in local action, and it is not necessary that defendant be in county of action either when action is commenced, or during time between commencement of action and service of process. (20-4-101). Suits commenced by attachment against property of person may be brought in any county in which such property may be found (20-4-103) and service had on nonresident defendant by publication for four consecutive weeks (29-6-144). Proper venue to probate will is set forth in 32-2-101. In action where parties are motor vehicle manufacturer and motor vehicle dealer, venue shall be State of Tennessee. (55-17-115).

**Real actions** must be brought in county where land lies. Suit for partition of lands lying in several counties may be brought in any one of them. (24-4-104).

**Change of Venue.**—In all civil cases at law or equity to be tried by jury, either in circuit or chancery court, in all civil cases before judge of court of general sessions, and in all criminal cases, (1) venue may be changed upon good cause or, (2) court may issue order for special venire of jurors from another county if necessary to insure fair trial. (20-4-201-02).

See also category Insurance, topic Insurance Companies.

**COURTS AND LEGISLATURE****COURTS:****United States District Courts.**—

*Eastern District.*—Clerk's office: 800 Market Street, Suite 130, Knoxville 37902.

*Northern Division* is composed of following counties: Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Scott, Sevier and Union.

*Court sits* at Knoxville.

*Northeastern Division* is composed of following counties: Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi and Washington.

*Court sits* at Greeneville.

*Southern Division* is composed of following counties: Bledsoe, Bradley, Hamilton, McMinn, Marion, Meigs, Polk, Rhea and Sequatchie.

*Court sits* at Chattanooga.

*Winchester Division* is composed of following counties: Bedford, Coffee, Franklin, Grundy, Lincoln, Moore, Van Buren and Warren.

*Court sits* at Winchester.

*Deposits.*—Plaintiff, filing civil suit must deposit \$350.

*Middle District.*—Clerk's office: 801 Broadway, Nashville 37203.

*Nashville Division* is composed of following counties: Cannon, Cheatham, Davidson, Dickson, Houston, Humphreys, Montgomery, Robertson, Rutherford, Stewart, Sumner, Trousdale, Williamson and Wilson.

*Court sits* at Nashville.

*Columbia Division* is composed of following counties: Giles, Hickman, Lawrence, Lewis, Marshall, Maury and Wayne.

*Court sits* at Columbia.

*Northeastern Division* is composed of following counties: Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith and White.

*Court sits* at Cookeville.

*Deposits.*—Plaintiff filing suit must deposit \$350.

*Western District.*—Clerk's office: 167 N. Main St., Rm. 242, Memphis 38103.

*Eastern Division* is composed of following counties: Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley.

*Court sits* at Jackson.

*Western Division* is composed of following counties: Dyer, Fayette, Lauderdale, Shelby and Tipton.

*Court sits* at Memphis. Under certain limited circumstances, nonjury cases may be heard in Dyersburg.

*Deposits.*—Plaintiff filing suit must deposit \$350.

**Supreme Court of Tennessee.**—

*Jurisdiction.*—Supreme Court is highest appellate court. Has no original jurisdiction. Supreme Court may direct that cause tried and appealed from in one division of state may be heard by Supreme Court in another division of state. See category Civil Actions and Procedure, topic Appeal and Error, subhead Supreme Court.

*Court sits* at Knoxville, Nashville, and Jackson.

**Court of Appeals.**—This court was established in 1895 as Court of Chancery Appeals, reorganized in 1907 as Court of Civil Appeals, and again reorganized in 1925 as Court of Appeals. It is composed of 12 judges.

*Jurisdiction.*—See category Civil Actions and Procedure, topic Appeal and Error, subhead Court of Appeals.

*Court sits* at Knoxville, Nashville and Jackson.

**Court of Criminal Appeals.**—This court was established in 1967. It is composed of 12 judges, serving eight year terms.

*Jurisdiction.*—Appellate only. Extends to all criminal cases, felony and misdemeanor; habeas corpus and cases arising under Post-Conviction Procedure Act; criminal contempt proceedings arising out of criminal matter; and extradition cases. (16-5-108).

*Court sits* at Nashville, Knoxville, and Jackson.

**Chancery Courts.**—

*Jurisdiction.*—Chancery courts have general equity jurisdiction where value exceeds \$50. (16-11-103). They have jurisdiction concurrent with circuit courts of all civil cases, except for unliquidated damages for injuries to person or character or injuries to property not arising from breach of contract where objection to jurisdiction has been made. (16-11-102). Chancery courts have exclusive jurisdiction of probate of wills, administration of estates of decedents and wards under guardianship and related matters, except as otherwise specifically provided by statute. (16-16-201). See subheads Probate Courts, and County Courts, *infra*.

*Place of Sitting.*—See subhead Circuit Courts, *infra*.

**Circuit Courts.**—

*Jurisdiction.*—Circuit courts are common law courts, having general original jurisdiction for trial of all common law actions of contract and tort where value exceeds \$50. (16-10-101, -106). They also have jurisdiction of appeals from municipal courts and general sessions courts. (27-5-101, -108).

*Place of Sitting (Chancery and Circuit Courts).*—

Anderson County; Seventh District; court sits at Clinton.  
Bedford County; Seventeenth District; court sits at Shelbyville.  
Benton County; Twenty-Fourth District; court sits at Camden.  
Bledsoe County; Twelfth District; court sits at Pikeville.  
Blount County; Fifth District; court sits at Maryville.  
Bradley County; Tenth District; court sits at Cleveland.  
Campbell County; Eighth District; court sits at Jacksboro.  
Cannon County; Sixteenth District; court sits at Woodbury.  
Carroll County; Twenty-Fourth District; court sits at Huntingdon.  
Carter County; First District; court sits at Elizabethton.  
Cheatham County; Twenty-Third District; court sits at Ashland City.  
Chester County; Twenty-Sixth District; court sits at Henderson.  
Claiborne County; Eighth District; court sits at Tazewell.  
Clay County; Thirteenth District; court sits at Celina.  
Cocke County; Fourth District; court sits at Newport.  
Coffee County; Fourteenth District; court sits at Manchester.  
Crockett County; Twenty-Eighth District; court sits at Alamo.  
Cumberland County; Thirteenth District; court sits at Crossville.  
Davidson County; Twentieth District; court sits at Nashville.  
Decatur County; Twenty-Fourth District; court sits at Decaturville.  
DeKalb County; Thirteenth District; court sits at Smithville.  
Dickson County; Twenty-Third District; court sits at Charlotte.  
Dyer County; Twenty-Ninth District; court sits at Dyersburg.  
Fayette County; Twenty-Fifth District; court sits at Somerville.  
Fentress County; Eighth District; court sits at Jamestown.  
Franklin County; Twelfth District; court sits at Winchester.  
Gibson County; Twenty-Eighth District; court sits at Trenton and Humboldt.  
Giles County; Twenty-Second District; court sits at Pulaski.  
Grainger County; Fourth District; court sits at Rutledge.  
Greene County; Third District; court sits at Greeneville.  
Grundy County; Twelfth District; court sits at Altamont.  
Hamblen County; Third District; court sits at Morristown.  
Hamilton County; Eleventh District; court sits at Chattanooga.  
Hancock County; Third District; court sits at Sneedville.  
Hardeman County; Twenty-Fifth District; court sits at Bolivar.  
Hardin County; Twenty-Fourth District; court sits at Savannah.  
Hawkins County; Third District; court sits at Rogersville.  
Haywood County; Twenty-Eighth District; court sits at Brownsville.  
Henderson County; Twenty-Sixth District; court sits at Lexington.  
Henry County; Twenty-Fourth District; court sits at Paris.  
Hickman County; Twenty-First District; court sits at Centerville.  
Houston County; Twenty-Third District; court sits at Erin.  
Humphreys County; Twenty-Third District; court sits at Waverly.  
Jackson County; Fifteenth District; court sits at Gainesboro.  
Jefferson County; Fourth District; court sits at Dandridge.  
Johnson County; First District; court sits at Mountain City.  
Knox County; Sixth District; court sits at Knoxville.  
Lake County; Twenty-Ninth District; court sits at Tiptonville.  
Lauderdale County; Twenty-Fifth District; court sits at Ripley.  
Lawrence County; Twenty-Second District; court sits at Lawrenceburg.  
Lewis County; Twenty-First District; court sits at Hohenwald.  
Lincoln County; Seventeenth District; court sits at Fayetteville.  
Loudon County; Ninth District; court sits at Loudon.  
McMinn County; Tenth District; court sits at Athens.

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**COURTS . . . continued**

McNairy County; Twenty-Fifth District; court sits at Selmer.  
 Macon County; Fifteenth District; court sits at Lafayette.  
 Madison County; Twenty-Sixth District; court sits at Jackson.  
 Marion County; Twelfth District; court sits at Jasper.  
 Marshall County; Seventeenth District; court sits at Lewisburg.  
 Maury County; Twenty-Second District; court sits at Columbia.  
 Meigs County; Ninth District; court sits at Decatur.  
 Monroe County; Tenth District; court sits at Madisonville.  
 Montgomery County; Nineteenth District; court sits at Clarksville.  
 Moore County; Seventeenth District; court sits at Lynchburg.  
 Morgan County; Ninth District; court sits at Wartburg.  
 Obion County; Twenty-Seventh District; court sits at Union City.  
 Overton County; Thirteenth District; court sits at Livingston.  
 Perry County; Twenty-First District; court sits at Linden.  
 Pickett County; Thirteenth District; court sits at Byrdstown.  
 Polk County; Tenth District; court sits at Benton and Ducktown.  
 Putnam County; Thirteenth District; court sits at Cookeville.  
 Rhea County; Twelfth District; court sits at Dayton.  
 Roane County; Ninth District; court sits at Kingston.  
 Robertson County; Nineteenth District; court sits at Springfield.  
 Rutherford County; Sixteenth District; court sits at Murfreesboro.  
 Scott County; Eighth District; court sits at Huntsville.  
 Sequatchie County; Twelfth District; court sits at Dunlap.  
 Sevier County; Fourth District; court sits at Sevierville.  
 Shelby County; Thirtieth District; court sits at Memphis.  
 Smith County; Fifteenth District; court sits at Carthage.  
 Stewart County; Twenty-Third District; court sits at Dover.  
 Sullivan County; Second District; court sits at Bristol, Blountville, and Kingsport.  
 Sumner County; Eighteenth District; court sits at Gallatin.  
 Tipton County; Twenty-Fifth District; court sits at Covington.  
 Trousdale County; Fifteenth District; court sits at Hartsville.  
 Unicoi County; First District; court sits at Erwin.  
 Union County; Eighth District; court sits at Maynardville.  
 Van Buren County; Thirty-First District; court sits at Spencer.  
 Warren County; Thirty-First District; court sits at McMinnville.  
 Washington County; First District; court sits at Johnson City and Jonesborough.  
 Wayne County; Twenty-Second District; court sits at Waynesboro.  
 Weakley County; Twenty-Seventh District; court sits at Dresden.  
 White County; Thirteenth District; court sits at Sparta.  
 Williamson County; Twenty-First District; court sits at Franklin.  
 Wilson County; Fifteenth District; court sits at Lebanon.

**Claims Commission.**—Board of Claims, Tennessee Claims Commission and Division of Claims Administration created to resolve monetary claims against State. (9-8-101 et seq.). Exclusive jurisdiction to determine certain enumerated categories of monetary claims against State vested in Tennessee Claims Commission. (9-8-307). Matters that must be brought before claims commission include certain claims based in negligence, nuisance, professional malpractice, workers' compensation claims by state employees, breach of written contract duly executed by authorized state officer, unconstitutional taking of private property, as defined in 12-1-202, and claims for recovery of taxes collected or administered by state, except for taxes collected or administered by Commissioner of Revenue and unemployment insurance tax collected or administered by Commissioner of Labor and Workforce Development. (9-8-307).

**County Courts.**—Probate jurisdiction, formerly vested in County Courts has been transferred to chancery courts. (16-16-201). See subhead Probate Courts, *infra*.

**Probate Courts.**—Exclusive jurisdiction of probate of wills, administration of estates and related matters is vested in chancery courts and chancery clerk and master, except where otherwise specifically provided by statute. Clerk and master authorized, subject to review by chancellor, to hear and determine all probate matters and to grant letters of administration, letters testamentary, appoint guardians, conservators, executors and administrators, adjudicate claims, determine allowances to family and assignment of homestead, etc. (16-16-201).

**Courts of General Sessions.**—Generally, they have all civil and criminal jurisdiction of former justices of peace, and are not courts of record. They have unlimited original jurisdiction in cases of forcible entry and detainer and actions to recover personal property; and up to \$25,000 in all other civil cases. (16-15-501, *am'd* 2006, c. 722). Civil action commenced by issuance of civil warrant upon execution of \$500 cost bond or pauper's oath. (16-15-716; -718). Attorney fees, court cost, and discretionary costs not included in jurisdictional calculation. (16-15-501). Full powers of execution granted by levy, attachment or garnishment, and examination in aid of execution may be made under Rules of Civil Procedure for depositions. (16-15-801 et seq.; 16-15-722). Discovery except physical and mental examinations, may be taken in all civil trials pursuant to Rules of Civil Procedure 26-37 on motion and showing of good cause or exceptional circumstances, with order describing conditions of discovery. Depositions of custodians of hospital and medical records may, however, be taken under same rules as apply in courts of record. (24-9-102). Defendant who believes he is not at fault, or that another person is at fault, must notify opposing party and clerk of court in writing, within 48 hours of scheduled hearing, of name of any other person at fault. Failure to provide such notification entitles plaintiff to continuance for 30 days so that he can amend civil warrant to include additional defendants. (16-15-735).

**Trial Justice Court.**—Special limited jurisdiction. Exist in Anderson, Dyer, Gibson and Montgomery Counties.

**Criminal Courts.**—Generally original jurisdiction for hearing all crimes and misdemeanors vested in Circuit Court. (16-10-102). Several districts have special criminal courts, which are branches of circuit court jurisdiction, dealing solely with presentment and indictment for criminal offenses under state statute. Jurisdiction of each court is defined and limited by act creating it.

**Small Claims Courts.**—See subhead Courts of General Sessions, *supra*.

**City Courts.**—Home-rule municipalities may establish to try violators of municipal ordinances (16-17-101) and may impose maximum penalties of 30 days imprisonment, of \$500 fine, or both (6-54-306). Courts have authority touching upon arrest and preliminary trial, discharging, and binding over, of those charged with offenses against state committed in municipality. (16-17-103). Municipality may recover actual administrative expenses for false threats or hoaxes. (6-54-306).

**LEGISLATURE:**

Sessions of general assembly are held on second Tues. in Jan. next succeeding election of members of House for no more than 15 days. Thereafter, general assembly shall meet on first Tues. next. May by joint resolution recess or adjourn until such time as it shall determine. (Const., Art. 2, §8).

**Ethics.**—All members, elected or appointed to their first term or partial term, in General Assembly must undergo orientations including instruction on ethics law. (3-1-115).

**Special or Extraordinary Sessions.**—May be called by governor for specific purpose (Const., Art. 3, §9), or by presiding officers of both houses on written request of 2/3 of members of each house (Const., Art. 2, §8).

**Initiative and Referendum.**—No statutory provisions.

**Lobbyists** regulated by 3-6-101 et seq. Tennessee Ethics Commission Act of 2006. (3-6-101 et seq.).

**Consulting Services.**—See also category Criminal Law, topic Criminal Law.

**REPORTS:**

State reports are: Overton, 2 volumes, 1-2 Tenn.; Cooke, 1 vol., 3 Tenn.; Haywood, 3 vols., 4-5-6 Tenn.; Peck, 1 vol., 7 Tenn.; Martin & Yerger, 1 vol., 8 Tenn.; Yerger, 10 vols., 9 to 18 Tenn.; Meigs, 1 vol., 19 Tenn.; Humphreys, 11 vols., 20 to 30 Tenn.; Swan, 2 vols., 31-32 Tenn.; Sneed, 5 vols., 33 to 37 Tenn.; Head, 3 vols., 38 to 40 Tenn.; Coldwell, 7 vols., 41 to 47 Tenn.; Heiskell, 12 vols., 48 to 59 Tenn.; Baxter, 9 vols., 60 to 68 Tenn.; Lea, 16 vols., 69 to 84 Tenn.; Pickle, 24 vols., 85 to 108 Tenn.; Cates, 19 vols., 109 to 127 Tenn.; Thompson, 26 vols., 128 to 153 Tenn.; Smith, 11 vols., 154 to 164 Tenn.; Beeler, 31 vols., 165 to 196 Tenn.; McCanness, 26 vols., 197 to 222 Tenn.; Pack, 3 vols., 223 to 225 Tenn.

Court of Civil Appeals Reports are Higgins, 8 vols.

Court of Appeals Reports are Tennessee Appeals Reports, vols. 1 to 63.

Decisions of Supreme Court and Court of Appeals are also reported in Southwestern Reporter, which is official reporter beginning with 225 Tenn. and 63 Tenn. App.

**State digests** are: Webb & Meigs Digest; Michie's Digest; Crawford's Digest and supplement; West's Tennessee Digest.

**STATUTES:**

The latest official compilation is the Tennessee Code Annotated as enacted by Seventy-ninth General Assembly, Chap. 6, Public Acts 1955, effective Jan. 1, 1956.

**Uniform Acts** adopted are: Absence as Evidence of Death and Absentees' Property (1941); Anatomical Gift (1969); Arbitration (1983); Athlete Agents (2001); Child Custody Jurisdiction and Enforcement (1979); Commercial Code (1963, 1991, 1993, 1995, 1998); Common Trust Fund (1953); Contribution Among Tortfeasors (1968); Controlled Substances (1971, 1974); Criminal Extradition (1951); Declaratory Judgments (1923); Determination of Death (1976); Disposition of Unclaimed Property (1978); Durable Power of Attorney (1983); Electronic Transactions (2001); Enforcement of Foreign Judgments (1976); Extradition of Persons of Unsound Mind (1917); Fiduciaries (1953); Fraudulent Transfer (2003); Insurers Liquidation (1969); Interstate Arbitration of Death Taxes (1951); Interstate Compromise of Death Taxes (1951); Interstate Family Support (1997); Judicial Notice of Foreign Law (1943); Revised Limited Partnership (1988); Management of Institutional Funds (1973); Principal and Income (1997); Prudent Investor (2002); Reciprocal Enforcement of Support (1953); Residential Landlord and Tenant (1975); Revised Partnership Act (2001); Simplification of Fiduciary Security Transfers (1959); Simultaneous Death (1941); State Administrative Procedure (1974); Statutory Rule Against Perpetuities (1994); Testamentary Additions to Trusts (1961); To Secure Attendance of Witnesses from Without a State in Criminal Proceedings (1939); Transfers to Minors (1992); Transfer on Death Security Registration (1995); Unclaimed Property (1978); Veterans' Guardianship (1943).

†Some have been adopted with significant variations or modifications. See appropriate topics as to Acts within scope of Digests volume.

For text of Uniform Acts falling within the scope of the Martindale-Hubbell Law Digests see Uniform and Model Acts section.

**CRIMINAL LAW****CRIMINAL LAW:**

Crimes are provided for by 39-11-101 et seq., and criminal procedure by 40-1-104 et seq.

Legislature has adopted Criminal Sentencing Reform Act of 1989, comprehensive revision of criminal code. Act amends and repeals various sections in titles 37, 39, 40, 55, 63, 68, and other titles containing criminal offenses and amends certain portions of Criminal Sentencing Reform Act of 1982. Act abolishes common law offenses and defenses but does not bar or otherwise affect civil liability for conduct defined as criminal offense.

**Classes of Offenses.**—Felonies classified into five categories and misdemeanors classified into three categories based on seriousness of offense. Authorized terms of imprisonment and fines for felonies unless otherwise provided by statute are: (1) Class A felony—not less than 15 years nor more than 60 years, fine not exceeding \$50,000; (2) Class B felony—not less than eight years nor more than 30 years, fine not exceeding \$25,000; (3) Class C felony—not less than three years nor more than 15 years, fine not

**CRIMINAL LAW . . . continued**

exceeding \$10,000; (4) Class D felony—not less than two years nor more than 12 years, fine not exceeding \$5,000; and (5) Class E felony—not less than one year nor more than six years, fine not exceeding \$3,000. Fine imposed on corporation for offense defined in Title 39 or for offense defined in any other title for which no specific fine is stated, not to exceed: (1) \$350,000 for Class A felony, (2) \$300,000 for Class B felony, (3) \$250,000 for Class C felony, (4) \$125,000 for Class D felony and (5) \$50,000 for Class E felony. (40-35-111). Repeat violent offenders, within meaning of statute, sentenced to life imprisonment without possibility of parole. (40-35-120). Capital punishment barred for juvenile over 15 but under 18 at time capital crime committed. (125 S. Ct. 1183 [2005]).

Authorized terms of imprisonment and fines for misdemeanors unless otherwise provided by statute are: (1) Class A misdemeanor—not greater than 11 months 29 days or fine not exceeding \$2,500 or both; (2) Class B misdemeanor—not greater than six months or fine not exceeding \$500 or both, and (3) Class C misdemeanor—not greater than 30 days or fine not exceeding \$50 or both. (40-35-111).

Under 8-7-401, victim or his family may employ private counsel as co-counsel for prosecution. However, prior thereto, defendant(s) must be notified and court must conduct hearing on such employment.

State provides limited compensation to victims of certain reported crimes, and their families. Claim including information prescribed by statute must be filed within one year of crime or death of victim with Division of Claims Administration. No award will be made where crime was not reported to proper authorities within 48 hours unless delay is found to be justified. (29-13-108). Failure of victim to report because physically unable to do so, as in case of victim of sex abuse or domestic abuse, may constitute justification for nonreport. (29-13-108). Additionally, all income owing to defendant, from whatever source derived, is to be collected by Attorney General and deposited in escrow to be paid to victim or victims of defendant's crime, upon victim bringing civil action within three years of crime. (29-13-403-11). District attorney general must report to Attorney General any knowledge of such income.

**Indictment or Information.**—Prosecution is by indictment by or presentment to grand jury. (40-3-102). Accused represented by attorney may waive prosecution upon indictment or presentment and consent to prosecution by information. (40-3-101). All felonies and misdemeanors are indictable offenses. (40-13-102).

**Bail.**—All offenses are bailable before conviction, except capital offenses where proof is evident or presumption great. Bail is revoked if defendant is convicted of separate felony while free on appeal. (Const. 1, §15; 40-11-104). If crime is one of domestic nature, magistrate may hold suspect up to 12 hours to secure victim's safety. (40-11-150). If alleged victim is of advanced age, offender may be held longer than 12 hours upon written finding that offender would be continued threat to victim. (40-11-150[k]).

**Interstate compact for supervision of parolees and probationers** in effect. (40-28-401-04).

**Uniform Criminal Extradition Act** in effect. (40-9-101-29).

**Consulting Services by Public Officials and Lobbyists.**—Neither Governor nor any member of General Assembly, nor members of certain officers of executive branch, nor any member of municipal or county legislative bodies, nor other elected county or municipal officers may receive fee for consulting services. Depending on proof, this offense may be misdemeanor or felony. Lobbyist must make certain disclosures. (2-10-122).

**Regulation of Lobbyist Registration.**—Intentional violations of specified registration requirements results in Class C misdemeanor for first offense, as Class B misdemeanor for second offense, and as Class A misdemeanor for third and subsequent offenses. (3-6-306, 2006 c. 1).

**TERRORISM PREVENTION AND RESPONSE:**

**Tennessee Terrorism Prevention and Response Act of 2002**, 39-13-801 et seq. enacted in light of terrorist acts of Sept. 11, 2001, provides legislation relating to possession, manufacture, use, or threatened use of chemical, biological, nuclear or radiological weapons, as well as intentional use of industrial or commercial chemicals as weapons as terrorist act (as defined in 39-13-804).

**Hoaxes** involving terrorists threats are also subject to sanctions and fines. Act of terrorism is class A felony. (39-13-805).

**Unfair or Deceptive Acts.**—Charging price that's grossly in excess of normal price for consumer food item; repair or construction service; emergency supplies; medical supplies; building materials; gasoline; transportation; freight and storage services; or housing, during declared state of emergency is unfair or deceptive act or practice under §47-18-104(a). (47-18-5103 through 5104).

**Computer Related Offenses.**—Tennessee Personal and Commercial Computer Act of 2003 provides for criminal penalties for various computer related prohibited acts. (39-14-601 through 603).

**Homeland Security.**—Provision was made in 2004 for implementation of certain protective measures by Commissioner, Tennessee Dept. of Safety, upon application by U.S. Office of Homeland Security. (38-3-114).

**Drug Dealer Liability Act.**—Imposes civil liability under market liability model, adopted from products liability arena, on any person who knowingly participates in illegal drug market within Tennessee if there is some nexus between dealer and person, other than user, who is injured by illegal conduct.

**DEBTOR AND CREDITOR****ASSIGNMENTS:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

**Contractual Rights.**—Generally speaking, all rights arising from contracts may be assigned. The right of an assignee may be asserted by suit either in his own name, or

in the name of the assignor, for his use and benefit, subject to set-offs or counter-claims in favor of the debtor against the assignor. (47-50-102).

**Right of action ex delicto** is assignable if it would survive to personal representative of injured person. (268 S.W. 130 [1924]).

**Notice.**—As between assignor and assignee, notice to obligor is not essential. (354 S.W.2d 492 [1961]). Assignments are not effective as to obligor or third persons without notice to obligor. (79 S.W.2d 44 [1934]).

**Priority.**—As between successive assignees of choses in action, he who first gives notice to debtor is entitled to preference although his assignment be subsequent to that of other. (188 S.W. 1144 [1916]).

**Assignment of expectancy** by heir expectant will be sustained in equity when, but not until, property comes into such heir's possession. (201 S.W.2d 659 [1947]).

**Wages.**—Court may order assignment of wages or income for child support upon finding of prior failure to support in accordance with court order. Assignment is binding on employer (including successive employers) 14 days after service of order by certified mail. Otherwise, assignments of unearned wages are unenforceable as to employer in absence of written assent. (50-2-105).

**Accounts receivable** for security are governed by Uniform Commercial Code. (47-9-101 et seq.).

See also category Business Regulation and Commerce, topic Commercial Code.

**ATTACHMENT:**

**Actions in Which Allowed.**—Attachments lie in all civil actions, whether in contract or in tort (29-6-101 and 29-6-106), without limitation as to amount in controversy in proper cases.

**Courts Which May Issue Writ.**—Suits by original attachment may be brought in any court, or before any magistrate, having jurisdiction of cause of action. (29-6-110; 16-15-722).

**In Whose Favor Writ May Issue.**—Any person is entitled to issuance of writ, whether resident or nonresident (29-6-101; 227 S.W.2d 35 [1950]), without restriction as to foreign corporations (42 Tenn. 153 [1865]). Where both creditor and debtor are residents of same foreign state, creditor must make oath that property of debtor has been fraudulently removed to this state to evade process in state of residence. (29-6-109).

**Grounds.**—The writ lies against property of: (1) nonresident (will not lie against foreign corporation domesticated in Tennessee unless it has no agent on whom process may be served); (2) one who is about to remove or has removed himself or property from state; (3) one who has removed, or is removing himself out of county privately; (4) one who conceals himself so that ordinary processes of law cannot be served upon him; (5) one who absconds or is absconding or concealing himself or his property; (6) one who has fraudulently disposed of, or is about to fraudulently dispose of, his property; (7) decedent resident outside of state liable for debt leaving property in state. (29-6-101).

**Claims on Which Writ May Issue.**—Writ may be sued out upon debts or demands not due except when debtor or defendant resides out of state. (29-6-102). If any other ground exist, it may issue against nonresident. Accommodation endorser or surety may sue out writ as security for his liability. (29-6-103). No final judgment will be rendered until debt matures. (29-6-104).

**Proceedings to Obtain.**—To obtain attachment, the plaintiff, his agent or attorney, must make oath in writing stating the nature and amount of the debt, claim or demand, and that it is a just claim, and also that one or more of grounds for attachment exist (29-6-113); substantially accurate description of property sought to be attached and its approximate value must be set forth in affidavit or bill, which must be sworn to (29-6-117). Copy or abstract of, or lis pendens describing, attachment, order, injunction or other writ affecting real property must be recorded in register's office of county where land is situated to be effective against nonparty having or acquiring interest in such property. (25-5-101).

As to attachment by garnishment, see topic Garnishment.

**Attachment Bond.**—Bond conditioned to prosecute attachment with effect, or, in case of failure, to pay defendant all costs and such damages as he may sustain by reason of the wrongful suing out of the writ, must be filed by plaintiff, his agent or attorney. (29-6-115). Amount of bond must be: (1) where amount of claim is less than value of property to be attached, equal to asserted claim plus additional sum estimated to cover probable costs and damages; (2) where amount of claim is greater than value of property to be attached, be equal to estimated value of property plus estimated costs and damages; (3) where claim is for unliquidated damages, be equal to value of personal property to be attached plus estimated costs and damages; (4) where real property is attached, sufficient to cover all costs and damages only. (29-6-116).

**Levy.**—The writ is levied by the officer upon any real or personal property, whether interest therein is legal or equitable, debts and choses in action, whether due or not due. (29-6-132). Personality must be exhausted before levy on real estate. (29-6-133).

**Indemnity.**—No provision is made for the officer to require indemnity.

**Priorities** between different attachments of same property are according to times of levies.

**Release of Property.**—Principal may discharge attachment of indorser or surety by giving bond, etc., approved by court. (29-6-105). Defendant in attachment suit may replevy property attached by giving bond, etc., of twice amount of plaintiff's demand or, at defendant's option, twice value of property attached, with interest. (29-6-149).

**Sale.**—No property levied upon, except it be perishable property, will be sold before final judgment or decree. (29-6-104).

**Vacation or Modification.**—Attachments issued without prescribed affidavit and bond may be abated by plea of defendant. (29-6-132).

**CREDITORS' SUITS:**

**Jurisdiction.**—Where execution has been returned unsatisfied, creditor may proceed in court granting judgment or in any court of general jurisdiction to compel discovery

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**CREDITORS' SUITS . . . continued**

of and execution upon any property of defendant that is possessed by defendant or third party, including interests of defendant in property held in trust for him, except when trust is exempt under §§40-46 of Tennessee Uniform Trust Code. (26-4-101).

**Creditors of a corporation** may, without first obtaining a judgment, file a bill in the Chancery Court to attach the property of the corporation and subject same to the satisfaction of their debts when the corporate franchises are not used or have been granted to others. (29-12-107).

Real property owner, owner's agent or prime contractor may serve written demand on lienor requiring lienor to commence action to enforce lien and such action shall be commenced within 60 days after service or lien shall be forfeited. (66-11-130).

**EXECUTIONS:**

All judgments and decrees of any judicial tribunal of this state for money are enforced by execution. (26-1-103). Distringas or fieri facias and other types of execution follow judgment of court. (26-1-105). All are issued by clerk as matter of course or upon demand. (26-1-207). As to executions by garnishment, see topic Garnishment.

**Exemptions.**—See topic Exemptions.

**Time of Issuance.**—Executions from Supreme Court issue after ten days from final judgment (26-1-202); from all other courts of record, after 30 days from judgment in any case. (26-1-203). Execution may not issue until final action taken on timely motions for new trial or alteration or amendment of judgment. (Rules of Civil Procedure 62.02).

Execution may issue immediately upon rendition of judgment before adjournment, by leave of court, upon affidavit showing good cause. (26-1-206[b]). After adjournment of court, execution may issue before prescribed time upon affidavit that "defendant" is about to fraudulently dispose of, conceal or remove his property, thus endangering plaintiff's judgment. (26-1-206[a]); Rules of Civil Procedure 62.01).

Foreclosure on home secured by mortgage or deed of trust or repossession of motor vehicle owned in part by member of Tennessee National Guard who has been called into active military service outside U.S. must be suspended until such time as National Guardsman has returned to Tennessee for 90 days. (26-1-111).

**Stay.**—Trial court's power in exceptional cases to stay proceedings upon proper terms and conditions is not limited by Rules. (Rules of Civil Procedure 62.07). Execution may be stayed pending appeal by posting bond. See category Civil Actions and Procedure, topic Appeal and Error.

**Lien.**—Executions are a lien upon all leviable property of the defendant from the date of test, and avoid all intervening sales or assignments (118 S.W.2d 677 [1938]); and they are also lien upon choses in action of corporations (26-3-103).

**Levy** is upon goods and chattels first, but if to best of officer's knowledge there are none, or they are not sufficient, then upon lands and tenements. (26-3-101). It may be upon growing crop, after crop has matured and then subject to landlord's lien. (26-3-102). It may be upon choses in action of corporation. (26-3-103). Plaintiff must pay costs incurred by court, sheriff and officer, including transportation, storage and advertising, and has right to obtain reimbursement from defendant. (26-3-117). Equitable interests are reached by court granting judgment or any court of general jurisdiction after unsatisfied return. (26-4-101 et seq.).

**Return.**—Executions returnable to courts of record within 30 days of issue date. (26-1-401[a]). General Sessions executions returnable within 30 days of issue date either to issuing court or court having possession of original judgment. (26-1-401[b]).

**Sale.**—Personalty is sold on ten days notice by poster advertisement at five places in county, one of which is by the courthouse door, another the most public place in neighborhood of the defendant. (26-5-101-02).

Real property is sold on 20 days notice by publication three times in a newspaper published in the county (35-5-101), unless amount of indebtedness is less than \$200, in which event owner of property to be sold may order that advertisement be by posters for 30 days posted at five places in county, one of which must be courthouse door (35-5-103). Newspaper advertisement dispensed within counties where there is no newspaper. (35-5-102). At public sale of real property, auctioneer appointed by court to receive fees for services. (35-5-112).

As to payment of costs, see subhead Levy, supra.

**Redemption.**—Debtor may redeem by paying to purchaser or anyone claiming under him, the amount bid or paid (including any amount credited on the debt) by him at current composite prime rate as published by Federal Reserve Board as of date of purchase, together with all lawful charges. If creditor redeems from original purchaser or other redeemer, he must, in addition to foregoing, pay to debtor, or credit his debt with, 10% or more on sum bid at sale, or 10% or more on judgment of said creditor, at creditor's election. Such right of redemption continues in debtor and his creditors for two years after sale, no matter how often previously redeemed. If party holding land is absent from usual place of residence, or resides out of county where land lies, redeemer may pay money to clerk of circuit court where land lies, or if land sold by judgment or decree of court, then to clerk of court from which sold. Debtor to be made party to suit to enforce right of redemption brought by transferee of debtor. Suit to be dismissed if transferee engaged in speculation or profiteering rights of redemption. (66-8-101 et seq.).

**Supplementary Proceedings.**—After nulla bona return of execution, judgment creditor may, by bill in court granting such judgment or any court of general jurisdiction, subject equitable estate of his debtor in realty to sale for satisfaction of his judgment by filing bill describing property in which equity is sought to be reached. Lien of his pendens is thereby created which may be enlarged to include bona fide purchases by registration of abstract of claimed lien. Upon filing of such bill, trustee under prior deed of trust has no right to sell land, even though no injunction be ordered, but must proceed, subject to orders of court in cause. Creditor, where execution has been returned nulla bona, in whole or in part, may file bill in chancery against defendant or any other person or corporation, to compel discovery of any property, including stock, choses in action or money due to such defendant or held in trust for him, except under spendthrift trust. Failure to make full discovery in answer to such bill of discovery is punishable as contempt of court. Common-law writ of ne exeat obtains. (26-4-101 et seq.).

**EXEMPTIONS:**

All necessary and proper wearing apparel for actual use of debtor and his family, trunks or receptacles necessary to contain same, family portraits and pictures, family Bible and school books are exempt. (26-2-103).

**Personal property**, in addition to that specified supra, in aggregate amount of \$4,000 is exempt from execution, seizure or attachment when in hands of one who is bona fide resident permanently residing in state. (26-2-102).

**Debts Against Which Exemptions Not Allowed.**—Personal property exemption is not available against taxes or certain criminal fines. (26-2-113).

**Waiver of Exemption.**—Exempt property may be conveyed or mortgaged by head of family, but cannot be levied upon and sold under execution. (42 Tenn. 283 [1865]).

**Necessity of Claiming Exemption.**—\$4,000 exemption must be claimed by filing with court list, under oath, of claimed exempt items and value thereof. List may be modified. Exemption claim filed after final judgment does not affect execution issued before claim filed. Judgment creditor, or court on creditor's application, may inquire as to accuracy of exemption claim. Inaccurate claim is ground for denial of exemption. (26-2-114).

**Earnings.**—Defined as compensation paid or payable for personal services, including wages, salaries, commission, bonus, and pension and retirement payments, except as discussed infra, subhead Pensions. "Disposable earnings" defined as earnings remaining after deductions required by law. (26-2-105). Except as against order, judgment, decree or installment thereof for temporary or permanent alimony, where party entitled thereto has not remarried, and as against decree or assignment for support of minor child, as to which earnings are not exempt, maximum garnishable earnings for work week is lesser of: (1) 25% of disposable earnings for week or (2) disposable earnings for week less 30 times federal minimum wage at time earnings due and payable. (26-2-106). Additional exemption of \$2.50 per week allowed for each dependent child under 16. (26-2-106 and 26-2-107).

Wages earned and payable outside Tennessee are exempt where cause of action arose outside Tennessee, but in such cases, garnishee must plead exemption, unless defendant actually served with process. (29-7-102).

Debtor must pay all costs of original garnishment; and for each subsequent garnishment, debtor must pay up to \$3 of costs, but does not pay sheriff's commission. (26-2-106).

As to duration of garnishment lien for earnings, see topic Garnishment, subhead Adverse Claims.

**Stay of Execution, Etc.**—Upon: (1) Filing with court clerk of written agreement between parties for payment of judgment in installments, (2) entry of order on written consent of parties or (3) filing of motion by judgment debtor (other than judgment debtor who had admitted debt and is paying judgment by agreed installment payments) for order for payment of judgment in installments, issuance, execution or return of writ of garnishment against earnings is stayed so long as there is compliance with agreement or order. Motion of debtor must be supported by affidavit stating inability to pay with funds other than earnings, name and address of employer, amount of earnings and due dates thereof. (26-2-216).

Stay by order becomes void immediately upon clerk's noting on record noncompliance of debtor with order, but order may be reinstated or amended on proper showing by affidavit of debtor and hearing that noncompliance was due to unemployment or other justifiable cause beyond control of debtor. (26-2-217). Stay by filing agreement becomes void immediately if debtor fails to comply strictly with agreement. (26-2-219).

**Insurance.**—Proceeds of accident, health and disability insurance are exempt. (26-2-110[a]). Benefits of any life insurance policy acquired by insured or insured's spouse and payable to or for benefit of insured's spouse and children are exempt. (56-7-201-02). Net amount payable on life insurance or annuity contract for benefit of, or assigned to, insured's wife, children or dependent relatives, is exempt, even if insured could have changed contract beneficiary. (56-7-203).

**Pensions** from state and subdivisions thereof are exempt. Funds payable to participant or beneficiary or interest of participant or beneficiary in Internal Revenue Code §401(a), §403(a), §408 plan exempt, except from claims of state of Tennessee or alternate payee under qualified domestic relations order. (26-2-104). To same extent that earnings are exempt under 26-2-106, supra subhead Earnings, payments under stock bonus, pension, profit sharing, or similar plan or contract on account of death, age or length of service are exempt unless such plan or contract does not qualify under specified provisions of Internal Revenue Code of 1954 or does not meet other criteria specified by statute. (26-2-111).

**Benefits** from social security, unemployment compensation, local public assistance, veterans' programs, illness or disability, or pension that vests as result of disability, as well as any professionally prescribed health care aids, are exempt. (26-2-111).

**Compensation to victim also exempt**, not exceeding aggregate of \$15,000 or its equivalent in property traceable to: (1) crime victim reparation law (not to exceed \$5,000); (2) actual pecuniary loss on account of bodily injury of debtor or person of whom debtor is dependent (not to exceed \$7,500); (3) payment or compensation for wrongful death of person of whom debtor was dependent (not to exceed \$10,000). (26-2-111).

**Compensation for loss of future earnings** of debtor, or person of whom debtor is dependent, is exempt to extent reasonably necessary for support of debtor and dependents. (26-2-111).

**Alimony** is exempt as to payments becoming due more than 30 days after debtor asserts right to such exemption in any judicial proceeding. (26-2-111).

**Child Support.**—Payments due debtor are exempt as to payments becoming due more than 30 days after debtor asserts right to exemption in judicial proceeding. Additionally, liquid assets, stocks or bonds, up to amount of child support owed by debtor pursuant to court order, are exempt, if such assets are immediately deposited into court or executed upon on behalf of child or children in partial or full satisfaction of child support obligations. (26-2-111).

**EXEMPTIONS . . . continued**

**Tools of Debtor's Trade.**—Debtor's aggregate interest in any tools, implements or professional books of his or dependent's trade is exempt up to \$1,900. (26-2-111).

**Bankruptcy Exemptions.**—Tennessee citizens are entitled to exemptions provided by state law and are not authorized to claim as exempt property prescribed in Bankruptcy Code. (26-2-112).

**Homestead Exemption.**—See topic Homesteads.  
See also topic Garnishment.

**FRAUDULENT SALES AND CONVEYANCES:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

**Uniform Fraudulent Conveyance Act** adopted. (66-3-301).

**Bulk Sales.**—Uniform Commercial Code governs. (47-6-101 et seq.).  
See also category Business Regulation and Commerce, topic Commercial Code.

**GARNISHMENT:**

Garnishment may be in aid of either attachment or execution.

**Property That May Be Reached.**—All property, debts and effects of defendant, including real estate, judgments, choses in action whether or not due, and money or stock in unincorporated company, in possession or control of garnishee on or after service of notice and before judgment. (26-2-202).

Salaries, wages or other compensation due from state, county or municipality to officer or employee thereof may be garnished. (26-2-221).  
See also topic Exemptions.

**Proceedings to Obtain.**—Officer may summon, in writing, any person as garnishee, to appear at court from which execution issued or from any other court to whom execution is returnable. (26-2-203). Garnishment summons shall have attached notice to employer that he is required to withhold and pay into court amount garnished and is liable for failure to do so. (26-2-216).

**Answer of Garnishee.**—Garnishee's initial appearance may be in person or through written answer. Garnishee may be required to answer under oath: (1) whether he is, or was at time of garnishment, indebted to defendant, and if so, how and in what amount; (2) whether he had in his possession or control any property, debts or effects of defendant, at time notice was served, or has at time of answering, or has had at any time between date of service and date of answering, and if so, what kind and amount; (3) whether there are, to his knowledge and belief, any and what property, debts and effects in possession or control of any other, and, if so, what person; (4) such other questions appearing on or attached to original execution put to him by court of judgment creditor as tend to elicit information sought. (26-2-204). Answer not conclusive. (26-2-205). Garnishee receiving execution without defendant's social security or federal taxpayer identification number and who, after reasonable effort, cannot identify defendant, may return execution with statement that garnishee cannot identify or distinguish defendant from information provided. (26-1-110).

**Practice.**—If, on answer and examination of garnishee, it appears that he has property, etc., in hand (or under control) that is liable for plaintiff's debt, judgment may be entered and execution awarded for such as will satisfy debt to plaintiff and all costs and charges, whereupon such must be delivered to officer serving garnishment on demand or else judgment will be entered against garnishee for debts and costs when return is made showing failure to deliver. (26-2-206).

For additional garnishee obligations as to wages, etc., see catchline Wages, Etc., infra. If garnishee fails to appear or answer, conditional judgment may be entered against him for debt to plaintiff and costs, and thereafter notice must be issued to him to appear and show cause why judgment should not be final. If he does not appear as required and show cause, conditional judgment becomes final. (26-2-209).

Garnishee against whom judgment rendered is entitled to certificate from court clerk stating date and amount of garnishment judgment, and in whose favor and in what case rendered. Certificate is receipt for original debt and entitles garnishee to credit on original judgment or execution already issued. (26-2-212).

**Debts Not Due.**—Choses in action may be collected and sold as court may order, but until same are due, execution may be stayed. (26-2-211). If, upon disclosure on oath by debtor, it appears that garnishee is indebted to defendant but debt is not yet payable, then judgment of plaintiff is lien on debt until and at time same is due and payable. (26-2-213).

**Wages, Etc.**—Garnishee must: (1) pay judgment debtor exempt amount; (2) submit, as part of answer, statement of judgment debtor's dependent children under 16 and residing in Tennessee; (3) furnish judgment debtor prescribed notice, which must be affixed to garnishment summons at time served on garnishee, that debtor may apply for order staying further garnishment and allowing judgment to be paid in installments; (4) hold, to extent of amount due on judgment and costs, subject to court order, nonexempt wages due or subsequently due; (5) remit to court at least once every 30 days all monies withheld. (26-2-214; -215). Judgment debtor, other than judgment debtor who admitted debt and is paying judgment by agreed installments, may apply once to court to set payments, and garnishment will be stayed. If motion is denied or payments are not met, court has discretion to reinstate order of stay as to subsequent payments for good cause shown. (26-2-216).

Assignments of wages for child support take priority over garnishments in effect after July 1, 1981. (50-2-105). See topic Assignments, subhead Wages.  
See also subhead Adverse Claims, infra.

**Adverse Claims.**—Garnishment judgment is lien on wages, etc., due at time of service of execution and continues as to subsequent wages, etc., until: (1) amount due on judgment and costs are paid and satisfied; (2) expiration of employer's payroll period immediately prior to six months after service; (3) termination of employment; (4) underlying judgment vacated or modified; or (5) garnishment proceedings stayed, whichever occurs first. Lien has priority over subsequent garnishment liens. (26-2-214). If stay of execution by garnishment becomes void and issuance and service of garnishment had been made prior to proceeding for stay, judgment creditor has lien on wages prior to all

liens executed subsequent to original date of issuance. (26-2-219). Subsequent executions effective for successive calendar month periods in order served. (26-2-214).

**Earnings.**—As to amount garnishable, see topic Exemptions. As to duration of garnishment lien on, see subhead Adverse Claims, supra.

**HOMESTEADS:**

Any individual, whether or not head of family, is entitled to homestead exemption on real property owned by him and used by him, spouse or dependent as principal place of residence. (26-2-301). Exemption applies to life and equitable estates (26-2-302), to leaseholds of more than two and not exceeding 15 years, except as to rent due thereon (26-2-303), and to insurance proceeds for casualty to homestead, except as to mortgagee's interest evidenced by written contract (26-2-304).

Homestead exemption is not allowed to alien resident. (82 Tenn. 369 [1884]).

**Limitation of value** of property in which exemption is allowed is \$5,000. Individuals jointly owning and using property as principal place of residence are limited to aggregate of \$7,500 if exemptions are claimed in same proceeding. If only one of joint owners is involved in proceeding, his exemption shall be \$5,000. Unmarried individual age 62 or older is entitled to exemption of not more than \$12,500; married couple where one spouse is 62 or older and other is younger than 62 allowed up to \$20,000; married couple where both spouses are 62 or older allowed up to \$25,000; individual with one or more minor children in individual's custody shall be entitled to exemption not to exceed \$25,000. (26-2-301).

**Limitation of Area.**—None.

**Debts or Liabilities Against Which Exemption Not Available.**—The homestead is not exempt from sale to pay public taxes, purchase money, cost of improvements thereon or certain fines. (26-2-301; -306).

**Designation of homestead** before levy permitted. (26-2-307).

**Claim of exemption** may be made after levy. (26-2-308).

**Waiver of Exemption.**—Exemption does not operate against debt secured by homestead where exemption is waived by written contract. Exemption cannot be waived, however, in note or other debt instrument which does not convey property in which exemption is claimed. (26-2-301).

**Loss of Exemption.**—Removal from state constitutes abandonment of exemption. (103 Tenn. 308, 52 S.W. 1068).

**Alienation or Encumbrance.**—If marital relationship exists, exemption cannot be alienated or waived without joint consent of spouses. (26-2-301).

**Proceeds of Sale.**—Where homestead property is sold under foreclosure or execution, proceeds up to \$5,000 are exempt until reinvestment in another homestead. Proceeds of voluntary sale are not exempt. (26-2-309).

**Rights of Surviving Spouse and Family.**—Upon death of head of family, deceased's exemption inures to spouse and minor children so long as one or other uses property as principal place of residence. (26-2-301).

See also categories Family, topic Husband and Wife; Property, topics Curtesy, Deeds, and Real Property.

**JUDGMENT NOTES:**

Not recognized.

**LIENS:**

**Uniform Commercial Code** has been adopted. (47-1-101 et seq.).

**Campgrounds.**—Campgrounds in business of providing accommodations for recreational vehicles may be entitled to lien on all abandoned vehicles which lawfully come upon their premises. (66-79-103).

**Farm laborers** have lien second to landlord on crop, for payment of their wages due for cultivating same. (66-12-113).

**Keepers of hotels and boarding houses** have lien on all furniture, wearing apparel, baggage or other goods and chattels of any guest or patron to secure payment of all sums due for board or lodging. (66-17-101).

**Employees of corporation or partnership** have lien for their wages, subject to certain limitations. (66-13-101-03).

**Artisans** have lien on goods left with them for repair, etc., and if such goods are not claimed or called for by owner within six months from time of contract or leaving of goods, such lien may be enforced by sale at public auction, after written notice and advertisement of sale. Owner may reclaim property by paying amount due, plus expenses before sale. Proceeds of sale are applied to artisan's claim and expenses and balance, if any, held for owner of goods and, if not called for in 12 months, turned over to county trustee for benefit of common schools. (66-14-101-06).

**Keeping or Service of Animals.**—See 66-20-101-06.

**Printers, Etc.**—Typographers, printers, lithographers, photoengravers, electrotypes, stereotypers, bookbinders and/or manufacturers have lien on all type set, plates, dies, engravings, etc., and materials prepared or furnished by them or by customer to facilitate production, so long as items remain in plant, custody of manufacturer, etc., being lien to secure unpaid amounts due on such work. Lien is not lost so long as any part of completed or partially completed work remains in custody, except by special written release. Lien is enforced by mailing notice to person for whom work is done at last known address, plus attachment and bill in chancery court. Lienor has 90 days from giving notice of intention to claim lien within which to file said bill in chancery court. (66-15-103).

**Laundries and cleaners** can auction customers' articles if not redeemed within 90 days, provided 30 days written notice is given to customers. (66-16-107-08).

**Repair or Improvement of Vehicles.**—Every mechanic, contractor, founder, or machinist who undertakes the work, or makes any repair, or puts thereon any improvements, fixtures, machinery, wood, rubber, composition, or metal, on any vehicle used in the

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**LIENS . . . continued**

transportation of persons or merchandise either by land, by water or through the air has a lien for such work or material on said vehicle and improvements. Lien continues 12 months but is subordinate to rights and title acquired by purchasers without notice. (66-19-101-02). Lien for materials or repairs against any type of aircraft used in transportation of persons or merchandise must be filed in register's office for county in which repairs or materials were furnished within 90 days after performance. (66-19-301 et seq.).

**Vendors.**—The renewal of a purchase money note given for the conveyance of lands, or a new promise before expiration of limitations, will preserve the vendor's lien, and prevent operation of the statute of limitations against it as to the vendee in possession from the maturity of the renewal or date of the new promise. (59 S.W. 766 [1900]).

**Foreclosure.**—Liens are foreclosed as provided for in the contract or statute, otherwise by attachment in court of proper jurisdiction. (20-4-103).

**Redemption.**—There is no right of redemption of property sold under various liens.

**Garage keepers and towing firms** have lien on all vehicles that come into their possession for payment of reasonable charges. Enforced after 30 days in same manner as artisans' lien, except garage keepers only required to advertise sale one time in newspaper published in place where sale to be held. (66-19-103). Failure of garage keeper to inform consumer in writing of certain enumerated rights pertaining to estimates of repair costs and repairs not originally authorized by consumer abrogate repair facility's lien rights under 66-19-103.

**Mechanics' Liens.**—There shall be lien, secured by contract price, upon any lot or tract of real property upon which improvement has been made by prime contractor and any remote contractor. There shall also be lien upon any lot or tract of real property in favor of any land surveyor who has, by contract with owner or agent of owner of real property, performed on such property practice of land surveying, as defined in §62-18-102(3). Lien will also exist upon any lot or tract of real property upon which improvement has been made, by contract with owner or owner's agent, in favor of any person licensed to practice architecture or engineering, for architectural or engineering services performed with respect to such improvement actually made. Lien for furnishing tools, equipment, or machinery arises under to the following extent: (1) For reasonable rental value for period of actual use and any reasonable period of non-use taken into account in rental contract; except that reasonable rental value and reasonable periods of use and non-use need not be determined solely by contract; or (2) for purchase price of tools, equipment or machinery, but lien for such price only arises if tools, equipment, or machinery were purchased for use in course of particular improvement and have no substantial value to lienor after completion of improvement on which they were used. (66-11-102). If contract is for improvement of individual one, two, three or four family residential property in which owner resides or intends to reside, lien is upon building and improvements, but lien right exists only in favor of prime contractor. (66-11-146). Any person may, before judgment is rendered enforcing lien, record with register of deeds of county in which lien was filed bond for amount of lien claimed with surety approved by register of deeds, conditioned upon obligor's satisfying judgment that may be rendered in favor of lienor. Recording of bond discharges lien. (66-11-142).

Additionally, there is lien upon any leasehold in case where person performs labor, or furnishes materials, fixtures, machines, or other things of value relating to oil, gas, or other materials to leasehold. (66-11-147). Lien in such cases is as to leasehold interests and begins upon first day of operation or furnishment. Lien expires after 90 days unless registered with registrar in county in which leasehold is located. (66-11-147). Sworn statement set forth in §66-11-112 must be filed. (66-11-147).

**Time of Attachment.**—Lien relates back to and takes effect from time of visible commencement of operations other than demolition, surveying, excavating, clearing, filling, grading, placement of sewer or drainage lines or other underground utility lines or work preparatory therefor, erection of temporary security fencing and delivery of materials therefor; except if operations ceased over 90 days and then resumed, lien relates back and takes effect at resumption. (66-11-104).

**Prior Mortgage.**—Such lien has priority over prior mortgage only if mortgagee had written notice thereof by certified or registered mail before work began or materials furnished and gave written consent thereto; failure of mortgagee to object in writing within ten days after receipt of notice implies consent, provided notice included name and return address to which written objection must be mailed by certified or registered mail. (66-11-108).

**Notice of Nonpayment.**—Every remote contractor with respect to improvement, except specified types of residential property, must serve, within 90 days of the last day of each month within which work or labor was provided or materials, services, equipment, or machinery furnished and for which remote contractor intends to claim lien under this chapter, notice of nonpayment for such work, labor, materials, services, machinery, or equipment to owner and prime contractor in contractual privity with remote contractor if its account is, in fact, unpaid. Remote contractor who fails to provide notice of nonpayment in compliance with this section shall have no right to claim lien. (66-11-145).

**Notice of Lien.**—Every remote contractor shall have lien provided by this part for such work or labor performed or materials, services, equipment, or machinery furnished by remote contractor in furtherance of improvement; provided, that remote contractor: (1) Satisfies all of requirements set forth in §66-11-145, if applicable; and (2) within time provided for recording sworn statements set out in 66-11-112(a), serves notice of lien, in writing, on owner of property on which improvement is being made. Lien shall continue for period of 90 days from date of service of notice in favor of such remote contractor, and until final termination of any suit for its enforcement properly brought pursuant to §66-11-126 within that period. (66-11-115). Prime contractor's lien shall continue for one year after date improvement is complete or is abandoned, and until final decision of any suit properly brought within that time for its enforcement. (66-11-106). Suit by one contracting directly with owner may be filed within one year after completion of contract. (66-11-106). Notice is effective against third parties and innocent purchasers only when claim is registered with county register within 90 days after work is completed; lienor's contract expires or is terminated; lienor is discharged; or work has ceased for 90 days with intent of owner or contractor to cease operations indefinitely or permanently. (66-11-112, -117). Owner or purchaser may, upon completion of work, register

in office of register of deeds in county where real property is located notice of completion or require contractor to do same. Unregistered lien claimants for projects on specified types of residential property must send written notice of lien by certified mail in time to be received by person designated in notice of completion within ten days of filing of notice of completion; notice by other unregistered claimants must be sent in time to be received within 30 days of filing notice of completion. Failure to send timely notice shall terminate lien rights. Notice filed prior to completion of work is void. (66-11-143).

**Removal of Improvements.**—Where any contractor, mechanic or furnisher innocently makes improvements, does labor, or furnishes materials to be used on property of minor, who refuses to recognize lien or pay debt, or where superior lien exists without his knowledge, or where contract is with tenant, and landlord refuses to pay therefor, contractor, mechanic, or furnisher, after giving ten days notice, has right to remove improvements. (66-11-128).

**Enforcement.**—Lien can only be enforced by attachment, at law or in equity, except that liens on railroads for work, labor or material can also be enforced by suit at law or in equity. (66-11-126).

**Public Works.**—No lien on public works. Bond required of contractor to protect laborers and materialmen, and in order to fix liability against bond, notice by registered mail or in person to contractor or commission letting contract is required after materials furnished and within 90 days after completion of said public works. (12-4-201 et seq.).

**Misapplication of Proceeds.**—Owner who procures loan secured by mortgage or other encumbrance on certain real property, representing that proceeds are to be used to improve such real property, and who, with intent to defraud, uses proceeds for purposes other than to pay for labor performed on, or materials furnished for, this specific improvement, while any amount for which he may be or become liable for such labor or materials remains unpaid, is guilty of Class E felony. (66-11-137). Contractor, subcontractor, or other person who, with intent to defraud, uses proceeds of payment made to him on account of improving certain real property for purpose other than to pay for labor performed on, or materials furnished by his order for, specific improvement, while any amount for which he may be or become liable for such labor or materials remains unpaid, is guilty of Class E felony; provided, however, that there shall be no violation if distribution is pursuant to written agreement or, in certain cases, pursuant to generally accepted accounting principles. (66-11-138).

**Truth in Construction and Consumer Protection Act.**—Prior to commencing improvement or making of contract, contractor must deliver to owner, by registered mail or otherwise, written notice that there will be lien upon real property for improvements made by contractor or subcontractors, and that liens of subcontractors or suppliers may be enforced although contractor has been paid in full, if contractor has not paid subcontractors. (66-11-203). However, where owner of residential property and general contractor are one and same person, only person who contracts directly with general contractor will have lien or right of lien. (66-11-146). Owner may reject contract by notifying contractor within three days of owner's receipt of notice. (66-11-204). Upon completion of contract or improvement and receipt of contract price, contractor must deliver to owner by registered mail or otherwise receipt and affidavit which provides that contractor has paid all claims or will pay any claim no later than ten days after bill is rendered, and that contractor will hold owner harmless from liens. (66-11-205). If liens are perfected and contractor has not complied with Act, contractor is guilty of Class B misdemeanor, but lien rights of contractor actually performing work under contract with owner are not affected by noncompliance. (66-11-206).

**Hospital Lien.**—Hospitals have lien for reasonable charges for hospital care of injured persons on causes of action for personal injuries not to exceed one-third amount of damages recovered by judgment or settlement. Lien subordinate to attorney's lien and is not applicable for accidents covered by workmen's compensation. Lien perfected by filing within 120 days after discharge from hospital a verified statement of amount with clerk of Circuit Court of county where hospital is located and by mailing copy within ten days from filing to each person claimed to be liable on account and to their attorneys. Filing fee: \$10. Lien contested by motion to quash. (29-22-101 et seq.). Perfected lien will not apply to insured which obtains release of liability from or pays claim filed by insured prior to perfection of lien. (29-22-102).

**Self-service storage facilities** have lien on personal property stored on premises. If occupant has been in default continuously for 30 days, lien may be enforced by public sale after notice and under prescribed procedure. (66-31-101 et seq.).

**Attachment Lien.**—See topic Attachment.

**Attorney's Lien.**—See category Legal Profession, topic Attorneys and Counselors.

**Execution Lien.**—See topic Executions.

**Judgment Lien.**—See category Civil Actions and Procedure, topic Judgments.

**Landlord's Lien.**—See category Property, topic Landlord and Tenant.

**Liens on Exempt Property.**—See topic Exemptions.

**Liens on Homestead.**—See topic Homesteads.

**Public Pledges and Liens.**—Perfection, priority, and enforcement of pledges and liens made or granted in connection with issuance of public obligations are governed by Perfection, Priority Enforcement of Public Pledges and Liens Act. (9-22-101).

**Real Estate Mortgage Lien.**—See category Mortgages, topic Mortgages of Real Property.

**Tax Lien.**—See category Taxation, topics Property Taxes, subhead Lien; Inheritance Tax, subhead Lien.

See also category Business Regulation and Commerce, topic Commercial Code.

**MECHANICS' LIENS:**

If contractor fails to pay supplier for materials for house built for speculative market and supplier fails to file notice of lien before sale of house to owner/occupant, resulting conversion of property to residential classification does not cut off lien. (940 S.W.2d 66 [1996]).

See topic Liens.

See note at head of Digest as to 2007 legislation covered.

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**PLEDGES:**

**Uniform Commercial Code** has been adopted. (47-1-101 et seq.).

See category Business Regulation and Commerce, topic Commercial Code.

Title Pledge Act adopted providing for licensing of persons engaged in pawn or title pledge trade or business and regulation of such transactions. (45-6-201 et seq.). Statutory scheme relating to licensing and regulation of title pledge lenders was significantly revised in 2005. (45-15-102 et seq.).

**RECEIVERS:**

General equity rules apply to receivers.

**TRUSTEE PROCESS:**

See topic Garnishment.

**DISPUTE RESOLUTION****ALTERNATIVE DISPUTE RESOLUTION:**

Uniform Arbitration Act is adopted. All causes of action, pending suit or not, may be submitted to decision of one or more arbitrators, except, (1) where party is infant or of unsound mind or (2) claim respecting real property, in fee or for life except that controversies regarding estate for term for year or less or for years not exceeding five and controversies regarding partition of real property are not included in bundle. (29-5-101). Submission may be made by any party in interest, executor, trustee, administrator or assignee for creditors. (29-5-103). Submission to arbitrators shall be by written agreement, specifying what demands are submitted, the names of arbitrators and court by which judgment on their award is to be rendered. (29-5-104). Written agreement to submit to arbitration is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity. (29-5-302). When award of arbitrator(s) is adopted, it is filed and entered on records, and judgment shall be rendered, including costs and fees. (29-5-118). Arbitration award and proceedings governed by 29-5-301-320.

Upon motion of party, or upon its own motion, court may order parties to eligible civil actions to participate in judicial settlement conferences, mediations or case evaluations. With consent of all parties, court may order parties to participate in nonbinding arbitration, minitrial, summary jury trial or other appropriate alternative dispute resolution proceedings. (Supreme Ct. Rule 31).

Legislature and courts have recognized, as mandatory or voluntary, alternative dispute resolution in specific instances as follows:

Manufacturers of motor vehicles and consumers who assert breach of warranty may resort to informal dispute settlement procedure under provisions of Title 16, CFR, Part 703. If manufacturer establishes or participates in informal dispute settlement procedure, consumer who has not first pursued such informal procedures may not seek remedies provided by applicable statutory provisions. (55-24-206).

State insurance committee and local insurance committee has authority to promulgate rules for administering group insurance plan, which rules may include provisions for handling and resolution of disputes regarding benefits of insurance plan. (8-27-102; 8-27-301).

Victim-offender mediation centers for resolution of felony, misdemeanor and juvenile delinquent disputes established to provide forums in which persons may voluntarily participate in resolution of disputes in informal and less adversarial atmosphere. Victim-offender mediation centers established to help meet need for alternatives to courts for resolution of certain disputes. (16-20-101). Center may be created by corporation organized to resolve disputes and shall be not for profit. (16-20-102).

Employees must follow grievance procedures contained in collective bargaining agreement when their claim is based upon collective bargaining agreement itself. (592 S.W.2d 322 [1979]).

Circuit courts have jurisdiction to enter judgments on awards of arbitrators and to have and determine agreed cases. (16-10-105).

Chancery court has jurisdiction, concurrent with all other judicial tribunals of arbitration and agreed cases. (16-11-112).

**ARBITRATION AND AWARD:**

**Uniform Arbitration Act** adopted effective May 26, 1983. (29-5-302 et seq.).

**Only material variation** from 1955 Official Text is in §1: second sentence deleted and new sentence added providing that in contracts relating to farm property, structures or goods, or to property and structures utilized as residence of party, clause providing for arbitration shall be separately signed or initialed by parties. (See 29-5-302.)

See also topic Alternative Dispute Resolution.

**DOCUMENTS AND RECORDS****ACKNOWLEDGMENTS:**

**Within State.**—Acknowledgment within the state must be before the clerk or deputy clerk of county, clerk and master of chancery court or notary public. (66-22-102). Fees of clerk (a) for issuing subpoena for each witness required to be summoned to prove execution of writing, 25¢, and (b) for filing and entering date of presentation of deed or other instrument when its authentication is not completed at time of presentation, in addition to fees allowed by law for taking probates and acknowledgments of deeds and other instruments and certifying same, 10¢. (66-22-112). For fees of notaries, see topic Notaries Public, subhead Fees.

**Outside State but Within United States.**—Acknowledgments outside of state but within the United States or its territories must be before any court of record or its clerk, a commissioner for Tennessee, or a notary public of any such state or territory, or any other officer of such state or territory authorized by its laws to take proof and acknowledgment of deeds. (66-22-103). May also be before any other officer of such state, territory or district authorized by laws thereof to acknowledge. In instance, acknowl-

edgment must be accompanied by certificate from Secretary of State or Clerk of Court of that state stating that officer was authorized to acknowledge. (66-22-103).

**Outside the United States.**—Acknowledgments outside of United States and its territories must be taken before commissioner for Tennessee, notary public of such country, consul, charge d'affaires, envoy, minister or ambassador of U.S. in country to which he is accredited and where acknowledgment is made. (66-22-104).

**Persons in or with U.S. Armed Forces.**—The acknowledgment of a person in the Armed Forces of the United States, whether inside the United States or in foreign service, may be before an officer of the U.S. Army or Marine Corps with the rank of 2nd Lieutenant or higher, officer of U.S. Navy or Coast Guard of rank of Ensign or higher, or officer of any other component part of armed services with equivalent rank. (58-1-605). Such officer must attest fact that person appearing before officer makes oath to facts contained therein or acknowledges same as his act. Certificate must show date but need not show place of such acknowledgment. Certificate of such attesting officer, his rank and branch of service, is proof of his authority and prima facie evidence that person acknowledging is in such armed service. (58-1-607). Wife of man in U.S. armed service accompanying husband may acknowledge or prove any instrument before same officers as above. (58-1-605).

**General Requirements as to Taking.**—If clerk or deputy clerk does not know, is not acquainted with or does not have satisfactory evidence of identity of person wishing to acknowledge instrument, such person has 20 days within which to produce witnesses to prove identity. (66-22-106).

**General Requirements of Certificate.**—All acknowledgments must be under the seal of the officer taking same. (66-22-110). The expiration date of the commission of the notary public must be shown. Failure of notary public to indicate expiration date of commission on instrument does not invalidate instrument. (8-16-115).

**Married persons** acknowledge as though sole; separate examination not necessary. (66-22-109).

**Attorneys in Fact.**—No special requirements.

**Corporations.**—No special requirements except that a special form of certificate is provided. (66-22-108).

**Foreign Acknowledgments.**—See subhead Outside the United States, supra.

**Effect of Acknowledgment.**—Instruments entitled to be registered must be so authenticated. (66-24-101 et seq.). Any instrument so proved or acknowledged, certified and registered shall be received as evidence. (66-26-110).

**Proof by Subscribing Witnesses.**—Instruments may be authenticated by two subscribing witnesses. (66-22-101).

**Authentication.**—Acknowledgment taken out of state, but in U. S., by anyone except court of record, clerk of court of record, commissioner for Tennessee appointed by Governor, or a notary public authorized there to take proof or acknowledgments, must have attached thereto a certificate of Secretary of State of such state or territory under seal of such state, or certificate of clerk of court of record of such state, territory, or district in the county in which said officer resides or in which he took said proof or acknowledgment under seal of such court, stating that such officer at time of taking the acknowledgment was duly authorized so to do and that said Secretary of State or clerk of court knows his handwriting and believes his signature to be genuine. If acknowledgment is taken before court of record, copy of entry of acknowledgment on records must be certified by clerk under seal of office and judge, chief justice or presiding magistrate of the court must certify to official character of clerk. (66-22-103).

**Forms.**—Any certificate clearly evidencing intent to authenticate, acknowledge or verify document constitutes valid certificate of acknowledgment. No specific form or wording required. Ownership of property or determination of other right or obligation not affected by inclusion or omission of any specific words. (66-22-114).

Forms for acknowledgments from out of state acceptable if in form prescribed by this state or state in which acknowledgment taken. (66-22-115). Forms for acknowledgment of natural person acting in his or her own right, of attorney in fact or on behalf of corporation or for other agency position may contain substance of following:

*Acknowledgment by Individual.*—State of . . . . ., County of . . . . . Personally appeared before me, (name of natural person executing instrument), with whom I am personally acquainted and who acknowledged that (s)he executed the within instrument as his/her free act and deed and for the purposes therein contained. Witness my hand, at office, this . . . . . day of . . . . ., (year) . . . . . (66-22-107).

*Acknowledgment for Corporation.*—State of . . . . ., County of . . . . . Before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared . . . . ., with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the (title of officer) of (name of grantor), the within named bargainer, a corporation, and that such person executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as (title). Witness my hand, etc. (66-22-108).

*Proof by Subscribing Witnesses.*—State of . . . . ., County of . . . . . Personally appeared before me (give name of officer and title) . . . . . and . . . . . subscribing witnesses to the within instrument, who being first sworn deposed and said that they are acquainted with . . . . ., the bargainer, and that the bargainer acknowledged the said instrument in their presence to be the bargainer's act and deed, on the day it bears date (or at such date as the witnesses prove the acknowledgment was made). Witness my hand, etc. (66-23-117).

**Alternative to Acknowledgment or Proof.**—No statutory provision.

**Validating Acts.**—Instrument of record for seven years or more presumed valid as to form. (66-26-106).

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**AFFIDAVITS:**

**In This State.**—General sessions judge (16-15-403), county clerk (18-6-114), clerk (18-1-108), deputy clerk (62 Tenn. 354 [1874]), or notary public (8-16-112), may administer oaths and take affidavits.

**In Other States of U.S.**—Affidavits may be taken before notary public duly authorized in such state, whose certificate must bear date of commission and statement of expiration date of commission. (8-16-121).

**Outside of U.S.**—In foreign countries oath is taken before any officer authorized to take probate of deeds and authentication in like manner. (66-22-104).

**General Requirements Of Jurat.**—Seal of notary must be affixed to and notary must sign instrument. (8-16-112). Failure to include date of expiration of commission does not invalidate instrument. (8-16-115).

**Form.**—State of . . . . ., County of . . . . ., I, . . . . ., first being duly sworn, make oath as follows: (here, insert body of affidavit and signature of affiant). Sworn to and subscribed before me this . . . . . day of . . . . ., (year) . . . . . (here, insert signature of officer taking affidavit, seal, and date of expiration of commission).

**Alternative to Affidavit.**—No statutory provision.

**NOTARIES PUBLIC:**

**Qualification.**—Notaries must take oath of office (8-16-105) and give bond in amount of \$10,000. (8-16-104). And upon moving notary's residence or principal place of business outside of state is no longer qualified and must surrender license. (8-16-110).

**Seal.**—Newly elected notaries must use seal, designed and provided by Secretary of State which may be imprinted by rubber or other type stamp and same shall print in only colors other than black or yellow, and appear as black when photocopied on noncolor copier. Impression seals in use in 2004 shall remain until end of notary's term. (8-16-114).

**Powers.**—Notaries have usual powers; may administer oaths, take affidavits and depositions, qualify parties to bills in chancery, etc. Notaries must affix seal and sign in ink all such documents. (8-16-112).

**Territorial Extent of Powers.**—Notary public commissioned in one county is authorized to exercise functions of notary public in all counties of state. (8-16-113).

**Protest of Commercial Paper.**—Attestations, protestations, and other instruments of publication or acknowledgment made by any notary public under seal shall be received into evidence. (8-16-116).

**Expiration of Commission.**—Notary must note date of expiration of commission on all certificates of acknowledgment, but absence of such commission expiration date does not invalidate instrument. (8-16-115).

**Disclosure.**—Notary Public not licensed to practice law in Tennessee must disclose that he or she is not attorney and may not give legal advice or accept fees for legal advice. (8-16-401).

**Fees** of notaries are: For recording in notary's book each attestation, protestation and other instruments of publication, \$1; for each negotiable instrument protested, without regard to number of parties, \$1.50; each acknowledgment or probate of any instrument, 25¢; for each deposition taken, \$1; for any other service legally performed by notary, same fees allowed as to other officers for like services. (8-21-1201).

**Officers of U. S. Armed Forces** are given general notarial powers. (58-1-605-06).

**RECORDS:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

County Register is officer having charge of records relating to property.

**Recordable Instruments.**—Writings subject to registration are set forth in 66-24-101. All deeds, judgments, orders and writs affecting real estate, whether absolute or in nature of mortgages, must be recorded with County Register in county in which land lies, to be good against third parties. (66-24-103-109). *For list of Counties and County Seats see first page for this state in Volume containing Practice Profiles Section.* All deeds or mortgages of personality may be registered in county where vendor or person executing same resides and in case of his nonresidence where property is. (66-24-104).

**Place of Recording.**—See subhead Recordable Instruments, *supra*.

**Requisites for Recording or Registration.**—To be recorded or registered, instrument must be acknowledged or proved according to Tennessee law. (See topic Acknowledgments.) Registration on defective acknowledgment is invalid.

Instrument to be recorded must recite source from which grantor received equitable interest and character of last registered instrument, if any, dealing with same property or subject, and office, book and page where same was recorded or if no prior instrument is recorded it must so state. (66-24-110).

Instrument conveying, assigning or encumbering interest in real or personal property must, to be recorded, recite on first page name and address of preparer. (66-24-115). Deed, except for deed of trust or mortgage, must also include name, address, and license number of surveyor who prepared survey from which legal description was prepared. (66-24-121). Real property deed other than trust deed or mortgage must recite name and address of one property owner and name of person or entity responsible for payment of property taxes (66-24-114) and contain parcel identification number (66-24-113).

**Recording Fees.**—For Commercial Code filings, see subhead Filing Under Commercial Code—Place; Fees and Taxes, *infra*. For plat, map, or survey, \$15. For each other type of document that may be registered, \$10. For each instrument in document in excess of one, each page in document in excess of two, or certified copy of plat, map, or survey, \$5. (8-21-1001). In addition to recording fee, recording tax and 50¢ tax collection fee must be paid on most deeds and all mortgages, deeds of trust and Commercial Code financing statements. See categories Taxation, topic Property Taxes, subhead Real Estate Conveyance Tax; Mortgages, topic Mortgages of Real Property, subhead Tax; and this topic *infra*, subhead Filing Under Commercial Code—Place; Fees and Taxes.

**Foreign Conveyances or Encumbrances.**—To be recorded, foreign instrument must conform to Tennessee requisites for recording and registration.

**Effect of Record.**—Registration constitutes notice to all the world. (66-26-102). Registered instruments are admissible in evidence but are subject to impeachment. (66-26-110).

**Failure to Record.**—Instruments entitled to record or registration but not recorded or registered are not effective against existing or subsequent creditors of maker or bona fide purchasers from maker. (66-26-103).

Instrument entitled to registration and not registered prior to expiration of 60 days from death of maker is null and void against innocent purchasers for present valuable consideration from those who would have succeeded to such property had such instrument not been made. But holder of such instrument has action for value of property against such sellers within one year from registration of deed to innocent purchasers, if it is required to be recorded; otherwise within one year from consummation of such transfer or sale. (66-26-104).

**Effect of Lapse of Time.**—Registration of deed on defective acknowledgment is invalid, but is good after lapse of 20 years. (66-26-106). Conveyance by one purporting to act as attorney in fact is, after 20 years registration, presumed to have been executed under proper authority, duly executed, whether with or without probate of power of attorney, and is deemed sufficient to pass valid, legal title. (66-26-108).

**Transfer of Decedent's Title.**—Probate records are sufficient evidence of transfer of property of resident decedent. Where nonresident dies leaving will, exemplified copy may be probated here and in such case copy of probate records is evidence, or after probate, copy may be registered in county where land lies and copy thereof is evidence, or in case of realty will may be duly proven in proceedings involving title to property as at common law. (30-2-302). See also category Estates and Trusts, topic Descent and Distribution, subhead Determination of Heirship.

**Torrens Act.**—Not adopted.

**Vital Statistics.**—Under 68-3-101 et seq., records of births, deaths (including fetal deaths), adoptions, legitimations, paternity adjudications, marriages and divorces are kept by Office of Data Collection, State Department of Health and Environment, 344 Cordell Hull Building, Nashville, Tennessee 37219. Department sets fees for producing copies of its vital records. (68-3-207). Fees for certified copies vary.

**Establishing Birth Record.**—Acceptance for filing of birth certificate ten days or more after birth subject to regulations of Office of Vital Records. (68-3-308). Rejection of delayed birth certificate subject to special judicial review procedure. (68-3-309). Errors in birth certificates may be corrected by circuit, probate or county court on application of resident of county in which application made. (29-8-101).

**Filing Under Commercial Code—Place; Fees and Taxes.**—Proper place of filing in order to perfect security interest under Art. 9 of Commercial Code is as follows: (1) office designated for filing or recording of record of mortgage on related real property, if: (A) collateral is as-extracted collateral or timber to be cut; or (B) financing statement is filed as fixture filing and collateral is goods that are or are to become fixtures; or (2) office of Secretary of State, in all other cases, including case in which collateral is goods that are or are to become fixtures and financing statement is not filed as fixture filing (47-9-501). Address for Commercial Code filings with and inquiries to Secretary of State: Secretary of State, Commercial Code Division, 312 Eighth Avenue North, 6th Floor, Snodgrass Tower, Nashville, TN 37243.

**Fees** are as follows: Original financing statement, or continuation statement, \$15; separate statement of assignment \$15; termination statement, \$15; release of collateral, \$15. If any record is over ten pages, fee is \$15 plus 50¢ per page. (47-9-525). Certificate may be obtained from filing office showing whether any presently effective financing statement naming particular debtor or statement of assignment exists; fee therefor is \$15. Filing officer will furnish copy of filed financing statement or statement of assignment for fee of \$1 per page.

**Mortgage tax** must be paid on recordation of UCC financing statement as if it were real property mortgage, even if only personal property is covered. See category Mortgages, topic Mortgages of Real Property, subhead Tax, for tax rates and provisions.

See also category Business Regulation and Commerce, topic Commercial Code.

**Electronic Documents.**—Writing eligible for registration created or retained as electronic record pursuant to 47-10-112 and other provision of Uniform Electronic Transactions Act may be registered using copy certified as true and accurate by licensed attorney or custodian of record and signature is notarized. (66-24-101).

**SEALS:**

Uniform Commercial Code has been adopted. (47-1-101 et seq.).

Private and corporate seals are entirely abolished. Addition to or absence from any instrument of corporate seal does not affect its character, validity or legal effect in any respect. (47-50-101).

See also category Business Regulation and Commerce, topic Commercial Code.

**TORRENS ACT:**

Not adopted.

**VITAL STATISTICS:**

See topic Records.

**EMPLOYMENT****LABOR RELATIONS:**

Employer may not: interfere with employee's selection of family physician (50-1-302[a]); withhold wages longer than usual term in order to force trade at employer-controlled store (50-2-106[a], [b]); deny or attempt to deny employment because of affiliation or refusal to affiliate with labor union or employee organization (50-1-201); terminate employee who refuses to participate or acquiesce in illegal activity (50-1-304).

See note at head of Digest as to 2007 legislation covered.

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**LABOR RELATIONS . . . continued**

**Department of Labor & Workforce Development, Andrew Johnson Tower, 8th Floor, Nashville, TN 37243-0655**, regulates and supervises any place where any manufacturing process is carried on or labor employed except by domestic workers, or by agricultural employees all of whom are related to other employees as spouse, child, parent, grandparent or grandchild. (50-3-101, et seq.).

Department of Labor and Workforce Development delivers employment related services and training in compliance with Workforce Investment Act of 1998, 29 U.S.C. §2801 et seq. (50-7-403).

**Hours of Labor.**—No minor may work during school hours. Minor 14 or 15 may not work between 7 P.M. and 7 A.M. if next day is school day, nor between 9 P.M. and 6 A.M., nor more than three hours per school day and eight hours per nonschool day, nor more than 18 hours per school week and 40 hours per nonschool week. (50-5-104). Minor 16 or 17 who is enrolled in school may not work between 10 P.M. and 6 A.M. if next day is school day. If guardian or parent provides written consent to employer, minor 16 or 17 may work between 10 P.M. and midnight during evenings preceding school days, but may not work more than three times per week past 10 P.M. during such evenings. (50-5-105).

Exceptions from above limitations discussed *infra*, subhead Child Labor.

**Wages.**—Employees have lien on employer's property for wages. (66-13-101).

As to wages payable during jury duty, see subhead Jury Duty, *infra*.

All wages of employees in private employment where five or more are employed, are due and payable at least semimonthly, and every employer must maintain regular paydays, notice of dates of which must be posted where it can be seen by employees. Payment must be in lawful money of U.S., or by valid negotiable check or draft, payable on presentation without discount or exchange. (50-2-103). Final wages of employee who quits or is discharged must include vacation pay or other compensatory time that is owed to employee by virtue of company policy or labor agreement. (50-2-103). Employee who quits or is discharged must be paid in full all wages earned no later than next regular pay day following dismissal or voluntary leaving or 21 days following dismissal or voluntary leaving, whichever occurs later. There are no exceptions from this. (50-2-103).

It is Class C misdemeanor for any person to misrepresent to any employee amount of wages that such employee is to receive on entering into new contract of employment. (50-2-104).

**Jury Duty.**—On day after receipt of U.S. or Tennessee jury duty summons, employee of regular employer of five or more persons must show summons to immediate supervisor, whereupon employee is excused from work for days of required jury duty and employer must continue employee's usual compensation, less jury fees and compensation, except that employer must compensate only for time spent serving and traveling to and from jury duty. Violation, or discharge by employer of employee who gives proper notice of jury service, is misdemeanor. (22-4-108). Juror may request prior to each day's service statement showing number of hours juror spent serving if less than three hours be provided to juror's employer. (22-4-108[c]).

**Volunteer Emergency Personnel.**—Volunteer firefighters afforded special protections and rights concerning termination of employment.

**Child Labor.**—Minor under 14 may not work. (50-5-103). Minor under 18 may not perform work involving radiation or radioactive substances; explosives; demolition; mining; excavation; logging; wood milling; slaughtering or meat processing; brick or tile manufacture; roofing; posing or modeling while engaged in sexual conduct for purpose of preparing photograph or film; motor vehicle driving; youth peddling; operation of elevators or power-driven hoists or of power-driven machinery used for woodworking, metalworking, baking or paper products; may not sell or take orders for alcoholic beverages or work at place receiving more than 25% of monthly gross receipts from sale of such beverages (50-5-106); and may not perform occupations interfering with schooling, health or well-being if 14 or 15 (50-5-104) or health or well-being or during specified hours if 16 or 17 (50-5-105). Minor who desires to perform artistic or creative services may petition appropriate court for approval of contract. (50-5-201 et seq.).

**Employer Obligations.**—Prior to employing or continuing to employ minor, employer must require proof of age of minor employee or prospective employee by requiring minor to provide employer with copy of minor's birth certificate, passport, driver's license or state issued identification or else minor's parents must appear with minor before judge or officer of juvenile or county court where minor resides and make oath as to minor's age. (50-5-109). Employer must: (1) Keep where minor is employed separate file on minor, containing: (a) employment application, (b) age evidence under 50-5-109, (c) work time records for minor 14 or 15, and (d) records required under 50-5-107, discussed *infra* this subhead, catchline Exemptions; (2) allow Department of Labor to inspect premises where minors are or could be employed and contents of required separate files; and (3) post and maintain in conspicuous place on premises printed notice furnished by Department. (50-5-111).

**Exemptions.**—Child labor laws, including age and work hour restrictions, do not apply to: Housework in minor's home; employment by parent or guardian unless prohibited by 50-5-106, discussed *supra* this subhead; agriculture; newspaper sales; errands and deliveries by foot, bicycle or public transport; music or entertainment unless relating to posing or modeling while engaged in sexual conduct for purpose of preparing photograph or film; self-employment; 16- or 17-year-old apprentice registered with and employed under standards set by U.S. Department of Labor; minor 16 or 17 participating under written agreement (copy to be kept by employer) in cooperative vocational training program under state or local educational authority or in similar private school program; child certified by federal agency in writing (copy to be kept by employer) as enrolled in federally-funded public employment program; child with high school diploma or equivalent, if copy of minor's high school diploma or equivalent is in employer's records; minor who is or has been married or who is parent, if copy of minor's marriage license or birth certificate of minor's child is in employer's records; minor 16 or 17 with written statement in employer's records from superintendent of schools stating that minor is not enrolled in school or is excused under 49-6-3005. (50-5-107). Also, Commissioner of Labor may grant special exemption on request of minor and his parents or guardian. (50-5-108).

See also *supra*, subhead Hours of Labor.

**Discrimination** in rate of pay because of sex is prohibited. (50-2-202). Employer who violates provisions of 50-2-202 may be liable for monetary damages to affected employee as set out in 50-2-204. Discrimination in employment on basis of race, creed, color, religion, sex, age or national origin prohibited. (4-21-101 et seq.). Discrimination in employment against handicapped is Class C misdemeanor unless handicap prevents or impairs performance of work involved. (8-50-103).

**Maternity Leave.**—Employer who employs 100 or more full-time permanent employees at job site must allow employees, employed full-time by same employer for at least 12 consecutive months, who gives three months advance notice unless prevented from doing so by medical emergency, four months leave for pregnancy, childbirth, adoption, and nursing infant if position can be filled temporarily. Leave may be with or without pay. Such employee is to be restored to previous or similar position after leave and leave not to affect employee's status or benefits. Employee need not be reinstated at end of leave if employee worked for another employer during leave. (4-21-408).

**Labor Unions.**—"Right to work" law has been adopted. (50-1-201 et seq.).

**Employment of Illegal Aliens.**—Unlawful to knowingly employ illegal aliens unless employer is granted exemption by Department of Labor. Employer may rely on identification. Illegal employment is Class B misdemeanor. (50-1-103). Person that knowingly used illegal immigrant services in performing contract to supply goods or services to state or state entities may be prevented from contracting with state or bidding on state contracts for one year. (12-4-124).

**Workers' Compensation.**—All employers of five or more employees are included except: (a) common carrier engaged in interstate commerce subject to Federal Employers Liability Act; (b) leased operator or leased owner/operator under contract to common carrier electing coverage under policy insuring common carrier; (c) employers of domestic servants; (d) farm and agricultural employers; (e) state, county or municipal departments of government, provided that they may accept terms of Act and comply. (50-6-106). Full-time proprietor or partner may elect to be included by filing written notice with division of workmen's compensation at least 30 days before injury or death. (50-6-102).

**Acceptance of Act.**—Every employer and employee subject to Act must elect to be covered by same except that corporate officer may elect to be bound by common law. (50-6-103).

**Insurance** must be carried in authorized company or employer must obtain valid certificate of authority from Commissioner of Commerce and Insurance by furnishing to Commission proof of financial ability to pay claim, deposit not less than \$500,000 in securities or bond, and furnish financial statement annually. (50-6-405).

**Written notice of injury** required within 30 days of accident, unless employer has actual notice, or when injury occurs as result of gradual or cumulative events of trauma, in which case, written notice of injury must be given within 30 days after employee knows or reasonably should know he has suffered work related injury. (50-6-201). Employer must also file, within 30 days, wage statement of employee's wages for previous 52 weeks unless employer stipulates that maximum weekly rate applies. Wage statement must be filed only if accident causes death or injury that keeps employee from returning to work within seven days of accident. (50-6-201). Claim is barred after one year except where payment has been made to injured person or his dependent during that period, in which case claim is barred after one year from later of date of last authorized treatment and date of last payment. (50-6-203). If injury is continuing and there is no particular event or incident identifiable as "accident resulting in the injury", one-year statute of limitations commences at time employee is no longer able to work due to injury. (944 S.W.2d 340 [1997]).

**Employer Reports.**—Employer must notify director of division of workers' compensation, on director's form, of first benefit payment, change or cessation of benefits other than by final settlement, or benefit denial, and if payments are made without award and then ceased due to election to contest liability, must give director notice of controversy within 15 days of first omitted payment. (50-6-205).

**Hearing.**—Parties must exhaust benefit review conference process before filing claim to appropriate court. (50-6-203). Jurisdiction is in circuit or chancery court in county in which employee resides or in which alleged injury occurred. If employee resides outside Tennessee or if accident occurred outside Tennessee, complaint must be filed in county where employer maintains office. Cause proceeds by petition, service of notice, answer and hearing without jury. (50-6-225).

**Settlements.**—Agreed settlements must be affirmed by court subject to right in Division to apply to set same aside within 30 days. (50-6-206).

**Compensation for Injuries.**—Schedule of payments for all disabilities, with exception of temporary partial, based on percentage of average weekly wage. (50-6-207). Calculation of temporary partial disability award is based on difference between wage of worker at time of injury and wage such worker is able to earn in such worker's partially disabled condition; this calculation method does not include average weekly wage definition. (50-6-207; 48 S.W.3d 148 [2000]). Excluding medical and burial allowances under 50-6-204, maximum benefit is maximum weekly rate then in effect up to 400 weeks except in cases of permanent total disability. (50-6-205; 50-6-102). There is no limitation on how long claimant may receive benefits for permanent total disability. (50-6-207; 951 S.W.2d 766 [1997]). Maximum weekly rate increases annually after Aug. 1, 1992 up to specified percentage of state's average weekly wage, but not more than 66⅔% of employee's average weekly wage at time of injury. (50-6-102). Court may award attorney fees and reasonable costs, including court reporter and expert witness fees, resulting from employer's failure to furnish medical, surgical, dental or psychological treatment or care or medicine, medical or surgical supplies, etc. to employee as required pursuant to settlement or judgment under this chapter. (50-6-204; 50-6-226).

**Death payments** to dependents until death or marriage. Partial dependents receive proportionate allowance. (50-6-210). If deceased employee leaves no dependents, sum of \$20,000 is payable to his estate by employer. (50-6-204; 50-6-209).

**Occupational Diseases.**—Certain occupational diseases under specified circumstances are covered. (50-6-301-07).

See note at head of Digest as to 2007 legislation covered.

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**LABOR RELATIONS . . . continued**

*Disfigurement* to head, face, or hands covered under certain conditions. (50-6-207). In order to recover under disfigurement statute, employee must prove: (1) Serious disfigurement has been sustained, (2) disfigurement materially affects employment, (3) condition is permanent, and (4) work-related injury caused disfigurement.

**Occupational Diseases.**—See subhead Workers' Compensation, *supra*.

**Employers' Liability Act.**—See subhead Workers' Compensation, *supra*.

**Unemployment Compensation.**—Governed by 50-7-101 et seq. Unemployed individual is eligible for benefits if he has been paid specified amount for insured work (50-7-301, 305); has registered for work and continued to report to employment office; is able to and available for work, unless due to illness or disability occurring after registration; is making reasonable effort to secure work; and has been unemployed for waiting period of one week, unless he has been offered same job previously held and has refused same (50-7-302). Except as provided in 50-7-304(b)(2)(D) no employer's account shall be charged for any benefits paid to former employee who left under conditions which result in imposition of disqualification under 50-7-303(a)(1), (2) or (4), or as provided by statute. No employer's account shall be charged for any employee who left employer to enter training approved under Trade Act of 1974. (50-7-403). Benefits shall be denied if former employee was discharged because she placed employer in violation of Fair Labor Standards Act. (50-7-303[a]).

Benefits range from a minimum of \$30 per week to maximum of \$169 per week for benefit year established on or after July 5, 1992; \$185 per week maximum for benefit year established on or after July 4, 1993; \$199 per week maximum for benefit year established after July 3, 1994; \$220 per week maximum for benefit year established after July 6, 1996; \$240 per week maximum for benefit year established after July 5, 1997; and \$255 per week maximum for benefit year established after July 4, 1998 and \$275 per week maximum for benefit year established after Aug. 5, 2001. (50-7-301).

See also category Taxation, topic Employment Taxes, subhead Unemployment Compensation Tax.

**VIOLENT ACTS OR THREATS:**

Under certain circumstances, employer may obtain temporary restraining order and injunction prohibiting certain violent acts or threats at workplace.

**WORKERS' COMPENSATION LAW:**

See topic Labor Relations. See also category Insurance, topic Insurance Companies.

**ENVIRONMENT****ENVIRONMENTAL REGULATION:****Water Quality Control.**—

*General Supervision.*—Vested in Commissioner of Health and Environment.

*Prohibited Acts.*—Unless valid permit held, it is unlawful for any person, other than person who discharges into publicly owned treatment works or person who is domestic discharger into privately owned treatment works, to: (1) Alter physical, chemical, radiological, biological or bacteriological properties of state waters; (2) construct, install, modify or operate any treatment works; (3) increase volume or strength of waste in excess of discharge permitted by existing permit; (4) develop natural resource or construct, install or operate any establishment likely to cause increase in waste discharge or alter physical, chemical, radiological, biological or bacteriological properties of state waters; (5) construct or use any new outlet for waste discharge into state waters; (6) discharge sewage or industrial wastes into waters or at location from which discharge likely to move into waters; (7) discharge sewage or industrial wastes into well or at location from which discharge likely to move into well or underground placement of fluids or substances which may affect state waters; or (8) divert water through flume for purpose of generation of electric power by utility. (69-3-108).

*Enforcement.*—Commissioner of Health and Environment issues corrective orders. (69-3-107 through 109). Appeal of corrective order or permit denial made by filing with Commissioner, within 30 days after service of order or delivery of permit denial, petition for hearing. (69-3-105). Appeal of Board or Panel action made to Chancery Court within 60 days of action, pursuant to Uniform Administrative Procedures Act, 4-5-301 et seq. (69-3-111).

*Penalties.*—Violations in specified cases punishable by civil penalty up to \$10,000 per day of violation. Negligent pollution Class C misdemeanor punishable by fine up to \$25,000. Willful pollution and willful falsification of records, plans, etc., Class E felony punishable by fine up to \$25,000 or incarceration or both. (69-3-115). Commissioner may assess damages to state (69-3-116) and may apply for injunctive relief (69-3-117).

*Permits.*—Required as indicated *supra*, this subhead. Applications filed with Commissioner. (69-3-108). Procedure for appealing permit denial discussed *supra*, this subhead.

*Major Energy Projects.*—See subhead Major Energy Projects, *infra*.

**Air Quality Control.**—

*General Supervision.*—Supervision vested in Air Pollution Control Division (68-201-105), L&C Tower, 401 Church St., 9th Floor, Nashville, TN 37243-1531, (615) 532-0554, administered by technical secretary (68-201-107).

*Prohibited Acts of Pollution.*—Air Pollution Control Board delegated authority to promulgate regulations establishing air quality standards. (68-201-105).

*Enforcement.*—Technical secretary is empowered to prosecute complaints before Board. Commissioner of Health and Environment may issue emergency stop order on finding that air contaminant source causes imminent danger to public health. (68-201-109). Decision of Board or Commissioner may be appealed pursuant to Uniform Administrative Procedures Act, 4-5-301 et seq., unless disposition became final as result of failure to appear at hearing after adequate notice. (68-201-110).

*Penalties.*—Knowing violation of rule or regulation is Class C misdemeanor. (68-201-112). Board may apply for injunctive relief. (68-201-111).

*Permits.*—Petition filed with technical secretary to obtain variance by action of Board. (68-201-118).

*Major Energy Projects.*—See subhead Major Energy Projects, *infra*.

**Solid Waste Disposal.**—

*General Supervision.*—Vested in Department of Health and Conservation, L&C Tower, 401 Church St., 5th Floor, Nashville, TN 37243-0435, (615) 532-0109, acting through its Commissioner (68-211-105, -107) and Solid Waste Disposal Control Board, which may delegate duties to local health officers under 68-211-108.

*Prohibited Acts.*—Unlawful to: (1) Deposit solid waste in state waters except in manner approved by Department and Water Quality Board; (2) burn solid waste, except in manner approved by Department and Air Pollution Control Board; (3) construct, alter or operate solid waste processing or disposal facility or site in violation of Commissioner's rules, orders, etc., or in manner creating public nuisance; (4) transport, process or dispose of solid waste in violation of this Title 68, c. 211, Rules or Regulations thereunder or order of Commissioner or Solid Waste Disposal Control Board. (68-211-104). No new construction or change may be made in solid waste processing or disposal facility or site without approval from Department. (68-211-105). No such facility or site may be operated or maintained unless registered with Commissioner. (68-211-106). No permit to construct or operate landfill for disposal of solid or hazardous waste is granted if location of such would violate provisions of 11-13-111. New commercial hazardous waste facilities must be at least 1,500 feet from residential, church, park, school or childcare property. (68-212-105[6]-107[d][11], 68-211-101 et seq.). Registration may be revoked for noncompliance with provisions of chapter. (68-211-106[a][1][d]). Bond or deposit of cash or securities in prescribed form and in amount of at least \$1,000 per affected acre (or fraction thereof) shall be filed with Commissioner. After notice of noncompliance to operator of facility, Commissioner may suspend registration. Registration may be revoked and bond forfeited in event of further noncompliance. (68-211-116). Above prohibitions do not apply to private, natural person disposing waste generated in his own household upon his own land provided disposal does not create nuisance or public health hazard, but such exemption shall not apply after Jan. 1, 2004 to person who deposits household waste on sinkhole. (68-211-110). Commissioner may refuse to issue or renew permit if he finds that applicant or party has: (1) Intentionally misrepresented or concealed any material fact which would have resulted in denial of application submitted or permit issued; (2) has been convicted or incarcerated for felony environmental criminal offense within three years preceding application; (3) has been in contempt of any State court order enforcing Solid Waste Disposal Act or Hazardous Waste Management Act; (4) has been convicted of violation of either State or federal RICO laws.

*Enforcement.*—Commissioner issues corrective orders. (68-211-112). Appeal of corrective order or permit denial made by filing with Commissioner (within 30 days after service of order or permit denial) petition for appeal specifying basis for appeal. Appeal of Board actions made to Chancery Court of Davidson County. Any person may file complaint with Commissioner or Board against alleged violators, and unless duplicitous or frivolous, allegations will be investigated with notification (to complainant and violator) of action to be taken. (68-211-113). Commissioner may apply for injunctive relief. (68-211-115).

*Consent Order.*—Once consent order has been entered, commissioner has discretion and is authorized to expend monies from remedial action fund to pay investigation, cleanup, monitoring of inactive hazardous site as provided by statute. Commissioner has discretion in allocation of liability consistent with 68-212-207(b) in consent order with potentially liable party participating in voluntary program; as provided by statute 68-212-224.

*Penalties.*—Willful violation of statute, regulation or order is Class B misdemeanor. (68-211-114). Violators also subject to civil penalty of up to \$5,000 per day per violation, assessed in prescribed manner and considering extent of harm, economic gain by violators, efforts to comply and enforcement costs, and damages to state, including reasonable expenses for investigation, enforcement and restoration of environment. (68-211-117).

*Permits.*—Required as indicated *supra*, this subhead. Applications filed with Commissioner. (68-211-105). Procedure for appealing permit denial discussed *supra*, this subhead. Municipality may use eminent domain powers to establish landfill for solid waste disposal outside its corporate boundaries only if governing body of area in which landfill is to be located approves action by majority vote at two consecutive regularly-scheduled meetings. (68-211-122).

*Solid waste disposal* and public and private landfills and other solid waste disposal facilities are subject to extensive regulation. (68-211-101 et seq.).

*Major Energy Projects.*—See subhead Major Energy Projects, *infra*.

*General Provisions.*—Employers that manufacture or use hazardous chemicals are required to inform employees of presence and/or use of hazardous chemicals in manufacturing process. Additional requirements include maintenance of detailed records, public posting of chemical use, labeling procedures and training programs for employees exposed to hazardous chemicals. Commissioner of Department of Labor has authority to enforce provisions, as set out in 50-3-401 et seq. Violators are subject to injunctions and monetary penalties. (50-3-2001 et seq.).

**Hazardous Waste Management.**—

*General Supervision.*—Vested in Department of Environment and Conservation, L&C Tower, 401 Church St., Nashville, TN 37243-0435, (615) 532-0109, acting through its Commissioner (68-212-107) and Solid Waste Disposal Control Board (68-211-111). Standards required to obtain operating permit for commercial facilities engaging in storage, treatment or disposal of hazardous waste contained in 68-212-108. No permit shall be issued for portable commercial unit to store, treat or dispose of waste generated in state other than Tennessee. (68-212-108). Each applicant is required to notify community of, and hold, at least one pre-application community meeting at which time applicant must provide community impact statement. (68-212-108).

*Prohibited Acts.*—Unlawful to: (1) Deposit hazardous waste in state waters, except in manner approved by Department or Water Quality Control Board; (2) burn hazardous waste, except in manner prescribed by Department or Air Pollution Control Board; (3) construct, alter, operate, own, close (or maintain after closure) hazardous waste treatment,

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**ENVIRONMENTAL REGULATION . . . continued**

storage or disposal facility in violation of Commissioner's or Board's orders or rules, or in manner creating public nuisance or health hazard; (4) store, containerize, label, transport, treat or dispose of hazardous wastes in violation of applicable orders or rules, or in manner creating public nuisance or health hazard; or (5) fail to pay assessed fees to Department. (68-212-105). Sufficient bond and cash deposit to assure perpetual care of facility or site may be required, as well as liability insurance for accidental occurrences, unless waived or variance granted. (68-212-108). Above prohibitions do not apply to emissions generated within residence or farm (waste from growing and harvesting crops or raising of animals if used as fertilizer, or waste pesticides if disposed of as provided by statute) and incident to operation thereof. (68-212-103).

**Enforcement.**—Commissioner issues corrective orders under 68-212-111. Appeal of corrective order or permit denial by filing with Commissioner (within 30 days after service of order or denial) petition for appeal to Solid Waste Disposal Control Board, specifying basis for appeal. If Commissioner fails to act on permit application within 45 days, appeal may be made to Board as if permit had been denied. Appeal of Board actions made to Chancery Court of Davidson County. Person aggrieved by final decision may file petition for review with Commissioner within 30 days of publication of final decision. Person aggrieved is defined to include (1) permit applicant; (2) owner of property within three-mile radius of site proposed for permitting; (3) city and county with authority to submit reports pursuant to 68-212-108(f), and any resident thereof. (68-212-113). Any person may file complaint against alleged violators under procedure discussed supra, subhead Solid Waste Disposal. Commissioner may file notice with county register of deeds for property placed on list of hazardous substance sites pursuant to 68-212-206, or whenever Commissioner expends money for investigation, identification, containment or cleanup of site. (68-212-209).

**Penalties.**—Violation of statute or order is Class A misdemeanor. Violator who willfully and knowingly disposes of hazardous waste is guilty of Class C felony. (68-212-114). Commissioner may apply for injunctive relief (68-212-115) and may assess civil penalty up to \$50,000 per day per violation. (68-212-114). In case of aggravated violation, Board may award attorneys' fees (and defined damages in certain situations) to complainant. (68-212-117).

**Permits.**—Required as indicated supra, this subhead. Applications filed with Commissioner. Procedure for appealing permit denial discussed supra, this subhead.

**Certain underground storage tanks** are regulated by Tennessee Petroleum Underground Storage Tank Act. (68-215-101 et seq.).

**Major Energy Projects.**—See subhead Major Energy Projects, infra.

**Mineral Test Hole Regulatory Act.—**

**General Supervision.**—Supervision vested in Department of Environment and Conservation, L&C Tower, 401 Church St., 21st Floor, Nashville, TN 37243-0435, (615) 532-0109, acting under Commissioner of Conservation, to regulate drilling of mineral test holes to prevent pollution of potable water resources. (60-1-504).

**Prohibited Acts of Pollution.**—Supervisor delegated authority to promulgate regulations establishing drilling standards. (60-1-504).

**Enforcement.**—Supervisor issues notice of determination of violation to owner or operator with order to remedy specified condition. If condition persists, supervisor may, after 60 days from notice, enter property to correct same, expenses for which owner and operator become jointly and severally liable. (60-1-507). Procedures, including appeals, governed by State Uniform Administrative Procedures Act. (60-1-506).

**Penalties.**—Violation of Act or regulation punishable by civil penalty up to \$1,000 for each day violation continues. Supervisor may apply for injunctive relief. Willful violation is Class C misdemeanor. (60-1-509).

**Permits.**—Owner must obtain permit from Supervisor. (60-1-505).

**Surface Mining.—**

**General Supervision.**—Supervision vested in Commissioner of Conservation, 701 Broadway, Nashville, TN 37219, or his designees. Commissioner delegated authority to promulgate regulations to control strip mining and reclamation standards and to administer and enforce statutes. (59-8-204 and 59-8-304).

**Coal.**—Regulated by Tennessee Coal Surface Mining Law of 1987. (59-8-401 et seq.). **Other Than Coal.**—Regulated by Tennessee Mineral Surface Mining Law of 1972. (59-8-201 et seq.).

**Prohibited Acts.**—No operator shall engage in surface mining operations without permit for each operation. (59-8-205). Coal exploration permit required. (59-8-306).

**Enforcement.**—Commissioner issues notice of noncompliance, cease order, or, if necessary, suspension of permit. If violation not corrected within time allowed, revocation of permit and forfeiture of performance bond may be ordered. (59-8-211).

**Penalties.**—Violation punishable by civil penalty up to \$5,000 for each day of infraction. Willful violation is Class B misdemeanor. (59-8-222). Commissioner may apply for injunctive relief. (59-8-223).

**Permits.**—Issuance depends on: (1) Compliance with detailed statutory criteria (59-8-205); (2) payment of fee of \$250 plus \$25 for each affected acre, subject to maximum of \$2,500 (59-8-206); (3) filing of sufficient performance bond (59-8-207); and (4) filing of reclamation plan meeting statutory criteria. (59-8-208).

**Certain underground storage tanks** are regulated by Tennessee Petroleum Underground Storage Tank Act. (68-215-101 et seq.).

**Major Energy Projects.**—Applicant may request designation of project (with capital cost of \$100,000,000 or more) as major energy project, defined as any project at one physical location, determined to be in state interest, and which is likely to reduce state dependence on imported energy projects. Joint review process or expedited review may be utilized, if approved. All information, including detailed design, economic and environmental impact data, must be included in application. Decision of agency and approval of governor subject to limited judicial review.

If application approved, detailed statutory provisions exist for: Joint review of project by state, local and federal agencies; coordination of permit applications; project decision scheduling and enforcement; consolidated hearings; expedited agency action and judicial review; and modification of agency procedures and requirements. (13-18-101 et seq.).

**Drycleaners.**—The Drycleaner Environmental Response Program operates under Department of Environment and Conservation. The Drycleaner Environmental Response

Board shall develop and investigate strategies and responses, accept and deny petitions for entry into program, and establish fee schedule. (68-217-105). Owner or operator of drycleaner (or abandoned drycleaning facility) shall register with Department. Each facility shall pay yearly per site registration fee as established by statute. Drycleaner solvent surcharge is also required to be paid. It shall be unlawful to sell or transfer drycleaning solvent to any person unless operator of drycleaners has conspicuously posted copy of valid certificate evidencing registration of facility. (68-217-107). Upon refusal to pay registration or surcharges Commissioner may proceed in Chancery Court of Davidson County to obtain judgment and seek execution of such judgment. (68-217-108).

**Lead-Based Paint.**—Tennessee Lead-Based Paint Abatement Training/Certification Act of 1997 requires certification for all lead abatement professionals. (68-218-102).

See also category Mineral, Water and Fishing Rights, topic Mines and Minerals.

**Methamphetamine.**—Any property wherein manufacture of methamphetamine occurs may be quarantined by Commissioner of Environment and Conservation. (68-212-503).

**ESTATES AND TRUSTS****ADMINISTRATION:**

See topic Executors and Administrators.

**ALLOWANCES:**

See topic Executors and Administrators.

**CLAIMS:**

See topic Executors and Administrators; category Civil Actions and Procedure, topic Pleading.

**DEATH:**

Uniform Absence as Evidence of Death and Absentees' Property Act has been adopted. (30-3-101).

**Definition.**—Uniform Determination of Death Act has been adopted. (68-3-501).

**Survivorship.**—Uniform Simultaneous Death Act has been adopted. (31-3-101).

**Action for death**, including of fetus which might reasonably have been expected to live outside of mother, accrues, free from claims of creditors, to surviving spouse, and, in case there is no spouse, to children, next of kin, personal representative for benefit of spouse or next of kin, or natural parent(s) if at time of death decedent was in custody of natural parent(s) and had not been legally abandoned by parent(s). (20-5-106). Parent delinquent on court-ordered child support payments will not be permitted to recover, however, until any such arrearages have been paid in full to parent entitled to receive them. (20-5-107). Adopted parent has same right as beneficiary that natural parent would have. Action must be commenced within one year after cause of action accrued. (28-3-104). Damages may be recovered for mental and physical suffering, loss of time and necessary expenses resulting to decedent from injuries, as well as damages resulting to parties for whose benefit cause of action survives. (20-5-113). No limit on recovery.

**Uniform Anatomical Gift Act** adopted. (68-30-101). §§2 and 3 of Uniform Anatomical Gift Act of 1987, amending The Uniform Anatomical Gift Act of 1968 adopted with minor variations, including, but not limited to, right of minor children of deceased to authorize anatomical gift in absence of surviving spouse or adult son or daughter. (68-30-114-116).

**Death Certificate.**—See category Documents and Records, topic Records, subhead Vital Statistics.

**Living Wills.**—See topic Wills, subhead Living Wills.

**DESCENT AND DISTRIBUTION:**

Surviving spouse takes all real and personal property if decedent left no issue and takes child's share, but not less than 1/3, if decedent left issue. Balance passes: (1) To children equally, issue of deceased children taking per stirpes; (2) to parents equally; (3) to brothers and sisters equally, issue of deceased brothers and sisters taking per stirpes; (4) half to paternal grandparents or their survivor, or if neither survives, their issue per stirpes, and half to maternal grandparents or their survivor, or if neither survives, their issue per stirpes, but if no grandparents or issue survive on one side, all to grandparents on other side or their survivor, or if neither survives, their issue per stirpes. (31-2-104).

**Surviving spouse** has homestead rights (see category Debtor and Creditor, topic Homesteads) and right to receive year's support allowance (see topic Executors and Administrators, subhead Allowances), in addition to distributive share. Conveyance made fraudulently with intent to defeat distributive share is voidable and includable in decedent's net estate under 31-4-101(b). (31-1-105). Surviving spouse has no homestead allowance against property in which decedent had life estate. Spouse of intestate decedent may elect to take either intestate share or elective share. (31-4-101 and 31-4-102).

**Renunciation or Disclaimer of Succession.**—Party receiving property by gift, trust or from decedent's estate, or through power of appointment, by another's disclaimer, or by any other type of gratuitous transfer, or fiduciary holding fiduciary power, may disclaim all or part of said property, interest, or power by means of signed, irrevocable, unqualified written refusal, describing what is being disclaimed and extent thereof. Writing must be received by transferor, legal representative, holder of title in property, or if property is realty and part of decedent's estate, filed with court (where proceedings are or will be pending) no later than nine months after date of transfer or date person disclaiming attains age of 21. Disclaimer effective only if in writing and person disclaiming has accepted no benefit. (31-1-103).

**Effect of Renunciation.**—Unless otherwise provided in decedent's will, interest disclaimed passes as if disclaiming person died intestate and predeceased decedent. Property or powers passing pursuant to power of appointment pass as if person disclaiming

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**DESCENT AND DISTRIBUTION . . . continued**

predeceased donee of power. Disclaimer relates back for all purposes to date of decedent's death, date of gift, or date of death of donee of power. If disclaimer is made by fiduciary, disclaimer shall be binding on any successor fiduciary. (31-1-103).

**Renunciation barred** under 31-1-103 by: (1) Assignment, conveyance, encumbrance, pledge or transfer of any part of property or contract therefor; (2) written waiver of disclaimer or any acceptance of property; (3) sale or other disposition of property by judicial process if made before expiration of period in which disclaimer may be made.

**Soil conservation payments** due from U.S. to decedent at time of death go: (1) To surviving spouse for use of spouse and minor children; (2) if no surviving spouse, to guardian of minor children; (3) if no surviving spouse or minor children, according to decedent's will or, if none, according to usual rules of distribution. (31-1-107).

**Half Blood.**—Inherit as if of whole blood. (31-2-107).

**Posthumous children**, if conceived before decedent's death but born thereafter, inherit as if born in decedent's lifetime. (31-2-108).

**Illegitimate child** deemed child of mother and also deemed child of father if natural parents participate in marriage ceremony (even if void) or if paternity established by adjudication before death of father (or by clear and convincing proof afterwards). Father and his kindred inherit from or through child only if father has openly treated child as his and has not refused to support child. (31-2-105). If child chooses to assert right to inherit by virtue of relationship with natural father after death of father, he must assert right within time allowed for creditors to claim rights against estate. (937 S.W.2d 803 [1996]).

**Adopted Children.**—See category Family, topic Adoption.

**Determination of Heirship.**—Affidavit duly sworn to on personal knowledge of affiant, setting forth facts relative to relationship of anyone to persons deceased (or containing facts pertinent to be ascertained in determining persons legally entitled to any part of estate of such decedent at time of his death), may be recorded in office of register of deeds in any county. Such affidavit or certified copy thereof is prima facie evidence of the facts stated therein in any proceeding (in any state court in county where recorded) involving right of persons to succeed to, or receive property of, decedent named in affidavit. Any person aggrieved by recording of such affidavit may, within six years, sue in chancery court challenging verity thereof, and in such proceeding, burden of proving truth of statements therein is on defendant. (30-2-712).

**Advancements**, whether by settlement or otherwise, in the lifetime of the deceased, or by testamentary provision, must be collated and brought into contribution in the partition and distribution of the estate; those in real estate, first in the partition of real estate, and those in personal estate in the distribution of the personal estate. Property given by decedents during their lifetime to their children is treated as advancement only if decedent declared in contemporaneous writing, or child acknowledged in writing, that gift was advancement, or such writing otherwise indicates that gift was intended to be taken into account in computing division and distribution of estate. Should value of advancement in real estate exceed child's share, overplus must be collated and brought into contribution in distribution of personal estate; and should value of such advancements in personal estate exceed share of such child in personal estate, excess must be brought into contribution in partition of real estate. (31-5-101-05).

**Escheat.**—If decedent, whether or not domiciliary, leaves no one to take estate or part thereof by will, and no one other than government or government agency or subdivision to take estate or part thereof by intestate succession, same escheats to state as of time of death. Foregoing applies to: (a) Realty located in state; (b) tangible personalty, wherever located at death, which was customarily kept in state prior to death; (c) tangible personalty subject to administration in state, subject to limited rights of other states; (d) intangible personalty if decedent was state domiciliary at death; (e) intangible personalty subject to administration in state, subject to limited rights of other states. Administrators, executors, trustees, guardians and other fiduciaries must report possible escheat property to State Treasurer. State Treasurer receives escheat property and reports thereon and is necessary party to suits regarding same. (31-6-101 et seq.). Any person claiming any interest in property of any decedent may file claim with State Treasurer under provisions of 66-29-101 et seq., governing disposition of unclaimed or abandoned property. (31-6-119).

See also categories Business Regulation and Commerce, topic Banks and Banking, subhead Unclaimed Deposits; Estates and Trusts, topic Wills, subhead Unclaimed Legacies; Property, topic Absentees, subhead Escheat.

**EXECUTORS AND ADMINISTRATORS:**

**Jurisdiction** to appoint personal representative is in chancery court (16-16-201) or probate court of county where decedent had his usual place of residence. In case decedent had fixed places of residence in more than one county, court of either county may grant letters. Estates of nonresidents are administered where assets are found. (30-1-101 and 30-1-103).

For listing of activities performed by clerk and master of chancery court, see category Courts and Legislature, topic Courts, subhead Probate Courts.

Where no one has applied (or can be procured) to administer estate of decedent in county where he resided or where he had property at time of his death, chancery court, after six months has expired, may appoint administrator. (30-1-301).

**Preferences in Right to Administer.**—Surviving spouse is preferred, and thereafter preference is to next of kin, then to creditor filing claim. Court decides between more than one next of kin applying. (30-1-106).

**Executor appointed under foreign will** may qualify in Tennessee on admission of foreign will to probate here (see topic Wills), but must give bond here. (32-5-102).

**Eligibility and Competency.**—Nonresident person (or corporation not authorized to do business in state and not maintaining office in state) may not serve as personal representative unless another person residing in state (or corporation authorized to do business and maintaining office in state) is also appointed. Exceptions include: (1) bank or trust company organized and doing business under laws of any state or U.S. territory, including District of Columbia, or national bank or trust company, duly authorized so to

act, may serve in this state as fiduciary, when and to extent that state, territory or district in which fiduciary is organized or has principal place of business grants fiduciary authority to Tennessee bank or Tennessee trust company; (2) spouse, parent, child, grandchild, or sibling of decedent may serve as personal representative if residue of estate is for sole benefit of one or more such family members; (3) any person who is decedent's spouse, parent, grandparent or issue of grandparent of decedent or of decedent's spouse, or spouse of any such relative, may serve as personal representative of estate of decedent regardless of residence of personal representative and whether nonresident is beneficiary of estate, and any other nonresident may serve as personal representative of estate of decedent with approval of court; and (4) certain nonresident trust companies may serve if they have office in Tennessee and, either (i) accept deposits at such office or (ii) meet definition of trust institutions under 12 U.S.C. §1841(c)(2)(D) and are subsidiaries of Bank Holding Company which has subsidiary which accepts deposits in Tennessee. (30-1-116; 35-50-107). Any resident or nonresident person may serve as personal representative of estate of decedent. (35-50-107).

Married woman may act as executrix or administratrix.

**Qualification.**—An executor or administrator must make oath before the clerk of court or notary public for faithful performance of his duties. (30-1-111). Executor or administrator must give bond, with two or more sufficient individual sureties or corporate surety. (30-1-201).

Bond of executor or administrator is fixed by the court in penalty of not less than value of estate nor more than double value of estate. (30-1-201).

**Exemption from Bond.**—Personal representative may be exempted from posting bond if excused by will or by other exceptions set forth in statute. (30-1-201).

**Special Kinds of Administration.**—Administrators d. b. n., and d. b. n. c. t. a. are appointed in the probate court. An administrator ad litem is appointed where a will is the subject of contest or litigation. (30-1-108). Administrator ad litem may be appointed in any cause where there is no personal representative or personal representative is interested adversely; and no bond is required of administrator ad litem, except where it becomes necessary for him to take charge of assets and property. (30-1-109).

**Public Administrator.**—Court may appoint public administrator and public guardian. (30-1-401).

**Inventory and Appraisal.**—Executor or administrator must, within 60 days after entering on administration: (1) Notify beneficiaries or distributees by mailing copy of will or pertinent paragraphs thereof or copy of letters of administration; (2) file affidavit that copies have been mailed or that efforts have been made to locate beneficiaries or distributees to whom copies were not sent; (3) make complete and accurate inventory of probate estate; (4) return same to clerk and verify it under oath before clerk or any person authorized to administer oaths either in or out of Tennessee; and (5) file affidavit that Bureau of TennCare has been notified of decedent's death. (30-2-301, am'd 2006, c. 639).

**General powers and duties** cover handling of personal estate. Special orders are usually obtained for protection of the personal representative. Court may order continuance of decedent's business for nine months, and thereafter upon proper showing. (30-2-322).

**Marital Deduction.**—Executor or administrator may not, by act or omission, cause defeat of U.S. estate or gift tax marital deduction if decedent's express intent was to take advantage of same. (35-50-112).

**Notice to Creditors.**—Within 30 days after issuance of letters, clerk of court where estate is administered must, in the name of the personal representative, give notice by two consecutive weekly notices in newspaper in county where administration is granted, or if no newspaper, by written notices posted in three public places in such county, one being usual place for posting notices at courthouse. Personal representative must mail or deliver notice to all creditors of decedent of whom personal representative has actual knowledge or who are reasonably ascertainable, except for creditors who have filed claim, been paid, or issued release. (30-2-306).

**Presentation of Claims.**—Generally, within four months from date of notice, all creditors (resident or nonresident, sui juris or not, whether claims are due or not, and whether estate is solvent or not) must file their claims in triplicate with clerk of court in which estate is being administered. If creditor receives actual notice less than 60 days before expiration of four months from date of notice to creditors (or after expiration of four months from date of notice to creditors and more than 60 days before date which is 12 months from decedent's date of death), such creditor's claim is barred, unless filed within 60 days from date of receipt of actual notice. If creditor receives actual notice less than 60 days before date which is 12 months from decedent's date of death (or receives no notice), such creditor's claim is barred, unless filed within 12 months from decedent's date of death. (30-2-307). If claim is on written instrument, original instrument or copy thereof that is attested by clerk of court as true copy it must be filed; if on judgment, copy thereof that is certified by clerk of court rendering judgment must be filed; if on open account, itemized statement thereof must be filed. Such filing arrests any statute of limitations applicable. Creditor who has timely filed claim against estate may file amended proof of claim within 30 days of date exception to claim is filed or expiration of exception period. (30-2-307).

**Proof of Claims.**—Claim must be verified by affidavit stating that it is just and valid obligation of decedent's estate; that neither claimant nor any person in his behalf has received payment either in whole or in part, except as credited thereon; and that no security has been received therefor, except as stated in claim.

**Form***Affidavit to Claim Against Estate*

State of Tennessee  
County of . . . . .

Estate of . . . . .  
Deceased.

Personally appeared before me, the undersigned authority, duly commissioned and qualified . . . . . who states on oath that the annexed claim amounting to \$ . . . . . is a correct, just and valid obligation of the estate of . . . . . deceased; that neither the claimant, nor any other person on his behalf, has received payment in whole or in part thereof, except such as is credited thereon, and that no security has been received therefor, except as stated thereon.

**EXECUTORS AND ADMINISTRATORS . . . continued**

(Signed) . . . . .

Sworn to and subscribed before me, this the . . . . day of . . . . , (year). . . .  
 . . . . .  
 Deputy Clerk

**Approval or Rejection of Claims.**—Anybody interested, including personal representative, may file in triplicate exceptions to any claims with detailed explanations. Validity of claim will then be determined by court at hearing duly set and without formal pleadings and, if creditor files timely amendment, exception may be filed within 30 days of date amendment was filed or expiration of exception period. (30-2-314).

**Payment of Claims.**—After expiration of four month period, representative may wait 30 days before paying any claims. If sufficient assets are available, after retaining assets to meet contingent liabilities, uncontested and allowed claims must be paid within 30 days after expiration of seven months following date of notice of creditors. (30-2-316 et seq.).

**Priorities.**—Claims have priority in following order: (1) Costs of administration, including fiduciary bonds and compensation of representative and counsel; (2) funeral expenses; (3) taxes, federal and state including claims by Bureau of TennCare; (4) claims of general creditors. (30-2-316-17, am'd 2006, c. 639).

**Sales.**—Real estate may be sold at instance of personal representative or creditor where personal property is insufficient to pay debts and expenses, upon petition to court. Beneficiaries and encumbrance holders must be impleaded. Creditors need not be notified. Hearing is according to forms of chancery court. (30-2-402).

Where personal representative's plea of "fully administered" is sustained, heirs must be summoned by scire facias before creditor may proceed against real estate. (30-2-410).

**Actions by Representative.**—Personal representative is proper party to file suit on claims of decedent's estate. (562 S.W.2d 827 [1977]). Next of kin may sue in own name where personal representative is dead or has resigned, or there is no one to represent estate. (30-2-714).

**Actions Against Representative.**—Personal representative has three months from qualification to ascertain situation without being liable to suits. (30-2-501). Except for claims for state taxes, claims and demands not filed within periods required by 30-2-306-09 (or, if later, in which suit is not brought or revived before end of 12 months from decedent's date of death) are barred. (30-2-310). Intervention of term between death and qualification of personal representative does not work abatement of suit. If no personal representative, suit may be revived against heirs. (20-5-104).

**Allowances.**—Surviving spouse of intestate, or spouse electing against decedent's will, is entitled to certain property enumerated in 30-2-101, exempt from claims against estate. Such property belongs to unmarried minor children if there is no surviving spouse. In addition, surviving spouse of intestate, or spouse electing against decedent's will, is entitled to one year's allowance out of estate, exempt from claims against estate. If no surviving spouse, allowance made to unmarried minor children. (30-2-102). Employers are authorized to pay to surviving spouse any wages or salary due decedent, up to \$10,000, which will be chargeable against allowance. Employee may designate beneficiary to receive payment for any wages or salary due such employee upon death. (30-2-103).

**Intermediate Accountings.**—Personal representatives must file accounting within 15 months from date of qualification and once every year thereafter until estate is closed, unless decedent by will, or all distributees by consent, waive accounting. (30-2-601). In connection with accounting, personal representative shall submit with accounting original of each cancelled check written on estate account unless personal representative is bank or savings and loan institution. (30-2-601).

**Final Accounting and Settlement.**—After all legal liabilities of estate have been paid and balance delivered to those entitled thereto, or after administration as provided in event of insolvency, personal representative must make and file with court final settlement. (30-2-701). Notice must be given to interested parties resident within county (or their attorneys) at least five days before time of taking accounting. Nonresidents are notified by ten days notice posted at courthouse door or published in newspaper in county. Notice may be waived in writing by person having interest in estate. (30-2-603). Notice shall be published in newspaper in county if addresses of heirs, distributees or other interested persons are unknown. (30-2-603).

**Distribution.**—On payment of all uncontested claims and making provision for administration expenses, tax obligations and claims that are contingent or not yet due, representative must pay balance in his hands to distributees, beneficiaries, etc., unless granted additional time by court or by instrument under which he acts. (30-2-701). Federal estate tax may be prorated among beneficiaries. (30-2-614).

**Distribution of Share Not Feasible.**—If distributee cannot be located, personal representative must deliver share to county trustee. If distributee is infant or lunatic, court will appoint guardian to receive share, if practicable. If not practicable, share must be delivered into state treasury, unless distribution ordered pursuant to 34-1-107. (30-2-702). Shares delivered into state treasury are held in trust for distributee. (30-2-703). Property delivered to state treasurer may be claimed under provisions governing disposition of unclaimed or abandoned property. (30-2-703).

**Liabilities.**—Personal representative is liable for devastavit as at common law.

**Compensation of Representative.**—Court allows reasonable compensation to representative. (30-5-134).

**When Administration Unnecessary.**—See subhead Small Estates, infra.

**Small Estates.**—Where wages due deceased employee are \$10,000 or less, employer may pay entire sum to surviving spouse of deceased, same to be chargeable against year's support, homestead and other claims and exemptions of widow. (30-2-102-03). After 30 days from death, depositor banks may pay deposits under \$10,000 to executor named in unprobated will, if known, or, in order of priority, to (1) creditor for funeral expenses; (2) creditor for expenses of last illness; (3) surviving spouse; (4) next of kin. (45-2-708). Six months from death, where no administration applied for, any person holding less than

\$10,000 for decedent may pay to surviving spouse and, if none, to guardian of unmarried minor children. (30-2-103).

**Optional Method of Administration.**—Where value of estate is \$25,000 or less, one or more legatees or devisees (if will was left) or heirs or next of kin (if no will was left) (and, in either testate or intestate estate, any of decedent's creditors who proves such creditor's debt on oath before court) must file with clerk of court, after expiration of 45 days from decedent's death, or sooner upon motion and for good cause shown, affidavit stating: (1) whether decedent left will; (2) list of unpaid debts and creditors' names, addresses, and amounts due; (3) itemized description and value of decedent's property, name and address of each known to possess any property of decedent, and schedule of all insurance on decedent's life payable to estate; (4) name, age, address and relationship, if any, of each devisee, legatee, or heir entitled to receive. Debtor of estate must be furnished copy of affidavit and must pay indebtedness upon demand of affiant. If decedent left will, property passes accordingly. If he left no will, property passes as provided by law. Affiant and those to whom property is delivered by him remain liable, to extent of value of property received, to unpaid creditors and those having prior claims. Those in possession of decedent's property refusing conveyance to affiant may be compelled to execute in court of competent jurisdiction. Affiant shall file bond with sufficient sureties. (30-4-101-05). Affiant and sureties automatically discharged from liability if, within two years from filing of affidavit, no petition for probate or appointment of administrator or claim against estate has been filed. (30-4-103). Any competent adult who is not legatee, devisee, personal representative or heir may serve as affiant if all adult legatees, devisees or personal representatives (or heirs if no will) consent in writing. (30-4-103, am'd 2006, c. 813).

**Foreign Executors or Administrators.**—Foreign administrator must qualify in the state and give his address to the county clerk. He may be sued as a resident. If the officer is unable to find him, notice is served upon the clerk who notifies representative by registered mail. (30-1-104). Unless so qualified, foreign administrators and executors have no right to administer assets of estate in this state, and can neither sue nor be sued in this state. (169 S.W.2d 671 [1940]; 78 Tenn. 93 [1882]).

**Uniform Fiduciaries Act** adopted. (35-2-101 et seq.).

**Uniform Principal and Income Act (1997 version)** adopted. (35-6-101 et seq.). Tennessee version of this act contains few minor variations from uniform act. See 35-6-104(b), 35-6-104(g), and 35-6-107.

**Distribution if Abroad.**—No provision with respect thereto.

**Uniform Simplification of Fiduciary Security Transfers Act** adopted. (35-8-101 et seq.). Not repeated by Uniform Commercial Code. (47-1-109).

**Uniform Anatomical Gift Act** adopted. (68-30-101 et seq.). §§2 and 3 of Uniform Anatomical Gift Act of 1987, amending The Uniform Anatomical Gift Act of 1968 adopted with minor variations, including, but not limited to, right of minor children of deceased to authorize anatomical gift in absence of surviving spouse or adult son or daughter. (68-30-114-116).

**TRUSTS:**

**Uniform Probate Code** has not been adopted.

Uniform Trust Code has been adopted with minor changes. (35-15-101 et seq.).

**Kinds.**—Express, resulting and constructive trusts are recognized.

**Eligibility and Competency.**—Nonresident individual or corporation not authorized to do business in state cannot serve as trustee of corporate or personal trust, personal representative, guardian or conservator unless resident fiduciary, individual or corporate, also appointed. Exceptions include: (1) bank or trust company organized and doing business under laws of any U.S. state or territory, or national bank or trust company, when and to extent state or territory in which organized or has principal place of business grants fiduciary authority to bank or trust company of Tennessee; (2) decedent's spouse, parent, issue, grandparent or issue of decedent's grandparent or decedent's spouse's grandparent, or spouse of any such relative, may serve as personal representative of estate regardless of residence and regardless of whether beneficiary of estate; (3) any person, with court approval, may serve as personal representative, regardless of residence; (4) corporation authorized to exercise fiduciary powers can serve as trustee of inter vivos trust; (5) any individual may serve as trustee of trust regardless of residence; (6) person related by blood or marriage may serve as guardian of minor or conservator of incompetent, regardless of residence; (7) any person or corporation authorized to exercise fiduciary powers may serve as agent or attorney-in-fact under power of attorney, regardless of residence; and (8) certain nonresident trust companies may serve if they have office in Tennessee and either (i) accept deposits at such office or (ii) meet definition of trust institution under 12 U.S.C. §1841(c)(2)(D) and are subsidiaries of bank holding company which has subsidiary which accepts deposits in Tennessee. (30-1-116; 35-50-107).

**Qualification.**—Neither oath nor bond required of trustee. All nonresident trustees must appoint Secretary of State as agent for service of process and consent to jurisdiction and service under 20-2-214-19. (35-50-107).

**General Powers and Duties of Trustees.**—Uniform Prudent Investor Act adopted, with minor deviations from uniform act. (35-14-101 to 35-14-114).

**Co-fiduciaries** may act by majority vote. (35-50-114). Trustees who are beneficiaries are entitled to limited power. (35-50-124).

**Marital Deduction.**—Trustee may not by act or omission cause defeat of U.S. or state estate or gift tax marital deduction if decedent's or settlor's express intent was to take advantage of same. (35-50-112).

**Charitable Trusts.**—No trust having for its object aid of poor or promotion of religion, morality or education will fail because of attempt to create perpetuity or because of lack of trustee. In case there is no provision, or insufficient provision, for trustee, or in case of failure of trustee to carry out and keep alive trust provisions, trustee may be appointed or vacancy filled. (35-15-704).

**Insurance trusts** are valid and effective as to all property not affected by exercise of reserved rights, if any. Trust instrument need not be executed like will. (35-50-102).

See note at head of Digest as to 2007 legislation covered.

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**TRUSTS . . . continued**

(Gifts to charities are governed by Tennessee Charitable Beneficiaries Act of 1997. [35-13-101].)

Life insurance may be made payable to trustee named in inter vivos trust agreement or trustee named by will. Proceeds not subject to insured's debts nor considered part of insured's estate for administration purposes. Proceeds may be commingled with other assets of trust. (35-50-103).

**Uniform Common Trust Fund Act** adopted. (35-4-101 et seq.).

**Uniform Principal and Income Act (1997 version)** is in force. (35-6-101 et seq.). Tennessee's version of this act has minor deviations from uniform act. See 35-6-104(b), 35-6-104(g), 35-6-106, and 35-7-107.

**Investments** for trust funds are provided by statutes, which courts have held to be permissive and not mandatory. (35-3-101 through 35-3-116). Uniform Prudent Investor Act adopted, with minor deviations from uniform act. (35-14-101 et seq.).

**Securities in Name of Nominee.**—Trustees owning stocks or registered bonds authorized to hold them in name of nominee. (35-3-118).

**Gifts to Minors.**—See category Family, topic Infants.

**Accounting.**—Trustee must keep beneficiaries reasonably informed about administration of trust. (35-15-813).

**Uniform Fiduciaries Act** adopted. (35-2-101 et seq.; 67-6-102).

**Uniform Simplification of Fiduciary Security Transfers Act** adopted. (35-8-101 et seq.). Not repealed by Uniform Commercial Code. (47-1-109).

**Compensation.**—Trustee is entitled to reasonable compensation taking into account size of trust, nature and amount of assets, income produced, time and responsibility required, management or sale of realty, involvement in litigation, etc. (35-15-708). If terms of trust specify compensation, trustee is entitled to be compensated as specified, but court may allow more or less compensation if duties of trustee are substantially different from those when trust was created, or compensation specified by terms of trust would be unreasonably low or high. (35-15-708).

**Accumulations.**—No statutory provisions.

**Perpetuities.**—See category Property, topic Perpetuities.

**Pour Over Trusts.**—See topic Wills, subhead Bequests and Devises to Inter Vivos Trusts.

**Renunciation.**—Only statutory provision is 31-1-103, discussed in topic Descent and Distribution, subhead Renunciation or Disclaimer of Succession.

**Incorporation by Reference.**—Certain specifically enumerated fiduciary powers may be incorporated into testamentary and inter vivos trusts by reference to this act. (35-50-110).

**Uniform Testamentary Additions to Trusts Act** adopted. (32-3-106).

**Tennessee Investment Services Act of 2007, adopted 2007 (35-16-101 et seq.)** allows settlor to establish investment services trust ("IST"). IST is irrevocable, self-settled trust, which if trust complies with provisions of Act, will protect assets from claims of transferor's creditors as well as creditors of beneficiaries. Protection is available even though transferor retains certain powers or control over disposition of income of trust.

**Uniform Prudent Management of Institutional Funds Act** has been adopted. (35-10-201 et seq.). The Act incorporates provisions of modern portfolio theory from Uniform Prudent Investor Act and uniform Principal and Income Act which allows for more efficient management of funds for charitable purposes.

**WILLS:**

Persons of sound mind married or unmarried over 18 years of age may execute will. (32-1-102).

In will construction trial, parol evidence is admissible to explain latent, but not patent, ambiguity. (933 S.W.2d 481 [1996]).

As to contracts to make or not to make or revoke will, see *infra*, subhead Joint and Mutual Wills.

**Testamentary Disposition.**—No limitations except that soil conservation payments due to testator do not pass under will if there is surviving spouse or minor children. (31-1-107).

**Execution.**—Testator may execute a will other than a holographic or nuncupative will by signing it himself, or acknowledging his signature already made, or directing someone else to sign his name for him in his presence. In any of the above instances the act must be done in the presence of two or more attesting witnesses. Testator must, at time of subscribing or acknowledging his name, declare to attesting witnesses that instrument is his will and request them to attest it. Attesting witnesses must sign in presence of testator and in presence of each other and at testator's request. (32-1-104).

**Attestation Clause.**—No specific form is prescribed. The following form is frequently used:

**Form**

We, the undersigned subscribing witnesses, do hereby certify that we witnessed the foregoing Will of . . . . ., at his request, in his presence, and in the presence of each other, and that he requested the same in our presence and in the presence of each of us, declaring the same to be his Last Will and Testament.

This the day and date hereof.

Witness

Witness

**Affidavit of attestation** by witness before any officer authorized to administer oaths in or out of state stating facts to which affiant witness would have to testify in court to prove will may be written on or appended to will at testator's request or, after testator's

death, at request of executor or any person interested under will. Affidavit not required but, if made, must be accepted by court of probate in lieu of affiant witness' testimony in person at probate proceeding when will not contested. (32-2-110).

No affidavit form prescribed. Following form frequently used:

**Form**

State of . . . . ., County of . . . . . We, . . . . . and . . . . ., on oath state:

We are the subscribing witnesses to the attached written instrument dated the . . . . . day of . . . . ., (year) . . . . ., which purports to be the Last Will of . . . . . ("Testator").

On this date Testator, in our presence, declared the instrument to be his Will, signed the instrument in our presence, and requested that we attest his execution thereof; whereupon, in the presence of Testator and of each other, each of us signed our respective names as attesting witnesses. At the time of the execution of the instrument Testator was over the age of 18 years and appeared to be of sound mind.

This Affidavit is made and signed at the request of [Testator, etc.].

This . . . . . day of . . . . ., (year) . . . . .

Witness

Witness

Subscribed and sworn to before me this . . . . . day of . . . . ., (year) . . . . ., etc.

**Holographic wills** made subsequent to taking effect of the Model Act are recognized and governed by 32-1-105. (As to holographic wills made on or prior to Feb. 15, 1941, see 32-1-110.) It is not necessary for witness to sign holographic will but signature and all its material provisions must be in handwriting of testator and his handwriting must be proved by two witnesses. (32-1-105).

**Living wills** are recognized and governed by 32-11-101 et seq. Physician who cannot honor terms of will required to make every reasonable effort to transfer patient to physician who will honor will, and compliance with will does not constitute homicide or suicide, and does not subject physician or health care provider to criminal or civil liability. (32-11-108). Living will does not affect existing life insurance policies or sale of such policies. (32-11-110). Sample form provided. (32-11-105).

**Nuncupative Wills.**—Required elements and manner of making wills are governed by 32-1-106. For method of proving nuncupative wills see 32-2-106.

**Joint and Mutual Wills.**—Contract to make will or devise, or not to revoke will or devise, or to die intestate, can be established only by: (1) Will stating material provisions of contract; (2) express will reference to contract and evidence of its terms; (3) writing signed by decedent evidencing contract. Execution of joint will or mutual wills creates no presumption of contract to make or to refrain from revoking will. (32-3-107).

**Revocation.**—Will or any part thereof is revoked by subsequent will revoking prior will or its parts expressly or by inconsistency; document of revocation, containing express revocation, executed with all formalities of attested, or holographic, will, but not nuncupative will; physical destruction with intent to revoke; or subsequent marriage of testator and birth of child. Divorce or annulment of subsequent marriage does not revive prior will. (32-1-201). If testator is divorced or marriage annulled after executing will, devise or bequest to spouse or appointment of spouse as executor, trustee, conservator or guardian is revoked unless will provides otherwise. Property passes as if spouse failed to survive testator. (32-1-202).

**Revival.**—Revival of a former will is a question of intent; destruction of a later will does not of itself revive a former will. (260 S.W.2d 304 [1953]).

**Testamentary Gifts to Subscribing Witnesses.**—Will is not invalidated by fact that attesting witness takes gift under will; but unless will is also attested by two disinterested witnesses, interested witness forfeits so much of his gift as exceeds share to which he would have been entitled in case of intestacy. (32-1-103).

**Bequests and Devises to Inter Vivos Trusts.**—Uniform Testamentary Additions to Trusts Act adopted. Trust instrument may be amended subsequent to date of testator's will. (32-3-106).

**Power of Appointment.**—Holder of power of appointment by will may exercise such power subject to certain conditions. (32-3-110).

**Testamentary Guardians.**—See category Family, topic Guardian and Ward.

**Will Depositories.**—Court having probate jurisdiction in county where testator lives may, upon payment of \$5 fee, receive for safekeeping testator's written will. Deposit does not submit will to probate or prevent testator from revoking or amending same, whether or not by means of another deposited instrument. (32-1-112).

**Probate.**—Domestic will may be probated in common or solemn form. Probate in common form is on petition of any interested party to court having probate jurisdiction (see category Courts and Legislature, topic Courts, subhead Probate Courts) and proof of execution by at least one of subscribing witnesses, if living. No notice is necessary, but will so probated may be contested by any interested party, contest being actually tried in circuit court. (32-2-101 et seq.).

Probate in solemn form (which is seldom used) is on notice to all interested persons and the will must be proved by all living witnesses who can be found and by such other persons as may be produced to support it. (760 S.W.2d 208 [1988]). Persons notified of proceeding must come before court having probate jurisdiction and give notice of their desire to contest will not later than time when it is offered for probate, in which case contest is heard in circuit court. Persons notified and who fail to give notice of their desire to contest will are bound by probate in solemn form and may not later contest will. (26 Tenn. 394 [1846]).

**Proof of Wills Out of Court.**—See subhead Affidavit of Attestation, *supra*.

**Self-proved Wills.**—No provision.

**Contest.**—Circuit court has jurisdiction of will contests. (16-10-103). Court having probate jurisdiction sends certificate of contest and original will to appropriate court and

See note at head of Digest as to 2007 legislation covered.

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**WILLS . . . continued**

requires contestant to enter \$500 bond (32-4-101), or make pauper's oath (32-4-103). Issues are tried by jury, and verdict and judgment upon validity of will are certified to court having probate jurisdiction to be recorded with will, if established. (32-4-107).

Voluntary dismissals are not permitted in will contest proceedings. (62 S.W.3d 139 [2001]).

Any court of record having probate jurisdiction has concurrent jurisdiction with Circuit Court of will contests. (32-4-109).

**Limitation of Actions.**—Proceedings to set aside probate of any will, however probated, must be brought within two years from entry of order admitting will to probate. Limitation tolled for persons under age of 18, or of unsound mind at time cause of action accrues, until disability removed. (32-4-108).

**Legacies.**—See topic Executors and Administrators, subhead Distribution.

**Right of Specific Legatees and Devisees.**—Right to property which is subject of specific legacy or devise vests at death of testator and such rights so vests in proceeds of sale if property was sold during testator's lifetime and contrary intention is not manifest during testator's lifetime. (32-3-111).

**Unclaimed Legacies.**—Where one or more payees or distributees of an estate cannot be located or refuses to receive share due such distributee, personal representative of estate of any deceased person must pay or deliver share due any such distributee to state treasurer and show same in his report and settlement. (30-2-702). Such shares may be claimed under provisions governing abandoned or unclaimed property, 66-29-101 et seq. See also topic Executors and Administrators, subhead Distribution of Share Not Feasible.

**Lapse.**—Whenever the devise or legatee to whom, or any member of a class to which, an immediate devise or bequest is made, dies before the testator, or is dead at the making of the will, leaving issue which survives the testator, said issue takes the estate or interest so devised or bequeathed, unless a different disposition thereof is made or required by the will. (32-3-105).

**Children.**—A child born after the will is made and not provided for in the will nor disinherited (expressly or by implication) therein and not provided for by settlement made by testator in his lifetime takes as though deceased parent had died intestate, with legatees and devisees contributing ratably to raise child's share. (32-3-103).

Child living when will was executed and not mentioned therein has no rights in estate, except certain statutory exemptions if child is minor at time of father's death. (30-2-101-105).

**Election.**—Surviving spouse may elect to take elective share of decedent's estate. Percentage of net estate surviving spouse takes under elective share is determined by total number of years surviving spouse and decedent were married. This election is made by filing in court where will probated and mailing or delivering to personal representative within later of nine months after decedent's death or six months after decedent's will probated petition for elective share. (31-4-101-103). If litigation pending as to title of surviving spouse to property devised or bequeathed by decedent spouse's will, deadline for filing election petition may be extended one year upon application to court where will probated. (31-4-102). If at time will probated, surviving spouse has been adjudged incompetent or is under 18, surviving spouse's legal representative or next friend may initiate election proceeding by petition filed in court where will probated within one year of probate. (31-4-104).

Conveyance made fraudulently with intent to defeat election is voidable and includable in decedent's net estate under 31-4-106(b). (31-1-105).

**Contribution.**—Proceeding may be maintained against fewer than all against whom relief could be sought, but no person is subject to contribution in greater amount than he would have been if relief sought against all subject to contribution. (31-4-102).

**Renunciation.**—See topic Descent and Distribution, subhead Renunciation or Disclaimer of Succession.

**Foreign Executed Wills.**—Foreign will executed in compliance with laws of this state, or, if written, in compliance with laws of place where executed or laws of testator's domicile at time of execution, is given same force and effect as if executed in this state in compliance with its laws. (32-1-107). Foreign will not probated in another jurisdiction may be probated here in any county where real estate passed by will is located. Such probate may be made upon true copy of will if original cannot be produced in court of this state. Such probate here has same effect as to said real estate as probate here of will of resident, but none of these provisions is to prevent proving of any such will as at common law and without probate. (32-5-110).

**Foreign Probated Wills.**—Uniform Act adopted. (32-5-101-05). Probate has same force and effect as original probate of domestic will. Such probate may be in common or solemn form; if latter, there must be hearing after such notice as is required for probate of domestic will in solemn form. (32-5-101-03). Foreign probate is conclusive as to devises of personality, but devises of realty may be contested. (32-5-103).

**Revised Uniform Anatomical Gift Act** has been adopted with minor changes. (68-30-101 et seq.). Donor may make anatomical gift by authorizing statement or symbol indicating that donor has made anatomical gift to be imprinted on donor's driver's license, in will, living will, durable power of attorney for healthcare or other instrument signed by individual complying with term of Title 32, Chapter 11 or Title 34, Chapter 6, Part 2, or advance directive under Title 68, Chapter 11, Part 18. Donor may also make anatomical gift during terminal illness or injury by any form of communication addressed to at least two adults, at least one of whom is disinterested witness. (68-30-105).

**Simultaneous Death.**—See topic Death, subhead Survivorship.

**Testamentary Trusts.**—See topic Trusts.

requirement does not apply to: (1) Members of military service who lived or maintained regular place of abode in state for six consecutive months prior to entering military service; (2) actual resident seeking to adopt child who is related. (36-1-115). Any person, regardless of place of birth, residence, or age may be adopted. (36-1-107).

No person, agency, association, institution or corporation may send child into state for adoption without written consent of Department of Children's Services which may require bond of \$1,000 to \$10,000. Child may not be placed outside of state for adoption without written consent of said department. (37-5-401; 37-5-403).

**Consent Required.**—Legal and biological parent or parents and guardian of person sought to be adopted must be made parties to adoption proceedings or to separate proceedings seeking termination of those rights, and those rights must be terminated by court, unless parent or guardian has surrendered parental or guardianship rights, executed parental consent which has been confirmed by court, or waived rights pursuant to 36-1-111, or unless parent's or guardian's rights have already been terminated by court order. (36-1-117). Signing of waiver of interest and notice by alleged biological father, in form set forth in statute, does not irrevocably terminate alleged father's rights and support obligations unless adoption actually takes place; rather, it waives his rights to child and to notice of or involvement in adoption, custody or guardianship proceedings. Said waiver cannot be revoked. (36-1-111).

If putative biological father has filed petition to establish paternity of child, legitimation proceedings must be concluded before adoption court takes any action to determine whether to grant adoption. (36-1-117). If petition for legitimation is granted, parental rights of father must be terminated as provided in 36-1-113 or as otherwise provided by law, or he must execute surrender (36-1-111), file parental consent or cosign petition for adoption before court may order adoption. If legitimation petition is not granted, adoption may proceed without further need to terminate rights of that putative father. (36-1-117). Parental rights of putative biological father who has not filed petition to legitimate (but has been identified as biological father in one of certain specified ways), must be terminated by surrender, parental consent, termination of parental rights pursuant to 36-1-113, or by waiver of interest before adoption may proceed. (36-1-117).

Parent may sign petition for adoption for purpose of giving parental consent to adoption, provided petition states that parent understands that order confirming parental consent will terminate parental rights forever. However, act of signing petition will not terminate parental rights until court has entered order confirming parental consent after requiring parent to answer certain specified questions under oath. Parental consent may be revoked at any time prior to entry of this confirming order, by executing revocation form as provided in 36-1-112. (36-1-117). When child is related (as defined) to one of petitioners or is stepchild of petitioner, and legal or biological parent(s) or guardian(s) sign adoption petition as co-petitioner for specific purpose of consent to adoption, no further surrender, parental consent or termination of rights is required as to parent(s) or guardian(s) thus cosigning petition. (36-1-117).

In case of adoption of child age 14 or older, adoption court must receive child's sworn, written consent to adoption and must also receive consent and testimony from child in chambers with only child and guardian ad litem present. When person sought to be adopted is age 18 or older, only sworn, written consent of that person shall be required and no order of reference or any home studies need be issued. (36-1-117).

**Minor Parent.**—Persons under 18 may surrender child, but court shall have authority to appoint guardian ad litem for minor parent. (36-1-110).

**Surrender.**—Unless waiver exists, no surrender shall be valid unless prospective parent has physical custody of child; will receive physical custody within five days; or has right to receive physical custody upon release from health care facility. Prior to execution of parental consent, prospective adoptive parents may request home study for use in proceedings. (36-1-111). Surrender form shall state beginning and ending period for revocation and procedures for revocation. (36-1-111). Surrender proceedings governed by 36-1-111. Uniform Child Custody Jurisdiction Act shall govern jurisdiction for disposition of child and proceedings for surrender. (36-1-111). Person who executed surrender may revoke surrender at any time within ten calendar days as provided by statute. (36-1-112). Revocation of surrender governed by 36-1-112.

**Conditions Precedent.**—None prescribed.

**Jurisdiction** is in the chancery and circuit courts. (16-10-108).

**Venue** is (1) where petitioners reside; (2) where child resides; (3) where child resided when it became a public charge; or (4) location of licensed agency having child's custody or guardianship or to whom child has been surrendered. (36-1-114).

**Petition** must be personally signed by each petitioner and must be verified. Necessary averments are set forth in law. (36-1-116). Name sought to be given to child may be used instead of its original name. Only form requesting new certificate of birth by adoption and report required by law are to contain original name of child. (36-1-116).

If no prior or updated home study of prospective adoptive parents has been filed with court, and if court has not waived requirement for prospective adoptive parents related to child, court will order licensed child-placing agency or licensed clinical social worker chosen by petitioners to submit home study of petitioners and court report concerning child's circumstances and antecedents and proposed adoptive home. If petitioners are indigent under federal poverty guidelines or if child was placed with petitioners by Department of Children's Services, that Department will conduct and submit study and report. (36-1-116).

**Decree.**—Unless child is related to petitioners, no final order of adoption shall be entered before home study has been filed, petition has been on file at least six months, and final report is filed with court. This six-months' waiting period may be waived if child has resided in petitioner's home for six months and court is satisfied adoption is in child's best interest. (36-1-119, am'd 2006, c. 890). If no appeal has been taken, court must complete or dismiss adoption proceeding by entering final order within one year of filing petition, unless petitioner shows good cause why final order should not be entered. (36-1-119, am'd 2006, c. 890). If appeal is taken, proceeding must be completed by court by entering final order within nine months from final judgment upon appeal, except for good cause shown by petitioner. Final order of adoption governed by 36-1-120.

See note at head of Digest as to 2007 legislation covered.

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## FAMILY

### ADOPTION:

Any person over 18 years of age who has lived or maintained regular place of abode in state for six consecutive months may petition to adopt another person. Residence

**ADOPTION . . . continued**

**Termination of parental rights** governed by 36-1-113. Termination of parental or guardianship rights may be based upon following: (1) abandonment; (2) substantial noncompliance with foster care plan; (3) child has been removed from home of parent by court order for six months without appropriate change in circumstances; (4) parent or guardian committed severe child abuse; (5) parent or guardian sentenced to more than two years of imprisonment for conduct against another child in the home; (6) parent confined in correctional facility as result of criminal act for more than ten years and child under age eight at time of sentencing; (7) parent or guardian found guilty of, or found civilly liable for, intentional and wrongful death of child's other parent or guardian; (8) parent or guardian mentally incompetent to provide care; or (9) parental rights of one who is not legal parent or guardian may also be terminated subject to statute. (36-1-113, am'd 2006, c. 890).

**Name** may be changed in proceedings. (36-1-120).

**Effect of adoption** is to establish relationship of parent and child so that adopted child and his descendants inherit from and succeed to property rights of adoptive parents and their lineal and collateral kindred. Adoptive parents and their lineal and collateral kindred inherit from and succeed to rights of adopted child and his descendants, but only as to property acquired by child after adoption. Child under age 21 at time of adoption also shares to same extent as natural child in class gifts, by will or otherwise, not vested in interest and in possession on or prior to Aug. 24, 1995, unless terms of gift clearly indicate donor's contrary intention. No rights of inheritance between adopted child and biological parents or relatives when relationship between them has been terminated by final order of adoption. (36-1-121).

**Disclosure of adoption records** governed by 36-1-125 to 127. For certain relevant definitions, see 36-1-102. All adoption records shall be confidential and kept under seal. However, special provision is made for access to certain records of adoptions prior to Mar. 16, 1951. (36-1-126; 36-1-127).

Procedures for limited access to adoption records, for requesting contact with person identified by records, and for veto of contact by such persons are provided by 36-1-128 to 141.

**Interstate Compact on Adoption and Medical Assistance** adopted. (36-1-201 et seq.).

**Setting Aside Adoption.**—No party may question final decree of adoption directly or indirectly save by appeal duly perfected. (36-1-127).

**ALIMONY:**

See topic Divorce.

**COMMUNITY PROPERTY:**

System not in force.

**DISSOLUTION OF MARRIAGE:**

See topic Divorce.

**DIVORCE:**

This subject is governed by 36-4-101 et seq.

**Grounds for Absolute Divorce.**—(1) That either party was at marriage and still is naturally impotent; (2) that either party has knowingly entered into a second marriage, a previous one still subsisting; (3) adultery; (4) willful or malicious desertion or absence for one year without reasonable cause; (5) conviction of an infamous crime; (6) conviction of a crime which is a felony under the laws of this state and sentence to the penitentiary; (7) attempts on life of other by means showing malice; (8) refusal by wife or husband to remove to this state, without reasonable cause, and willfully absenting herself or himself for two years; (9) that woman was pregnant at time of marriage by another without husband's knowledge; (10) habitual drunkenness or abuse of narcotic drugs contracted after marriage; (11) that for continuous period of two years parties have lived in separate residences, not cohabited, and have no minor children; (12) husband or wife is guilty of cruel and inhuman treatment or conduct towards spouse as renders cohabitation unsafe and improper, which may also be referred to in pleadings as "inappropriate marital conduct"; (13) husband or wife has offered such indignities to spouse's person so as to render spouse's position intolerable, and thereby forced spouse to withdraw; (14) husband or wife has abandoned spouse or turned spouse out-of-doors for no just cause, and has refused or neglected to provide for spouse while having ability to so provide. (36-4-101). See also *infra*, subhead *Irreconcilable Differences*.

**Grounds for Legal Separation.**—Party who alleges grounds for divorce may, as alternative to filing complaint for divorce, file complaint for legal separation. Such complaint shall set forth grounds of legal separation in substantially same language as 36-4-101 and pray only for legal separation or for such other and further relief as to which complainant may be entitled. Other party may deny existence of grounds for divorce, but, unless said party specifically objects to granting of order of legal separation, court shall declare parties to be legally separated. If said party specifically objects to legal separation, court may, after hearing, grant order of legal separation notwithstanding such objection if grounds are established pursuant to 36-4-101. Court also has power to grant absolute divorces to either party if there has been order of legal separation for more than two years upon petition being filed by either party setting forth original order for legal separation and that parties have not reconciled. Court granting divorce shall make final and complete adjudication of support and property rights of parties. Court may grant absolute divorce prior to expiration of two-year period. Legal separation permits parties to cease cohabitation. Court may provide for matters such as child custody, visitation, support, and property during legal separation upon motion by either party or by agreement of parties. Party who can establish grounds for absolute divorce pursuant to 36-4-101 is entitled to absolute divorce without going through legal separation. (36-4-102).

**Irreconcilable Differences.**—Absolute divorce may be granted on this ground if respondent is served personally or, if nonresident, by mail through Secretary of State under 20-2-215. In lieu of service of process, defendant may enter into written notarized

marital dissolution agreement with plaintiff, provided agreement makes specific reference to pending divorce by court and docket number, or agreement states that defendant is aware that divorce will be filed in Tennessee. Agreement must state that defendant waives further service and waives filing answer to complaint. Such waiver of service is valid for period of 180 days from date last party signs agreement. Agreement may include alimony, in *solido* or in *future*, to either party. Signing of such agreement constitutes general appearance and answer, which gives court personal jurisdiction over defendant and which constitutes default judgment for purposes of granting divorce on grounds of irreconcilable differences. (36-4-103). Divorce cannot be granted on this ground where there has been contest or denial, unless properly executed marital dissolution agreement is presented to court. Irreconcilable differences complaint cannot be heard until 90 days after filing if there are unmarried minor children, or 60 days after filing if no such children. Ninety and 60-day periods run from filing of original complaint and not from filing of amendment to claim irreconcilable differences. (36-4-103). If defendant admits facts charged in such complaint, or complaint is taken as confessed, no further proof need be taken. (36-4-114). Divorce decree on ground of irreconcilable differences must affirmatively find that adequate written child custody and maintenance and property settlement agreement was made and must incorporate agreement into decree. (36-4-103).

**Citizenship Requirements.**—None.

**Residence Requirements.**—No length of residence required where acts committed while plaintiff a bona fide resident of this state and is so at time of filing suit. Divorce may be granted upon proper grounds arising out of state while petitioner resided out of state, provided petitioner or defendant has resided in this state six months next preceding filing of bill. (36-4-104).

**Jurisdiction.**—The circuit court has concurrent jurisdiction with the chancery court for the trial of divorce cases. (16-10-108; 16-11-110). Court may exercise personal jurisdiction over any party to action of divorce if parties lived in this state while married, notwithstanding one party's subsequent departure, provided other party still resides in this state. (20-2-222).

**Venue.**—Bill may be filed in county where parties resided at time of their separation or in which defendant resides, but if defendant is a nonresident or a convict, then in county where applicant resides. (36-4-105). Armed forces personnel or spouses who have lived in this state for one year or more presumed to be residents. Presumption is rebuttable on clear and convincing proof. (36-4-104).

**Process.**—Substituted process by publication may be had upon same grounds for which same would issue generally in chancery. (36-4-108).

**Pleading.**—Complaint shall set grounds in substantially same language as statute. Where answer filed, court shall, on defendant's motion, require complainant to set forth facts relied upon with reasonable certainty as to time and place. (36-4-106).

Complaint for legal separation shall set forth grounds therefor in substantially same language as 36-4-101 and pray for such further relief as to which complainant is entitled. In all cases where answer is filed, court shall, on motion of defendant, require complainant to file bill of particulars, stating facts relied on as grounds for legal separation, with reasonable certainty as to time and place. (36-4-106).

Complaint must state full names (including maiden name of wife), addresses, dates and places of birth, race, number of previous marriages, of both parties, date and place of marriage, number of minor children, Social Security numbers of parties, children born of marriage, and any litigation concerning custody of such children. Failure to comply with this section shall result in dismissal. (36-4-106).

Except where sole ground for divorce is irreconcilable differences, complaint must be verified by oath of petitioner "that the facts stated in the bill are true to the best of the complainant's knowledge and belief for the causes mentioned in the bill." (36-4-107).

The answer follows usual chancery practice. Cross action is permissible.

Court may require sworn statement from parties and witnesses relative to income, expenses and property interests. (36-4-116).

**Practice.**—Jury may be demanded by either party. (36-4-113). Upon written stipulation of both parties, court may, without prejudice to rights of respective parties, enter order suspending all proceedings to permit parties' attempt at reconciliation. (36-4-126).

**Judgment or Decree.**—Court may grant relief by pronouncing marriage void from beginning by dissolving it forever and freeing each party from obligations thereof, or by separation for limited time. (36-4-119).

**Alimony.**—Support, pendente lite, and upon granting absolute divorce or temporary separation, may be awarded to either spouse. Amount is in discretion of court and may include counsel fees and expenses of job training and education. Statute lists factors for consideration by court, including relative fault and intangible contributions. Act does not preclude incorporation in decree of agreement for support of spouse. In futuro alimony award may be modified on motion of either party upon showing of substantial and material change of circumstances but, upon remarriage of recipient, award automatically terminates. Where recipient lives with third person, rebuttable presumption is raised that recipient is receiving from or contributing support to that person and court should suspend all or part of alimony obligation of former spouse. (36-5-101 and 36-5-102 and 103; 36-5-121). Commissioner of Department of Human Services is expressly authorized to issue administrative order of income assignment to Commissioner of Department of Labor and Workforce Development against any wages or wage benefits to which obligor is entitled. (36-5-103).

**Division of Property of Spouses.**—Tennessee is marital property state. Upon consideration of factors listed, court may equitably divide and distribute marital property, as defined by statute (or reserve division of property until later time), without regard to fault and may divest and reinvest title and where necessary, order sale with proceeds to be divided between parties. Lien may be imposed on marital or separate property as security for support payments. Act does not affect validity of antenuptial agreement or preclude incorporation into decree of property settlement agreement between parties. Court may award home and household effects to either party but must give special consideration to parent with custody of children. (36-4-121).

**Marital Debt.**—Debts incurred by either or both spouses during marriage are marital debts. In allocating marital debt consider: (1) Debt's purpose; (2) which party incurred

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.



**DIVORCE . . . continued**

debt; (3) which party benefited from debt; and (4) which party can repay debt. (120 S.W.3d 810 [Tenn. 2003]).

**Custody of Children.**—Regardless of whether divorce is granted or denied, court may award custody of children to either party, both parties, or to some other suitable person as welfare of children demands. Decree may be modified as exigencies demand. Court may modify upon finding that custodial parent has been convicted of, or found civilly liable for, intentional and wrongful death of other parent or legal guardian. (36-6-106[b]). Finding of child abuse under 36-6-106(a) or child sexual abuse under 37-1-602 shall give rise to rebuttable presumption that it is detrimental to child and not in best interests of child to award sole custody or joint legal or joint physical custody to perpetrator of such abuse. (36-6-101). In suit for divorce, annulment or separate maintenance, or in action to modify or change custody, court shall consider all relevant factors, including following: (1) Love, affection and emotional ties between parents and child; (2) disposition of parents to provide food, clothing, medical care, education and other necessary care and degree to which parent has been primary caregiver; (3) continuity in child's life; (4) stability of family unit; (5) mental and physical health of parents; (6) home, school, community record of child; (7) evidence of physical or emotional abuse; (8) character and behavior of any other person who resides in parent's home; (9) reasonable preference of child over 12; (10) each parent's past and potential for future performance of parenting responsibilities, including willingness and ability of each parent to facilitate and encourage close and continuing parent-child relationship between child and other parent, consistent with best interest of child. (36-6-106[a]). Gender of party seeking custody does not give rise to presumption or constitute factor in favor of, or against award of, custody to such party. In case of child of tender years, gender of parent may be considered after examination of fitness of each party seeking custody. (36-6-101). There is no presumption for or against joint custody, except that there is rebuttable presumption in favor of joint custody if agreed to by both parents. (36-6-101). If suit is for modification of residential parenting schedule then petitioner must prove by preponderance of evidence material change of circumstances which doesn't require showing of substantial risk of harm. (36-6-101[a][2][c]). All orders for absolute divorce, legal separation, or annulment shall grant to each parent following rights during non-custody periods, except when not in best interest of child: (1) Right to unimpeded telephone conversations twice per week; (2) right to send mail to child free from censorship; (3) right to receive notice as soon as practicable of any hospitalization, illness, or death of child; (4) right to receive from child's school upon request copies of all school documents concerning child; (5) right to receive medical records of child upon request; (6) right to be free of derogatory remarks being made about parent by other parent to child; (7) right to be given at least 48 hours notice, when possible, of all extra-curricular activities, and opportunity to participate or observe; (8) right to receive from other parent, in event other parent leaves state with minor child or children for more than two days, itinerary and telephone numbers for use in emergency; and (9) right of access and participation in education on same basis that is provided to all parents, provided participation is reasonable. (36-6-101; 36-6-110). In any child custody or visitation proceeding involving domestic abuse, court may order mediation only if alleged victim agrees to mediation, mediator is trained in domestic violence, and victim is permitted to have supporting person of his or her choice in attendance at mediation. (36-6-107, 305). Former pilot program for child custody has now been adopted for statewide use; establishes and comprehensively regulates "parenting plans" and provides for use of alternative disputes resolution. (36-6-401 through 414).

**"Move Away" Provision of Child Custody Statute.**—If parent who is spending time with child wants to move outside state or 100 miles from other parent within state, moving parent must provide notice to other parent no later than 60 days before said move. Notice must inform nonmoving parent of moving parent's intent to move and location and reasons for move and statement that other parent may file petition in opposition to move. (36-6-108). If parents cannot agree on revised visitation arrangement, moving parent can request court to alter visitation. Court shall consider best interests of child when determining revised visitation rights and will be guided by factors delineated in 36-6-101, as well as whether primary residential parent will comply with new visitation arrangements. If parents spend equal amount of time with children, nonmoving parent may file petition in opposition to removal of child within 30 days of receipt of notice, and court's determination will be based on statutory factors. (36-6-108). If parent spending greater amount of time with child wishes to relocate child, nonmoving parent may likewise oppose move. Court will allow relocation in this instance unless court finds no reasonable purpose for move, that move would pose threat of specific and serious harm outweighing threat of harm from change of custody, or if move is intended to defeat or deter visitation rights. Specific and serious harm includes, but is not limited to: (1) parent moving child with serious medical problems to area with inadequate medical facilities; (2) parent moving child with specific educational requirements to area with inadequate educational facilities; (3) parent wishes to relocate and reside with person with history of drug abuse or domestic abuse or who is currently abusing alcohol or other drugs; or (4) move would result in severe emotional detriment to child or emotionally disturbed parent would be unable to carry out duties as parent. (36-6-108).

**Child Abuse.**—Finding of child abuse or child sexual abuse within family gives rise to rebuttable presumption that it is detrimental to child and not in child's best interest to remain in custody of perpetrator of such abuse. (36-1-101, am'd 2006, cc. 979 and 652; 36-1-107). Visitation may be granted by court only when circumstances guarantee safety of child. To so guarantee, court may order that visit be supervised or that perpetrating parent undergo counseling, forbid overnight visitation until such counseling is successfully completed, order that address of child and non-perpetrating parent be kept confidential, or require other appropriate measures. (36-6-301 et seq.).

**Protective Parent Reform Act.**—Ensures that parent who makes good faith allegation based on reasonable belief supported by facts that his/her child is victim of abuse and acts lawfully in response will not be deprived of or restricted in visitation based on those beliefs or actions. (36-6-112).

**State Custody.**—Placement of child in custody of any agency of State of Tennessee shall make parents of that child liable for support. In all such cases, court shall immediately order child support or set hearing for such. (37-1-151). Commissioner of Department of Human Services is expressly authorized to issue administrative order of

income assignment against any wages to which obligor is entitled. (36-5-103). Hearings in all child support cases which are not being enforced shall be heard within 45 days of service of process. (36-5-402, am'd 2006, c. 984). Court shall set child support as evidence demonstrates and in accordance with child support guidelines. (37-1-151). If child support order exists, without further order of court, child support payments shall be forwarded to Department of Children's Services. (37-1-151).

**Abduction.**—Juvenile Court has concurrent jurisdiction with Circuit and Chancery Court of proceedings arising from 1980 Hague Convention on the Civil Aspects of International Child Abduction. (37-1-104).

**Visitation.**—After making award of custody, court shall upon request of non-custodial parent grant such rights of visitation as are proper pursuant to statute. (36-6-301). Grandparents may be granted visitation rights if in best interest of child, except where child has been adopted by unrelated party if child is removed from custody of child's parents, guardian or legal custodian and placed in foster care or child care agency. (36-3-302). Grandparents may be granted reasonable visitation rights with minor child if in best interest of child and either one of parents are deceased, parents are divorced or legally separated, one of parents has been missing for at least six months, or court of another state has granted such visitation. (36-6-306). (But see 530 U.S. 57 [2000].) Treatment of petitions for visitation by grandparents is set forth in 36-6-306. Additional best interest of child factors are set forth in 36-6-307. Effective July 1, 2000, multiple violations of visitation orders within six month period may provide basis for denial, suspension, or revocation of certain licenses, not including license to practice law. (36-6-503). Stepparent may be granted visitation rights if actually contributing to support and in child's best interest. (36-6-303).

**Allowance for Support of Children.**—Support, pendente lite, and upon granting of absolute divorce or of perpetual or temporary separation, may be ordered. In determining amount of child support, court applies guidelines of state Department of Human Services as rebuttable presumption. Private agreements as to child support payments outside of state guidelines are contrary to public policy. (21 S.W.3d 188 [2000]). Decree may be modified on motion of either party upon showing of substantial and material change of circumstances. (36-5-101).

**Uniform Interstate Family Support Act.**—Adopted. (36-5-2001 et seq.).

**Remarriage.**—When marriage is absolutely annulled or dissolved, parties are free to remarry. (36-4-124).

**GUARDIAN AND WARD:**

Any court exercising probate jurisdiction or any other county court of record has power to appoint guardians for infants within its jurisdiction, and to take cognizance of all matters concerning minors and their estates. (34-2-101). If minor has no estate, juvenile court has concurrent jurisdiction. (34-1-101). Permanent guardianship may be created for child adjudicated as dependent and neglected, unruly or delinquent. (37-1-801).

**Eligibility and Competency.**—Parent is preferred unless court thinks interest of minor requires otherwise. (34-2-103). No personal representative, except parent, grandparent, brother, or sister of infant, having in his hands any of estate of said infant, shall be appointed guardian until his accounts have been settled. (34-1-120). Father and mother, or survivor of them, may designate guardian of minor in will or other written document. (34-1-110).

**Qualification.**—Unless waived, bond is required of every guardian. Bond must be in amount equal to fair market value of all personal property plus amount of anticipated income for one-year period from all property. If bond is posted by corporate surety, amount posted may be equal to amount of bond; however, if property is posted for bond, value of property shall be equal to 150% of bond. (34-1-105).

**Inventory** must be filed by guardian within 60 days of appointment. (34-1-110).

**Powers and Duties.**—Include taking possession of minor's property, suing in relation to minor's property, investing funds, leasing minor's land, and accounting as to profits and disbursements of estate. (34-1-115).

**Investments** by guardians generally are regulated by 34-1-115; 35-3-101 et seq.

**Securities in Name of Nominee.**—See category Estates and Trusts, topic Trusts, subhead Securities in Name of Nominee.

**Gifts to Minors.**—See topic Infants.

**Accounts** must be made annually. (34-1-111). Upon failure so to account guardian may be cited to appear and account. (34-1-111).

**Termination of Guardianship.**—Every minor, on becoming 18, on receipt of money or estate due, must receipt to the guardian therefor. (34-1-118). Guardianship of minor usually terminates when ward attains age 18, but interested persons may petition to extend guardianship up to age 25 if shown to be in ward's best interest. (34-2-106).

Guardians may resign with consent of the court. (34-1-117).

**Foreign Guardians.**—When a ward and his guardian are nonresidents, or a ward, after having a guardian appointed, removes from the state, the ward's property in this state may, upon court order, be removed to state or territory of his residence. (34-1-117). Any person not resident of state or any corporation authorized to exercise fiduciary powers but not authorized to do business and not maintaining office in this state is not allowed to serve as guardian or conservator for incompetent person or as guardian for minor, except that: (1) Bank or trust company organized and doing business under laws of the state or territory, including District of Columbia, or national bank or trust company, duly authorized so to act, may serve as fiduciary when and to extent that state, territory or District of Columbia in which such bank or trust company is organized or has its principal place of business grants authority to serve in like fiduciary capacity to bank or trust company organized and doing business under laws of this state or national bank or trust company having its principal office in state; (2) any person may serve as guardian or conservator of incompetent person, regardless of residence of guardian or conservator; (3) certain nonresident trust companies may serve as a fiduciary if they have office in Tennessee and either (i) accept deposits at such office or (ii) meet definition of trust

**GUARDIAN AND WARD . . . continued**

institution under 12 U.S.C. §1841(c)(2)(D) and are subsidiaries of bank holding company which has subsidiary which accepts deposits in Tennessee. (35-50-107).

**Infirm Persons.**—Appointment, duties and powers, and removal of conservators for person with mental illness, developmental disability or other mental incapacity governed by 34-3-101 et seq. Persons over 60 may qualify to have public guardian appointed. (34-7-101 et seq.).

**Uniform Fiduciaries Act** adopted. (35-2-101 et seq.).

**Uniform Simplification of Fiduciary Security Transfers Act** adopted. (35-8-101 et seq.). Not repealed by Uniform Commercial Code. (47-1-109).

**HUSBAND AND WIFE:**

**Disabilities of Married Women.**—Married women are emancipated from all disabilities of coverture and all common law disabilities. (36-3-504). Nevertheless, tenancy by entirety is still recognized. (36-3-504-05).

**Separate Property.**—A married woman may acquire, hold, manage, control and dispose of all property, real and personal, as though not married. (36-3-504).

**Contracts.**—A married woman may contract with or become surety for her husband or any other person. Husband and wife may transact business with each other. (36-3-504).

Antenuptial contracts and settlements regarding property must be registered (66-24-101; 66-24-106) and are binding on court and enforceable if entered into freely, knowledgeably, in good faith and without duress or undue influence (36-3-501). Post-nuptial and voluntary marriage contracts and settlements are void as to existing creditors. (36-3-502).

**Torts.**—A married woman is liable for her torts as though unmarried.

**Actions.**—A married woman may sue or be sued without joinder of her husband. (36-3-504).

**Agency.**—Either spouse may act as attorney in fact for the other.

**Conveyance or Encumbrance of Property.**—Either spouse may convey his or her real estate (except homestead) without joinder of other.

**Desertion and Nonsupport.**—Repealed.

**Community property** system does not obtain in Tennessee.

**INFANTS:**

Age of majority, 18 for both sexes, except regarding purchase and possession of alcoholic beverages for which required age is 21. (1-3-113 and, also, Tennessee Uniform Transfers to Minors Act [35-7-202]).

**Emancipation.**—There is no provision for emancipation by marriage.

**Disabilities.**—All common law limitations on infants exist.

**Removal of Disabilities.**—Removal of disability of minority may be decreed by court having jurisdiction for specific purpose. (29-31-104). Chancery and circuit courts of any county may remove disabilities of nonresident minor who has an interest in any real or personal property as to such interest. Petition filed in county other than county where property located must show no prior applications. (29-31-101).

**Ratification or Disaffirmance of Contracts.**—An infant upon coming of age may disaffirm his contracts, other than contracts for necessities, within reasonable time. (30 Tenn. 468 [1850]). Absent overreaching or undue influence, however, if article purchased used by minor, vendor allowed reasonable compensation for use, depreciation, and willful or negligent damage while in minor's hands. (824 S.W.2d 545 [1992]). He may also ratify contracts expressly, or by acts which reasonably imply ratification, or by failure to disaffirm within reasonable time. (14 Tenn. App. 672 [1932]).

**Actions.**—Suits on behalf of minor are brought by guardian or next friend and may, in proper case, be upon pauper's oath and by filing of accompanying affidavit of indigency. (20-12-129).

**Foreign Protection Orders.**—Valid protection orders issued by court of another state, tribe, or territory related to abuse or domestic violence are afforded full faith and credit. (36-3-622).

Guardian ad litem for infant defendant must be appointed by clerk and master (21-1-701) or by court (29-15-106; 34-11-107).

**Support of Minor and Spouse.**—Any person legally chargeable with care or support of minor is guilty of misdemeanor if he fails to provide, and knows he has duty to provide, such support; is guilty of felony if (i) he leaves or remains outside state to avoid his duty or (ii) has previously been convicted of nonsupport. (39-15-101). Expedited procedures to set, enforce, modify or terminate support obligations governed by 36-5-401 et seq. Assignment of income for child or spousal support orders is controlled by 36-5-101. Court shall order assignment of up to 50% of obligor's income for all orders of child support, regardless of whether payments are in arrears, unless exception applies. Law of state of obligor's principal place of employment shall control for out-of-state employers. Employer may not use assignment of income as basis for discharge of obligor. Assignment is binding on employer and takes priority over most other assignments or garnishment of wages. (36-5-501).

**Parental Responsibility.**—Parent or guardian liable up to \$10,000 for malicious property damage or personal injuries caused by minor child (37-10-101-02); full liability for tortious personal or property damage, where child's tendency to commit such wrongful acts are or should be known and where parent or guardian has opportunity to control conduct, but fails to exercise reasonable care to do so (37-10-103); full liability for damages resulting from operation of motor vehicle by child 14-16 while accompanied by parent or guardian at least 18 who is licensed driver (55-7-104). Parent whose failure to take reasonable steps to prevent unruly conduct by unemancipated child may be ordered by court to participate in child's treatment, seek assistance from school officials, social services officials or other appropriate public or private resources and authorities, complete community service work, or provide supervision to insure that child complies with any and all conditions and requirements that court has ordered. (37-1-174).

**Uniform Transfers to Minors Act** adopted. (35-7-201 et seq.). Age of majority under Act is 21. (35-7-202). Where donor makes unrestricted gift in trust to minor beneficiary with right to demand immediate possession, parents may exercise such right on behalf of minor. (67-8-101).

**Savings Account.**—Savings and loan associations may accept deposits and pay withdrawals on order of minor. Payment to minor discharges association. (45-3-507).

**Missing Children.**—Tennessee Missing Children Recovery Act enacted. (37-10-201 et seq.). In 2005, definition of "child" under this Act was changed to any person under 21 years of age. (37-10-201).

**Termination of Parental Rights.**—Juvenile court has jurisdiction of proceedings to terminate parental rights. (37-1-104). Petition may be made by any person (37-1-119) and must comply with 37-1-121 (37-1-147). Venue lies in county in which child currently resides, or where custody of child was previously determined. (36-1-113). Parental rights may be terminated under 37-2-401 et seq., if parent of child in foster care fails to fulfill responsibilities as parent, for abandonment, or if in child's best interest and one or more of following conditions exist: (1) Child has been removed from custody of parent by court for at least one year and conditions exist which would cause child in all reasonable probability to be subjected to further abuse or neglect if returned to parent, there is little likelihood that such conditions will be remedied at early date, and continuation of legal parent and child relationship diminishes child's chances of early integration into stable permanent home; (2) parent has committed severe child abuse as defined by 37-1-102 against child two or more times; (3) parent has been sentenced to more than two years imprisonment for severe child abuse; (4) parent has committed severe child abuse against child under 11 years of age or any sibling of child if sibling under 11 years old, provided, however, this section is applicable only to proceedings filed by Department of Human Services or licensed child placing agency; or (5) parent has committed one or more acts of aggravated rape against child under 13 years old. (37-1-113). Parental rights may be terminated by voluntary abandonment of newborn. (68-11-255, and 36-1-102[1]).

**Adoption.**—See topic Adoption.

**Uniform Securities Ownership by Minors Act** not adopted.

**MARRIAGE:**

Statutory age of marriage is 16 years for either party. (36-3-105). County, probate, juvenile, circuit or chancery judge, upon good cause shown, may order license to issue regardless of restriction as to age. (36-3-107).

**Consent Required.**—Clerk, upon receiving application for license, must send notice to both parents, unless parties are at least 18 years of age or are joined in application by both parents. (36-3-104). Additionally, unless joined by parents, application where either party is under 18 must remain on file, open to public, for waiting period of three days. (36-3-104). Where either applicant is under 18 years of age, parents or agency having legal custody of such applicant must join in application, under oath, stating that applicant is 16 years of age or over and has consent to marry. (36-3-106). For right to contest issuance of license see subhead License, infra.

**License.**—Required for issuance of license: Application, certificate of marriage, health certificate.

Any county clerk within state may issue license. License valid for 30 days from issuance. (36-3-103). Application must be sworn to by both applicants. (36-3-104). No marriage license may be issued where either of contracting parties is under age of 16 unless county, probate or juvenile judge waives age limit and directs clerk to issue license. (36-3-105; 36-3-107). No license may issue where either party is drunk, insane, or imbecile. (36-3-109). Marriage consummated by ceremony upon license issued in violation of above provisions is voidable. (36-3-104-09). No license may be issued for any marital union other than between one man and one woman. (36-3-103).

Any interested person may contest issuance of license by filing contest before any judge or chancellor. (36-3-110).

**Waiting Period.**—Before issuance of a license, application therefor must remain on file, open to public in clerk's office, for three days unless both parties over 18 years of age or both parents, guardian, or next of kin joins in application. (36-3-104). Probate, juvenile, circuit, or chancery court or county executive may suspend three day limit and direct clerk to issue license (36-3-107). Reference in code to "county executive" are deemed to be referenced to County Mayor. (5-6-101).

**Medical Examination.**—Not required.

**Ceremonial Marriage.**—No particular form is required other than the mutual assent of the parties to become man and wife, expressed in the presence of the minister or officer performing the ceremony. (36-3-302). Such officer must be over 18 years of age and may be minister, justice of peace, judge, including resident federal judges and magistrates, chancellor, governor, speaker and former speakers of senate and house of representatives, present and former county executives or clerks, county legislator, mayor of municipality, former chancellors and former judges. (36-3-301). Reference in code to "county executive" are deemed to be referenced to County Mayor. (5-6-101).

**Certificate of marriage** must be made out in person by both applicants before the county court clerk upon form furnished by state office. (68-3-308).

**Report of Marriage.**—The person officiating at the marriage must return to the county court clerk the marriage license with the notation of the date of the ceremony, together with the certificate of marriage (see subhead Certificate of Marriage, supra) (68-3-401). Thereafter the county court clerk, on the 10th day of each month, reports all marriage certificates filed in his office during the preceding month. (68-3-401). Copies thereof are available at the state office for a nominal fee. (68-3-207).

**Record.**—See category Documents and Records, topic Records, subhead Vital Statistics.

**Common law marriages** are not recognized. Courts consider valid a common law marriage contracted in a state where such marriages are valid. (510 S.W.2d 73 [1974]).

**Proxy marriages** are not recognized. (36-3-302).

**Marriages by written contract** are not recognized. (36-3-302).

See note at head of Digest as to 2007 legislation covered.

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**MARRIAGE . . . continued**

**Irregular Marriage.**—Continued cohabitation after reaching age of marriage is a ratification of marriage theretofore voidable. (37 Tenn. 659 [1858]).

**Prohibited Marriages.**—Marriage cannot be contracted with lineal ascendant or descendant; lineal ascendant or descendant of either parent; uncle or aunt; lineal descendant of husband or wife; husband or wife of parent or lineal descendant. (36-3-101). Marriage between one man and one woman is only legally recognized marriage in this state. (36-3-113).

**Foreign Marriages.**—No provision for recognition of foreign marriages, which are recognized by comity.

**Annulment** may be granted where a party was mentally incapable of assent, or under the age of 16 at the time of the marriage, or where assent was obtained under duress by actual force and threat of violence, or where marriage is one prohibited by law. Inherent jurisdiction to try annulment cases is in the chancery court. Either the circuit court or the chancery court may, in its discretion, on prayer in a divorce bill therefor, grant an annulment for the same causes which are grounds for absolute divorce or divorce from bed and board.

Procedure for annulment is the same as in divorce cases.

Annulment or dissolution of the marriage does not in any way affect the legitimacy of the children of the same. (36-4-125).

No provision for limit of time for filing on ground of nonage.

**A marriage is deemed dissolved** for the purpose of a subsequent marriage if either party has been absent five years and is not known by the other to be living. (36-3-102).

Orders of protection are available to victims of stalking and sexual assault. (36-3-601, et seq.).

## HEALTH

### FOOD, DRUG AND COSMETICS:

**Tennessee Food, Drug and Cosmetic Act** covers following acts in regard to food, drugs, medical devices, or cosmetics: misbranding; adulteration; false advertising; misrepresentation; and improper labeling. (53-1-101, et seq.).

### GENETIC TESTING:

**Department of Health** required to establish statewide program to ensure availability of genetic services to citizens of Tennessee who need them for prevention and treatment of mental retardation or other physical dysfunctions. (68-5-502). Genetic and other testing services are provided only to following: (1) Born children; (2) unborn children whose testing would result in treatment (induced abortion not regarded as treatment); (3) men; (4) nonpregnant women; and (5) those pregnant women whose testing would result in treatment for themselves or their unborn children (induced abortion not regarded as treatment). (68-5-504). Commissioner empowered to formalize agreements with agencies in other states to provide services as may be needed. (68-5-505).

### PUBLIC HEALTH:

**Medical Assistance Act of 1968** enacted at 71-5-101 through 71-5-190. Act makes medical assistance possible for those recipients determined to be eligible to receive medical assistance that conforms to requirements of title XIX of Social Security Act and regulations promulgated thereto. Medical assistance pursuant to this part may also be provided pursuant to any federal waiver received by state that waives any or all of provisions of title XIX or pursuant to any other applicable federal law to extent adopted by means of amendment to required title XIX state plan.

**Tennessee Medicaid False Claims Act** enacted at 71-5-181 to 185. Qui tam actions authorized for violations of 75-5-182. (71-5-183). Civil actions brought under 71-5-183 may not be brought: more than six years after date on which violation is committed, or more than three years after date when facts material to right of action are known or reasonably should have been known by official of state charged with responsibility to act in circumstances, but in no event more than ten years after date on which violation is committed, whichever occurs last. (71-5-184). Criminal penalties are authorized for fraudulently obtaining or attempting to obtain benefits or payment for medical assistance. (71-5-118).

**Tennessee Health Care Decisions Act.**—Adult or emancipated minor may give current direction, or may execute written advance directive for health care, in accordance with provisions of Tennessee Health Care Decisions Act, enacted in 2004. (68-11-1701 through 68-11-1715).

**Durable Power of Attorney for Health Care** is effective to authorize attorney in fact to make health care decisions for principal, provided power of attorney for health care complies with 34-6-201, et seq. Conservator appointed after execution of durable power of attorney for health care does not have power to: (1) Revoke or amend durable power of attorney for health care; or (2) replace attorney in fact. (34-6-204). Upon application and good cause shown when appointing fiduciary, court may revoke or amend durable power of attorney for health care or replace attorney in fact. (34-6-204). Principal may revoke durable power of attorney for health care by notifying attorney in fact or health care provider orally or in writing. (34-6-207). Unless otherwise provided, valid durable power of attorney for health care revokes any prior durable power of attorney for health care. (34-6-207). Liability of health care provider limited by 34-6-208. Durable power of attorney for health care that is executed outside Tennessee by nonresident of Tennessee is effective if durable power of attorney for health care complies with 34-6-201, et seq., or laws of state of principal's residence. (34-6-215).

**Patient right to privacy** governed by Patient's Privacy Protection Act. (68-11-1501 to 1505). Disclosing name, address, or other identifying information is invasion of patient's rights to privacy unless such disclosure is pursuant to the four enumerated exceptions. (68-11-1503). Such information may be disclosed in following situations: (1) Any statutory required reporting to health or government entities; (2) access by third-party payer (or designee) for purpose of utilization reviews, case management, peer

reviews, or other administrative functions; (3) access by health care providers from when patient receives or seeks care; (4) if patient does not object, any directory information including only name of patient, patient's general health status, and patient's location and telephone number; and (5) pursuant to subpoena, court order, or request authorized by state or federal law. (68-11-1503). Name, address and other identifying information of patient shall not be sold for any purpose. Above confidential information may be subject to subpoena from court of competent jurisdiction. (68-11-1505).

**Uniform Anatomical Gift Act** adopted. (68-30-101, et seq.). Sections of Uniform Anatomical Gift Act of 1987, amending The Uniform Anatomical Gift Act of 1968 adopted with minor variations, including, but not limited to, right of minor children of deceased to authorize anatomical gift in absence of surviving spouse or adult son or daughter. (68-30-114-116).

### REGULATION OF HEALTH AND HEALTH-RELATED FACILITIES:

**Regulated generally** by Title 68, c. 11. Also, Commissioner of Commerce and Insurance has regulatory authority over hospital and medical service corporations. (56-1-201 et seq.).

**Department of Health** established by 4-3-1801. Under charge and general supervision of Commission of Health. (4-3-1802).

**General supervision** vested in Commission of Health. Health facilities commission has jurisdiction and powers relating to certification of need and related reporting of all health care institutions, as defined in 68-11-1604. Department of Health is empowered to license and regulate hospitals, recuperation centers, nursing homes, homes for aged, residential HIV supportive living facilities, assisted-care living facilities, home care organizations, residential hospices, birthing centers, prescribed child care centers, ambulatory surgical treatment centers, facilities operated for provision of alcohol and drug prevention and/or treatment services and outpatient diagnostic centers. (68-11-202 -209). *Note:* 68-11-101 was repealed in 2002 and was replaced by addition of 68-11-1601 et seq.

**Covenants Not to Compete.**—Tennessee Supreme Court held that except for those covenants not to compete specifically prescribed by statute, physician noncompetes are void and unenforceable. (205 Tenn. Lexis 608 [2005]).

**Health Care Consumer Right-to-Know Act of 1998** mandates that division of health related boards establish system to provide public access to information about certain health care providers and managed care organizations in Tennessee. (63-51-101 et seq.). "Health care provider" means: physician; osteopathic physician; chiropractor; dentist; podiatrist; optometrist; dietitian or nutritionist; physician assistant; respiratory care practitioner; pharmacist; audiologist and speech pathology therapist; certified nurse practitioner; registered nurse anesthetist; social worker; psychologist; professional counselor, marital and family therapist; clinical pastoral therapist; massage therapist; medical laboratory personnel; alcohol and drug abuse counselor; occupational therapist and physical therapist; dispensing optician; electrologist; veterinarian; and nursing home administrator. (63-51-102).

**Health Maintenance Organization Act of 1986** regulates establishment and operation of Health Maintenance Organizations. (56-32-201, et seq.).

**Nursing homes** may be subject to civil-monetary penalties imposed by Commissioner of Health for failure to meet standards under federal Nursing Home Reform Act of 1987 or under 68-11-802 to 804. Nursing home residents/patients are granted certain minimum rights (68-11-901) which may be abridged, restricted, limited, or amended only when medically contraindicated or necessary to protect and preserve rights and safety of other residents (68-11-902). Prior to, or within, seven days of employment, criminal background checks must be done on all persons employed by health care facilities in position that involves provision of direct care to resident or patient. (68-11-256).

**Medication Error Reduction Act of 2004.**—Creates uniform standard for issuing written or electronic prescriptions by: (1) Podiatrists (63-3-127); (2) dentists (63-5-122); (3) physicians and surgeons (63-6-235); (4) optometrists (63-8-126); (5) osteopathic physicians (63-9-115 and 63-5-116); (6) nurse practitioners (63-7-123); and (7) physician assistants (63-19-107[2][G]) and prohibits pharmacists from dispensing medication pursuant to illegible prescription (63-10-413). Prescriber must issue legible prescription, if written, and pharmacist is prohibited from dispensing medication pursuant to prescription which is not comprehensible to pharmacist. (63-10-213).

**Fire Suppression and Detection Devices.**—Nursing homes, assisted living facilities and residential homes for aged must post written disclosures as to absence of fire suppression and detection devices and any such absences shall be posted by licensing board on Tennessee website (<http://www.state.tn.us>). (68-11-910[c] and 68-11-257). "Nursing homes" and "facilities" shall mean any nursing home as defined in 68-11-201(29) and within 90 days from and after May 3, 2004, shall either be fully sprinklered or provide smoke alarms and/or smoke detectors in each patient room. Further, any nursing home or facility not fully sprinklered on May 4, 2004, must provide sprinkler plan to Dept. of Health, and failure to comply shall be grounds for discipline and/or licensure action pursuant to 68-11-207. (68-11-235). Dept. of Health must review and approve or disapprove any sprinkler plan for nursing home within 30 days of plan's submission and accelerated dates for compliance by nursing homes are provided by 68-11-235. Similar requirements and procedures are provided concerning assisted living facilities by 68-11-236.

**Minority Health.**—Office of Minority Health was created in 2004 for purpose of educating public as to minority population health issues, advocating initiatives to enhance quality of life, and address any disparity in availability of health services. (68-1-101).

**Free Health Clinics.**—Physicians, dentists, certain other health care professionals, and social workers rendering services in "Free Health Clinics" may be governed by separate licensing and regulatory provisions and may be exempt from certain state taxes.

**The Tennessee Chronic Kidney Disease Screening Act of 2005** urges health care providers who treat patients with diabetes, hypertension, or family history of kidney disease to test and counsel patients about chronic kidney disease. (68-5-2 through 5).

## REGULATION OF HEALTH AND HEALTH-RELATED FACILITIES

... continued

**Immunity from Liability.**—No person licensed, certified, or authorized by board of any of profession of healing arts who renders services within limits of his license, certificate, or authority, voluntarily and without compensation, to any sponsoring organization shall be liable for civil damages, unless such person's act or omission was grossly negligent or willful conduct. (63-6-708).

## INSURANCE

## INSURANCE COMPANIES:

**Regulated by** 56-1-101 et seq.

**Supervision by** Insurance Department headed by Commissioner of Commerce and Insurance, 500 James Robertson Pkwy., 5th Floor, Nashville, TN 37243-0565. (615) 741-2241. (56-1-201-02). Supervisory duties include regulation of acquisition of control of domestic insurance companies (56-10-202 et seq.) and regulation and analysis of premiums for accident and sickness policies issued in State (56-26-101 et seq.).

**Rates** for most types of insurance on risks within state are regulated by 56-5-301-322, and shall not be excessive, inadequate or unfairly discriminatory. (56-5-303). Pursuant to Interstate Insurance Product Regulation Compact Act of 2007, Tennessee has joined with other states in establishing Interstate Insurance Product Regulation Compact to develop uniform regulatory standards and policies. (56-58-101 et seq.). Commissioner of insurance serves as Tennessee's representative to compact.

Use of credit scores in determining rates and renewability is regulated by 56-5-402. (56-5-402).

**Annual statements and actuarial reports** must be filed with Commissioner of Insurance. (56-1-401 et seq.).

**Risk Based Capital Report.**—On or before each Mar. 1, each domestic insurer must prepare and submit to Commissioner report setting out certain data related to capital and risks, as specified in 56-46-101-112.

**Policies.**—Regulated in general by 56-7-101 et seq. Life insurance policies are regulated by 56-7-301 to -702 and 56-7-1601-1609. Life settlement contracts are governed by 56-50-101-111. Health and accident insurance policies are regulated by 56-26-101 et seq. Medical service plans are regulated by 56-27-125-28. Credit life and credit accident and health insurance policies regulated by 56-7-901 et seq. Noncancellable and guaranteed renewable automobile insurance policies are regulated. (56-7-1102). Group life policies are regulated by 56-7-601-02. Deferred individual annuity contracts are regulated. (56-7-112; 56-36-101 et seq.).

In compliance with federal Health Insurance Portability and Accountability Act of 1996, Tennessee has adopted Tennessee Health Insurance Portability, Availability, and Renewability Act. (56-7-2801 et seq.). Under Tennessee Act there is provided special enrollment period respecting TennCare Program. (56-7-2803).

Both life and health policies issued for delivery within state, including credit life and health and certificates issued pursuant to group policies, must comply with specified standards to promote ease of reading. (56-7-1601 et seq.).

**Bad Faith Denial of Claims.**—Insurance company that fails to pay claim within 60 days of loss shall be liable to pay policyholder sum not to exceed 25% of claim, provided that refusal to pay was not in good faith. (56-7-105). Attorney fees above and beyond 25% bad faith penalty are also available. (56-7-105).

**Producers.**—Licensing governed by Tennessee Insurance Producer Licensing Act of 2002, 56-6-1 et seq.

Insurance producers must be licensed, and to be licensed, must file with Commissioner application on prescribed form and, unless exempted by 56-6-107, must pass examination given by Commissioner. (56-6-133, 135, 136). License renewable each year. (56-6-142). Nonresident may qualify for license only if such person holds like license and is in good standing in his or her home state, has submitted proper request for licensure, has submitted to commissioner application for licensure, submitted to his or her home state or Uniform Application, and submitter's home state awards licenses to residents of this state on same basis as allowed by Tennessee. (56-6-101 et seq.). Temporary license, of 180 days duration, may be issued without examination in certain circumstances. (56-6-141).

Person soliciting insurance is regarded as agent of insurer and not of insured. Agent is personally liable on insurance contract made in state for insurer not authorized to do business in state. (56-6-148). Agent must not use license to write controlled business. (56-6-150). Subject to limited exceptions, agent may not place policy with insurer unless he has been appointed by insurer as its agent or limited representative. (56-6-152). Insurance company that enters into or terminates agency contract with agent or limited representative must notify Commissioner on prescribed form. (56-6-153).

Surplus lines insurance agents regulated by separate Act. (56-14-101 et seq.).

**Administrators of life or health insurance coverage** regulated by 56-6-401 et seq., under supervision of Commissioner of Insurance. Administrator includes any person or entity who collects premiums or adjusts or settles claims on life or health coverage or annuities, with prescribed exclusions including certain licensed insurance companies, agents, brokers, employers and trustees. (56-6-401). Written agreement with prescribed provisions required between administrator and insurer. Notice of relationship must be given to insured. (56-6-409). Administrator is fiduciary for persons entitled to funds received by it, and detailed provisions for deposit of funds and record keeping are specified. (56-6-406). Administrators must be licensed, after application to Commissioner, payment of fee of \$100, bond and determination of competency unless such requirements are waived by Commissioner. (56-6-410-11).

**Insurance holding companies** regulated by 56-11-201 et seq.

**Premium finance companies** regulated by 56-37-101 et seq.

**Captive insurance companies** permitted and regulated by 56-13-101 et seq.

**Discrimination.**—Unlawful for any person, as defined in statute to discriminate in rates or other terms of: life insurance contracts or annuities, between individuals of same

class or expectation of life; accident or health insurance policies, between individuals of same class and of essentially same hazard; and fire and allied hazard, casualty or indemnity contracts, between risks of same class and essentially same hazards. (56-8-104). It is unlawful for insurance provider to discriminate on basis of genetic testing, or to request or require individual to disclose genetic information. (56-7-2701 et seq.). No preference or distinction in form, premium, rate, benefits or conditions of insurance in property, marine, casualty or surety insurance shall be made based upon membership, nonmembership or employment by or in any association, corporation or organization, or by fictitious grouping, provided that these restrictions shall not apply to life, health and accident, disability or workmen's compensation insurance or to any domestic company confining its insurance business to this state solely for benefit of its members. (56-8-104). Except for retrospective rated plans, no insurers may impose additional charge for workers' compensation insurance based upon experience of insured past inception or renewal date of policy. (50-6-411). Nonrenewal or mid-term cancellation of commercial risk insurance allowed only in certain instances, e.g., nonpayment of premium, fraud in obtaining policy or pursuing claim. (56-7-1801 et seq.). Persons denied health insurance from private company may be eligible to obtain insurance through Tennessee Comprehensive Health Insurance Pool. (56-39-101 et seq.). Managed health insurance issuer shall not discriminate against certain classes of providers. (56-32-237).

**Coverage for health benefits** may not be denied to victims of abuse, which is defined to include intentionally or recklessly caused bodily injury, physical harm, severe emotional distress, psychological trauma, rape, sexual assault or involuntary sexual intercourse. (56-8-301 et seq.). Health insurance policy shall not exclude any coverage of drugs for life-threatening illnesses on ground that drug has not been approved by federal FDA if such drug is recognized for treatment of condition in one of standard reference compendia or medical literature. (56-7-2352). Timely Reimbursement of Health Insurance Claims Act establishes procedures to ensure prompt payment of provider claims submitted to health maintenance organizations, health insurers, nonprofit health service plans, managed care organizations, managed health insurance issuers, and behavioral health insurance organizations. (56-7-109). Health insurance entities are required to accept credentialing applications from Council on Affordable Quality Healthcare. (56-7-1009). All individual and group health insurance policies issued after Jan. 1, 2004 and providing coverage on expense incurred basis shall offer, as optional benefit, coverage for colorectal cancer examinations and laboratory tests. (56-7-2363). Policies providing coverage of neurological disorders must cover treatment of autism spectrum disorders for persons under 12 years of age. (56-7-23). 30 days prior notice required before coverage terminated for spouse due to divorce or legal separation. (56-7-2365). Health insurance entities must notify health care providers of results of provider's complete credentialing application within 90 calendar days of receipt. (56-7-1015).

**Rebates.**—Unlawful to knowingly permit or offer to give, make, or pay, directly or indirectly, as inducement to contract of insurance: Rebate of premium; special favor or advantage in dividends or benefits; stocks, bonds or securities, or dividends or profits thereon; or any valuable consideration not specified in contract. (56-8-104).

**Unfair Methods of Competition and Deceptive Practices.**—56-8-101 et seq. makes unlawful false information, misrepresentations or advertising; defamation; boycott, coercion and intimidation; false statements and entries; unfair claim settlement practices; failure to provide written statement of basic rights upon filing claim, under fire or homeowner's policy, with estimated value at or above \$20,000; lessening competition by stock transactions; dual office holding; failure to preserve nonforfeiture benefits; changing classifications and rates after policy expiration or renewal without written consent of insured; use by servicing carrier or representative of information obtained in policy application or in course of servicing policy for purpose of soliciting any form of insurance; and specified practices of lenders regarding insurance incident to extension of credit. Insurance companies may be held liable for unfair or deceptive acts or practices under Tennessee Consumer Protection Act. (47-18-101; 970 S.W.2d 920 [1998]).

Violation of Gramm-Leach-Bliley Act by person engaged in insurance business is unfair or deceptive trade practice, and violator is subject to certain penalties. (56-8-119).

Civil and criminal penalties are provided for various acts declared to be insurance fraud under 39-14-133 and Title 56.

**Process Agent.**—Commissioner of Insurance is agent for process for domestic companies (56-2-501) and foreign or alien companies generally (56-2-503). \$15 filing fee must accompany process. (56-2-504). Service of process from any county in this state on Commissioner shall establish proper venue in county where process issued if plaintiff resides in that county. Special provisions for companies not authorized to do business in state. (56-2-101 et seq.). When suit is brought by Commissioner, Secretary of State is such agent.

**Investments by Insurance Companies.**—Regulated by 56-3-101-502; 56-21-104, 110; 56-27-113.

**Foreign Insurance Companies.**—No foreign insurance company will be admitted and authorized to do business unless it has been in business for three years in state of its incorporation; but this requirement does not apply to wholly owned subsidiary of insurance company or health maintenance organization admitted and authorized to do business in this state, to company resulting from merger or consolidation of companies at least one of which prior to merger met all requirements to do business in Tennessee including having been in business for three years in state of its incorporation, to wholly owned subsidiary of holding company owning 100% of common capital stock, excluding qualifying share required to be held by directors of insurance company or health maintenance organization, and authorized to do business in Tennessee, to foreign company originally chartered and licensed in Tennessee making application to redomesticate to this state upon furnishing appropriate documents from Commissioner of Insurance of state of its domicile, or to company owned by trade association or group or trade associations or organized on mutual basis by such associations, at least one of which is domiciled in Tennessee and has 200 corporate members domiciled in Tennessee, provided such foreign insurance company engaged in business in state of incorporation at least one year and offers insurance in Tennessee only to association or its members. (56-2-113).

Foreign insurance company admitted to do business in Tennessee may become domestic corporation by complying with organization and fee requirements relating to

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**INSURANCE COMPANIES . . . continued**

domestic insurance companies and designating principal place of business at place in Tennessee. Foreign credit life reinsurance company with at least 50% of its outstanding voting stock owned by persons or entities domiciled in Tennessee may obtain certificate of corporate existence and license to transact business in Tennessee if Commissioner approves change of domicile to Tennessee, certificate of good standing from current domicile is submitted, requirements of law including payment of fees pertaining to domestic insurance companies are complied with, and situs in Tennessee designated as principal place of business. (56-2-102).

Alien companies, or their agents, financially owned or controlled by any government or political subdivision thereof outside United States, are prohibited from doing business in this state. (56-2-401).

Foreign life insurance company must file a certificate that it has on deposit with Treasurer of this state, or proper officer of another state, securities of actual cash value of \$200,000 verified by such officer that such officer is satisfied with value and that same are for protection of all policy holders and creditors in U.S. (56-2-103).

Foreign insurance companies are authorized to transact combination of kinds of insurance while maintaining capital or surplus funds as set forth. (56-2-114). In addition, new insurers must possess surplus funds as set forth in 56-2-115.

**Retaliatory Law.**—When home state of any foreign company requires, of companies organized in this state or the agents thereof, deposits greater than are required by this state, or imposes taxes, fines, penalties, license fees or other charges in excess of those imposed by this state, like requirements are imposed on such company and its agent. (56-2-412). Such retaliatory action is specially provided for foreign title insurance companies. (56-35-128).

**Premium Tax.**—All companies, both domestic and foreign, must file semi-annual report on forms furnished by Commissioner of Insurance. Workmen's compensation insurers pay 4% of gross premiums. (56-4-206). Foreign life insurance companies pay 2% of gross premium receipts from citizens and residents, until 1996, at which time premium percentage decreases to 1.95% and continues to decrease by .05% each year thereafter until year 2000; domestic life insurance companies pay 1¾%. All other companies (except fraternal benefit associations, which are exempt [56-4-103]) pay 2½% of gross premium receipts on premiums paid by or for residents of state or on property located in state (56-4-205). Substantial penalties for late payment. (56-4-216). Fire insurance companies pay additional ¾% toward fire marshal support. (56-4-208). Above taxes are credited on franchise and excise taxes. (56-4-217; 67-4-408; 67-4-980). Taxes are payable June 1, Aug. 20, Dec. 1 and Mar. 1. (56-4-205).

Foreign companies must continue to pay taxes on business remaining in force in this state after expiration of license. (56-4-215).

**Privilege Tax.**—None as such. All insurance companies must pay franchise and excise taxes imposed on corporations generally (see category Business Organizations, topic Corporations), subject to credit for certain premium taxes and payments to Tennessee guaranty association. (56-4-217; 67-4-408; 67-4-908).

**Delinquent Companies.**—Rehabilitation or liquidation and dissolution of delinquent domestic companies, and conservation of assets of delinquent foreign companies, are provided for and proceedings therein regulated by 56-9-102 et seq.

**Uniform Insurers Liquidation Act** adopted. (56-9-101 et seq.).

**Direct Actions Against Insurer.**—See category Transportation, topic Motor Vehicles, subhead Direct Actions.

**No-Fault Insurance.**—See category Transportation, topic Motor Vehicles, subhead No-Fault Insurance.

**Workers' Compensation Insurance.**—Certain specified acts, including submission of fraudulent claims for benefits, fraudulent application for rating or renewal of policies, or fraudulent solicitation for sale of such policies, may constitute Class A felony (if \$10,000 or less is involved), Class E felony (if more than \$10,000 but less than \$60,000 is involved) or Class B felony (if \$80,000 or more is involved). (56-47-101-113).

**Natural Catastrophic Disaster Property Insurance.**—Commissioner of Commerce and Insurance to develop proposal for natural catastrophic disaster property insurance pool to provide full coverage at reasonable fees to commercial and residential property owners unable to obtain coverage due to widespread cancellations due to catastrophic natural disaster. *Note:* Proposal was prepared and submitted in 2005, but no legislation was enacted thereon during 2005.

**SURETY AND GUARANTY COMPANIES:**

Guaranty and surety companies of this or other states may become surety on fidelity, fiduciary, appeal, attachment or other court bonds, if so empowered by their charters. (56-15-101).

**INTELLECTUAL PROPERTY****TRADEMARKS AND TRADENAMES:**

There is no statutory restriction as to what persons, associations and organizations may acquire trademarks. Tennessee Trademark Act was adopted, effective Apr. 25, 2000, and does not apply to suits, proceedings, or appeals then pending.

**What May be Used.**—Mark may not be registered if it consists of immoral, deceptive or scandalous matter; disparages or falsely suggests connection with living or dead persons, institutions, beliefs, or national symbols; simulates flag or insignia of U.S., state, municipality or foreign nation; comprises name, signature or likeness of any living person without consent; is merely descriptive or deceptively misdescriptive of applicant's goods or services; is primarily geographically descriptive or misdescriptive or is primarily surname; or is identical or deceptively similar to mark previously registered or used by another. (47-25-502).

**Registration.**—Application for registration is filed with Secretary of State. Contents of application are governed by 47-25-503. If mark complies, that office will issue

certificate of registration. (47-25-505). Term of registration is five years and may be renewed upon application. (47-25-506).

**Assignment.**—Mark and registration may be assigned with good will of business in which mark is used. Assignment shall be executed in writing and may be recorded for fee with Secretary of State, who shall issue new certificate for remainder of term. (47-25-507).

**Infringement.**—It is unlawful to use any reproduction of registered mark without consent of registrant in connection with sale or advertising of goods or services where use is likely to deceive or confuse as to origin; or to apply reproduction to label, sign, package or advertisement in conjunction with sale or distribution of such goods or services. (47-25-512). Violation is Class C misdemeanor. Owner of mark may apply for injunctive relief, and if acts are committed with knowledge that mark is intended to be used to cause confusion, mistake or to deceive, may recover profits and damages. (47-25-512; -514). Common law rights are preserved. (47-25-516). Notwithstanding absence of competition or confusion, likelihood of injury to business reputation or dilution of distinctive quality of mark shall justify injunctive relief, whether mark is registered or valid at common law, if mark is famous in state. (47-25-513).

**Tradenames.**—No requirement of registration.

**TRADE SECRETS:**

Effective July 1, 2000, Tennessee has adopted Trade Secrets Act. (47-25-1701 et seq.). Tennessee act, however, combines aspects of Uniform Trade Secrets Act with aspects of Revised Uniform Trade Secrets Act. Tennessee act also contains material language not appearing in either of aforementioned uniform acts. Tennessee's act does not apply to misappropriations occurring prior to July 1, 2000. (47-25-1701, compiler's note). Trade secret is defined as "information, without regard to form, including, but not limited to, technical or nontechnical financial data, a formula, pattern, or compilation, program, device, method, technique, process or plan that" is secret and of value. (47-25-1702). One who intentionally deprives or withholds control of trade secret from owner, or, with intent to appropriate, steals or embezzles article representing trade secret or makes or causes to be made unauthorized copy of article representing trade secret, is guilty of theft punishable under 39-14-105.

**Motion Picture Recordings.**—It is offense to knowingly operate audiovisual recording function of device for purpose of recording motion picture in facility where motion picture is being exhibited without consent of owner or lessee of facility. (39-14-110).

**LEGAL PROFESSION****ATTORNEYS AND COUNSELORS:**

The state bar is not integrated.

**Jurisdiction over admission** vested in State Board of Law Examiners (Board), 706 Church St., Suite 100, Nashville, TN 37243-0740, (615) 741-3234, appointed, supervised and acting under rules promulgated by Supm. Ct. (23-1-101 et seq.).

**Eligibility.**—Applicant must be citizen of state who intends to actively engage in practice of law in Tennessee and person of good moral character. (Supm. Ct. Rule 6).

**Registration As Law Student.**—Not required.

**Educational Requirements.**—Applicant shall file with Board, as part of application, evidence that prior to study of law applicant received Bachelor's Degree from college on approved list of regional accrediting association or Southern Association of Colleges and Secondary Schools; also, certificate from dean of school of law where enrolled or from which graduated that school is accredited by American Bar Association or approved by Board of Law Examiners and that applicant has completed all requirements for graduation or that he has average required for graduation and will have credit hours required by date of bar examination. (Supm. Ct. Rule 7).

Foreign-educated applicant must satisfy Board that his education is substantially equivalent to that required of U.S.-educated applicants. (Supm. Ct. Rule 7).

**Examination.**—Board holds examinations in Feb. and July in one or more of following places: Memphis, Chattanooga, Nashville, or Knoxville; but examination must be held at least once a year in Memphis, Nashville, and Knoxville. Notice of intent to take first examination must be filed with Board no later than Mar. 1 for July exam and no later than Oct. 1 for Feb. exam. Application must be made to Board no later than Apr. 15 for July exam and no later than Nov. 15 for Feb. exam. Application fee set by Board. Local examination may generally include following topics: State and Federal constitutional law; criminal law; criminal procedure; contracts; torts; real and personal property law; evidence; State and Federal civil procedure; agency; partnerships; corporations; commercial transactions; wills and estates; domestic relations; professional responsibility; remedies; and conflicts of law. Also, Multi-State Bar Examination is given, and scores from other jurisdictions are not transferable. (Supm. Ct. Rule 7; Board Rules, 23-1-103).

**Clerkship.**—No requirement of clerkship before admission.

**Admission Without Examination.**—Applicant licensed in foreign country must file with Board certified copy of court records showing his admission to bar together with three letters from attorneys or judges, certifying his good standing at that bar. Examination required.

Applicant admitted to practice law in another state may be admitted without examination upon demonstrating to Board that he possesses competence in profession provided he has been actively engaged in practice of law for at least five years, has satisfied educational requirements established by Board, and has passed equivalent examination. (Supm. Ct. Rule 7).

Fees for admission without examination set by Board. (Supm. Ct. Rule 7; Board Rules).

**Admission Pro Hac Vice.**—Nonresident attorney will be permitted to appear, file pleadings and briefs and participate in trial and appellate courts of Tennessee subject to

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**ATTORNEYS AND COUNSELORS . . . continued**

compliance with certain conditions, including association of licensed, resident Tennessee attorney. (Supm. Ct. Rule 19).

**Licenses.**—License is required. (23-1-104). Fee set by Board. No annual license fee required, but annual registration assessment must be paid to Disciplinary Board of Supm. Ct. under Supm. Ct. Rule 9.

**Privileges.**—Attorneys may testify and give depositions instead of appearing personally in court. (24-9-101). Attorneys are exempt from initial summons for jury service, but must inform clerk issuing summons of seven day period within next 12 months that he will be available to serve. If such attorney operates solo practice, however, he is completely exempt from jury service. (22-1-103).

Attorneys may sign bonds for clients in the prosecution and defense of their suits (23-2-104), bail bonds in criminal cases excepted. (39-6-1201).

**Compensation.**—Advertisement of fee for legal service is prima facie evidence of reasonableness of such fee, and unless reasonable under circumstances, court may not award fee in excess of advertised figure. (23-3-109).

**Lien** upon cause of action is given to attorney of record on court docket. (23-2-102).

**Attorney Ethics.**—On Aug. 27, 2002, Tennessee Supreme Court adopted new ethics rules for Tennessee lawyers patterned after ABA Model Rules of Professional Conduct. Effective Mar. 1, 2003, new Tennessee Rules of Professional Conduct represent first complete revision to Tennessee's ethics rules in 32 years and make Tennessee the 45th American jurisdiction to adopt rules based on ABA Model Rules of Professional Conduct.

**Disbarment or Suspension.**—Tennessee statutes regarding disciplinary proceedings were repealed in their entirety on Mar. 30, 2000.

Professional Responsibility Board of Supm. Ct. may also initiate investigations and seek disciplinary action (including reprimand, suspension and disbarment) by hearing committees established by Supm. Ct. Hearing committee actions appealable under 27-9-101. (Supm. Ct. Rule 9).

**Unauthorized Practice.**—No person may practice law without license. Violation is Class A misdemeanor and violator is subject to suit for treble damages. Attorney General authorized to seek injunctive relief, civil penalty of up to \$10,000 per violation plus restitution to any person who has suffered ascertainable loss. Corporation or association may not practice law. But see category Business Organizations, topic Associations, subhead Professional Associations; also category Business Organizations, topic Corporations, subhead Professional Corporations. Nonresident attorney associated with licensed attorney of state in case pending is allowed to appear without procuring license, when introduced to court by member in good standing of state bar, if all courts of resident state of nonresident grant similar courtesy to Tennessee attorneys. (23-3-103).

**Professional Association.**—See category Business Organizations, topic Associations, subhead Professional Associations; also category Business Organizations, topic Corporations, subhead Professional Corporations.

## MINERAL, WATER AND FISHING RIGHTS

### MINES AND MINERALS:

Any mineral interest unused for 20 years reverts to surface owner unless statement of claim filed. (66-5-108).

**Contracts.**—Printed text of contracts for sale or lease of products to be extracted from or beneath ground and attachments thereto must be at least ten point type size for legibility. Noncomplying documents, except those used by state, are voidable at instance of aggrieved party. (47-50-110).

**Operation of Mines.**—Owner or operator opening new or abandoned mine or assuming control of existing mine shall procure nontransferable license from Department of Labor. All licenses valid for one year from date of issuance, renewable annually. (59-1-115). Certificate of competency required for foremen. (59-4-208).

See also category Environment, topic Environmental Regulation.

**Oil and Gas.**—State Oil and Gas Board, Suite B30, 701 Broadway, Nashville, TN 37219, delegated authority to promulgate regulations and assess monetary penalties for noncompliance therewith. (60-1-101, 102). Application for permit to drill well for oil or gas to include plan for erosion control, prevention of pollution of surface waters, and reclamation of areas disturbed by operation. (60-1-103).

Energy acquisition corporation may be incorporated under 7-39-201 to act on behalf of two or more municipalities. Any gas acquisition corporation shall be subject to 7-39-312. (7-39-312).

Surface owners are entitled to compensation for damages caused by oil and gas drilling. (60-1-601 et seq.).

Lease of oil or natural gas rights, or other conveyance of any kind separating such rights from freehold, other than underground natural gas storage right, expires at end of ten years from date of execution thereof unless oil or natural gas is then being produced from said land for commercial purposes, and if after said ten-year period, commercial production of oil and gas terminates for six months all such rights revert to owner of estate from which leasehold was carved. However, during first year after ten-year period, if royalties or rent are being paid or certain activities are being conducted on leased tract or tract unitized or pooled therewith, lessor may exercise any continuation rights in lease. (66-7-103).

Special provisions which governed construction of gas storage tanks near railroad lines (68-16-105) were repealed in 2003.

In 2005, legislature passed Landfill Methane Development Act to encourage and govern extracting and processing of methane gas from landfills. (65-28-201 et seq.).

Any person who performs labor or provides materials in development of leasehold containing oil, gas or other minerals has statutory lien on leasehold. (60-11-102).

See also categories Environment, topic Environmental Regulation; Taxation, topic Coal and Mineral Severance Tax.

**Fishing Rights.**—License generally required to hunt, fish, or trap. (70-2-102). Hunting, fishing, or trapping without license is Class C misdemeanor. (70-2-102). Owners and tenants of farm lands and their spouses and children, along with their grandchildren and great-grandchildren under age of 16 have right to fish on land of farmer without license. (70-2-204). These persons must be Tennessee residents, have permission of farmer and conduct their activities during appropriate season. (70-2-204).

## MORTGAGES

### CHattel Mortgages:

Covered by Uniform Commercial Code. (47-9-101 et seq.).

See category Business Regulation and Commerce, topic Commercial Code.

**Forms.**—See end of this Digest for forms of Financing Statement, and Statement of Continuation, Partial Release or Assignment.

### Form

**Security Agreement.**—May generally follow form such as following, with changes to fit transaction. Prudent secured parties will often add other provisions.

THIS AGREEMENT between A. B. of . . . . . (hereinafter called "Debtor") and C. D. of . . . . . (hereinafter called "Creditor"). WHEREAS Debtor desires to grant Creditor a security interest in certain collateral pursuant to the Uniform Commercial Code (Tenn.), and WHEREAS Debtor, on execution of this agreement will borrow from Creditor the sum of \$ . . . . . [or describe other premise for security agreement], NOW THEREFORE, WITNESSETH, that Debtor hereby grants to Creditor a security interest in [Describe goods, identifying as consumer goods, equipment, farm products, or inventory, stating location, and stating whether after-acquired property, proceeds, increase, etc., are also included and/or describe other collateral], hereinafter called "Collateral," in order to secure (1) the repayment to Creditor of the principal and interest of the obligation secured hereby; (2) all costs incident to the collection of the same and to the enforcement of Creditor's rights hereunder; (3) future advances for protection of collateral or for any other purpose whatsoever; and (4) interest on any such funds [or describe other obligation secured]. Debtor warrants that he has power to grant a security interest in such Collateral (or agrees to devote the proceeds borrowed hereunder, together with such other amounts as necessary to the acquisitions of the Collateral; or authorizes Creditor to pay to . . . . . the funds borrowed hereunder for the purchase of Collateral free and clear of all prior interests of any nature whatsoever), and Debtor agrees (1) to maintain Collateral in good condition during the life of this agreement; (2) to notify Creditor of any changes in his place of business (if chattels are to be used in business), or in his place of residence (if chattels will become fixtures, are consumer goods or are used in farming); (3) to pay the costs of filing of all financing statements, amendments to financing statements, and continuation statements necessary to perfect and to maintain the perfection of the security interest; (4) to maintain insurance against such casualties to Collateral as may be selected by Creditor in companies and in amounts satisfactory to Creditor; (5) (if applicable) that the Collateral is personality and shall not become a fixture of any realty; (6) not to remove any part of the Collateral from the location described herein, [except in the normal course of business,] without the written consent of Creditor; (7) to keep the Collateral free from all other interests, liens, encumbrances or clouds of any nature whatsoever; (8) to allow Creditor to enter the premises of Debtor to inspect the condition of Collateral and inspect all books and records of Debtor relevant to the maintenance, disposition, or proceeds of Collateral. Debtor agrees that in the event of default in the payment of principal or interest of any obligation secured hereby or in breach of any of the conditions herein, Creditor shall have all rights in and to, and remedies with respect to, the Collateral granted under the Uniform Commercial Code of Tennessee, in addition to any and all rights, interests and remedies provided in this Agreement. Debtor waives, as to an assignee of the rights of Creditor herein, all defenses which he might have against Creditor of which such assignee has no notice. This agreement shall inure to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto. Made and entered into at . . . . . day of . . . . . (year) . . . . .

(Debtor) \_\_\_\_\_ (Creditor)

### MORTGAGES OF PERSONAL PROPERTY:

See topic Chattel Mortgages.

### MORTGAGES OF REAL PROPERTY:

Mortgages are practically unused, trust deeds, usually accompanied by notes, being used almost exclusively.

**Trustee.**—With certain exceptions (including security trust), trustee must be resident of or have principal place of business in state, or, if corporation, be chartered under state or federal law. Trust deed must include trustee's address. (66-24-122).

**Execution.**—Trust deeds or mortgages must be in writing (50 Tenn. 562 [1871]), and must be authenticated for registration by acknowledgment of maker's signature or natural person acting on behalf of marker or proved by at least two subscribing witnesses. (66-22-101).

(See category Documents and Records, topic Acknowledgments.)

**Recording.**—To be good against third persons or operate as notice to creditors or purchasers, trust deed or mortgage must be recorded in office of county register where land lies. (66-24-103).

See also category Documents and Records, topic Records, subhead Requisites for Recording or Registration.

**Recording Fees.**—See category Documents and Records, topic Records, subhead Recording Fees.

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**MORTGAGES OF REAL PROPERTY . . . continued**

**Tax.**—Prior to recordation of trust deed, mortgage or any instrument evidencing indebtedness, tax of 11½¢ per \$100 of indebtedness over \$2,000 must be paid. (67-4-409). Where security property is part within and part without state, tax imposed on portion of total secured indebtedness equal to ratio of value of Tennessee collateral to value of all collateral by applying following mathematical formula: value of Tennessee collateral/value of total collateral = \_\_\_\_% × indebtedness = taxable Tennessee indebtedness. (67-4-409). Statute recites that nonpayment or underpayment of tax, or failure timely to pay tax on increase in indebtedness, does not affect or impair validity, priority or enforceability of lien but shall result in imposition of tax lien, in amount of any tax and penalties unpaid. Any such nonpayment or underpayment of tax, until cured, subjects holder of debt to statutory penalty; and debtholder may not maintain action on debt, except for action limited to enforcement of lien, until nonpayment is cured.

**Future advances** clauses in certain mortgages and deeds of trust are enforceable. (47-28-102). Mortgages or deeds of trust which are for future advances which may be obligatory and which are for commercial purposes, in order to have priority over subsequent encumbrances and conveyances, must contain statement or other notice identifying mortgage or deed of trust as securing obligatory advances and as being for commercial purposes. (47-28-104). All open-end mortgages (as defined by statute), in order to have priority over subsequent encumbrances and conveyances, must contain following: (1) Statement or other notice conspicuously identifying mortgage as open-end mortgage; (2) fixed, stated duration for open-end credit agreement, not exceeding 30 years from date of original execution; (3) fixed, maximum limit on total principal debt (including precomputed interest and other precomputed charges); (4) conspicuous notice to borrower of right to reduce maximum principal limit; and (5) provision governing borrower's duty to return checks, credit cards or other devices to obtain further advances in certain circumstances. Optional advances made under mortgages securing future advances, other than noncommercial open-end mortgages, are generally superior in priority to any intervening conveyance or encumbrance unless mortgagee has actual notice of same prior to exercising option to make advance. As general rule, all obligatory advances made under any mortgage, other than noncommercial open-end mortgage, take priority over subsequent encumbrances and conveyances; provided, however, all mortgages securing future advances which may be obligatory and which are for commercial purposes, in order to have this priority, must contain statement or other notice identifying mortgage as securing obligatory advances and as being for commercial purposes. (47-28-101 et seq.). See also category Business Regulation and Commerce, topic Contracts.

**Discharge.**—See subhead Satisfaction, infra.

**Satisfaction.**—After full payment or satisfaction of mortgage debt, holder must record proper release. Failure to make complete release within 45 days after receipt of written request subjects debtholder to \$100 penalty and continued failure to release within 30 days from second written request subjects holder to additional penalty not to exceed \$1,000. If holder of mortgage debt has accepted partial payments pursuant to agreement to release portion of property, holder must, on written request, record partial release. Failure to make partial release within 30 days after written request subjects debtholder to \$100 penalty and continued failure to make partial release within 30 days after second written request subjects debtholder to additional penalty not to exceed \$1,000. (66-25-101-104). Release or modification of mortgage, deed of trust or lien is to be signed by legal holder of secured debt without necessity of signature by deed of trust trustee. (66-25-116). Partial or full payment to mortgage lender of record on debt secured by trust deed is satisfaction and discharge against mortgagee or assignee or transferee of debts secured by such instrument, as to amount of such payment. (66-25-105).

**Foreclosure.**—Trust deeds generally include power of sale, but, in absence of same, compulsory foreclosure requires a bill in chancery. Tennessee Home Loan Protection Act limits terms, practices and documentation of high-cost home loans. (45-20-101 et seq.). Notice by registered or certified mail to debtor and co-debtor of public notice of foreclosure is required on or before first date of publication. (35-5-101).

**Sales.**—Foreclosure is by trustee's sale, resort to suit being rare. Publication of notice of foreclosure must be made at least 20 days before date of sale and must be published at least three different times in some newspaper published in the county where the sale is to be made. Time of sale must be between 10 A. M. and 4 P. M. Advertisement or notice must give the names of the plaintiff and defendant, or parties interested, describe land in brief terms, including street address if available, and mention time and place of sale. (35-5-101 et seq.). Notice must also identify and give specified information regarding federal and state tax liens, if any. (35-5-101 et seq.). "Parties interested" includes holder of any junior lien filed more than ten days before first publication. (35-5-104). Sale without advertisement is not void; but failure to comply is Class C misdemeanor and trustee or other person making sale may be liable for all damages resulting from failure to advertise. (35-5-106-07).

**Deficiency judgments** are lawful, and may be taken against party who buys mortgaged property and assumes debt. (101 S.W.2d 1108 [1936]).

**Redemption.**—Two-year period of redemption applies unless waived in deed of trust. See category Debtor and Creditor, topic Executions.

**Form of Trust Deed**

For the purpose of securing the payment of the following indebtedness to \_\_\_\_\_, or the owner thereof, viz: (Description of indebtedness, amount, number of notes, due dates, interest, etc.) \_\_\_\_\_ hereby bargain, sell, convey and confirm unto \_\_\_\_\_ as trustees, \_\_\_\_\_ County, Tennessee, their successors, heirs, or assigns, forever, the following property situated in Shelby County, State of Tennessee, and described as follows: to-wit:

(Here describe property).

To have and to hold to said trustees their successors, heirs or assigns, the aforesaid property with whom \_\_\_\_\_ covenant that \_\_\_\_\_ lawfully seized in fee of the same, that \_\_\_\_\_ have good right to sell and convey the same; that the same is free from all encumbrances and that we (or I) will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

But this is a trust deed.

Now, should the indebtedness secured hereby be paid at maturity, then this deed is satisfied, and the trustee shall execute proper release deed at the expense of the grantor. Should the indebtedness secured hereby, or any part thereof, not be paid when due, then all said indebtedness shall become due for the purpose of foreclosing this trust, and said trustees shall, after advertising time, place and terms of sale for twenty-one days, by publication once a week for three successive weeks in a daily newspaper published in \_\_\_\_\_, Tennessee, sell the property at public outcry, for cash, execute proper conveyances to the purchasers, and apply the proceeds, first, to the payment of necessary expenses of executing this trust, next, to the payment of the said indebtedness and interest, and pay the balance, if any, to \_\_\_\_\_ or \_\_\_\_\_ heirs, representatives or assigns. Either one of said trustees may alone execute any powers conferred upon them by this trust deed.

The oath and bond of said trustees are expressly waived, and in case of sale hereunder, the grantors hereby expressly waive the equity of redemption, statutory right of redemption, dower and homestead and all other rights and exemptions of every kind in and to said property, and agree that the purchaser shall have an absolute title in fee simple.

Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, (year) \_\_\_\_\_.

\_\_\_\_\_ (L.S.)

\_\_\_\_\_ (L.S.)

(Acknowledgment).

*Caveat:* Prudent lenders will usually include additional provisions, including environmental provisions, depending upon circumstances of transaction. Deeds of trust seeking priority for future advances will, in most circumstances, need to contain certain specified provisions. See subhead Future Advances, supra. For construction loan mortgages to achieve certain priorities over certain UCC interests, recorded writing must indicate that it is construction mortgage. (47-9-334).

**PROPERTY****ABSENTEES:**

**Care of Property.**—Uniform Absence as Evidence of Death and Absentees' Property Act adopted with minor variations, including: Chancery Court has jurisdiction to appoint receiver; if seven-year absence is relied upon as proof of death relative to life or accident insurance claim, statute of limitations begins running at end of seven years; decree not final until seven years have elapsed from date of court's finding that absentee is dead; 25% deduction for insurance fund for appearing absentees; funds in hands of clerk of court or personal representative to be distributed according to law in effect at date of death. (30-3-101 et seq.). Chancery or Probate Court has jurisdiction to appoint conservator of estate of absentee who disappears under circumstances indicating that he may have died or disappeared as result of mental derangement, amnesia, or other mental cause upon showing: (1) Absentee has interest in property in Tennessee, or he, spouse or next of kin is legal resident; (2) absentee has not provided adequate power of attorney; (3) necessity exists for providing care for his property or estate. If spouse of absentee, or next of kin if absentee has no spouse, wishes to transfer property with value less than \$5,000, he may apply to Chancery or Probate Court for authorization without opening full conservatorship. (30-3-201 et seq.). See topic Death.

**Process Agent.**—No statutory provision.

**In partition proceedings** where any of the parties are absent from the state, and without legal representatives in this state, or are not known or named in the proceedings, the court will direct the shares of such parties to be invested in permanent securities at interest, for the benefit of such parties, until claimed by them or their legal representatives. (29-27-218).

**Escheat.**—Tennessee has adopted many provisions of Uniform Unclaimed Property Act (1981). Abandonment period is generally five years, with certain exceptions, including following: sums payable on money orders, seven years; sums payable on traveler's checks, 15 years; deposits and certain other funds held by utility companies and certain court ordered refunds, two years; stock certificates, dividends, distributions, etc., held by business associations or cooperatives, two years; property removed from safe-keeping repository on which rental period has expired, two years (except that surplus proceeds from bank's sale of contents pursuant to 45-2-907 is deemed abandoned immediately if cannot be credited to existing customer account); property held by courts and public and governmental authorities, one year. Intangible property distributable in voluntary or involuntary dissolution is deemed abandoned after date for final distribution or liquidation. Many types of property are also deemed abandoned if owner is known to have died and left no one to take property. \$50 minimum for reporting property. Reports due May 1 for property held as of previous Dec. 31. (66-29-101 et seq.).

Unclaimed or abandoned motor vehicles governed by 55-16-101 et seq.

Unclaimed property payable or distributable in course of demutualization of insurance company is presumed abandoned three years after earlier of date of last contract with policyholder or date property became payable or distributable. (66-29-1).

See also categories Business Regulation and Commerce, topic Banks and Banking, subhead Unclaimed Deposits; Estates and Trusts, topics Descent and Distribution, subhead Escheat, Executors and Administrators, subhead Distribution of Share Not Feasible; Wills, subhead Unclaimed Legacies.

**ADVERSE POSSESSION:**

**Character of Possession.**—Possession must be adverse, actual, exclusive, continuous, open and notorious, for entire period, under claim of right or title. (267 S.W.2d 112 [1953]).

**Duration of Possession:**

*With Color of Title.*—Adverse possession by any person or those claiming under him for seven years supported by recorded instrument purporting to convey fee simple title vests good title in fee provided instrument or decree has been registered for seven years in county where land lies. (28-2-101). Such possession vests title good against all parties, including remaindermen and persons under disability, where instrument or decree has been so recorded for 30 years. (28-2-105).

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**ADVERSE POSSESSION . . . continued**

**Defensive Title.**—Any person or one claiming under him maintaining any action for any lands, etc., must do so within seven years after right accrues. (28-2-103).

**Prescriptive Right.**—Twenty years actual, visible, continuous, notorious, exclusive and adverse possession of land within enclosures or by actual occupancy confers title by prescription with presumption of grant or other muniment of title. (39 Tenn. 690 [1859]).

**Easements.**—Acquired by prescription by uninterrupted adverse user for 20 years during which all parties with interest in servient estate are free from disability and in possession. (292 S.W.2d 501 [1954]).

**CONVEYANCES:**

See topic Deeds.

**CURTESY:**

Curtsey, unless vested, abolished as of Apr. 1, 1977. (31-2-102). For rights of surviving spouse, see category Estates and Trusts, topics Descent and Distribution, and Wills, subhead Election.

**DEEDS:**

**Execution.**—To authenticate deed for recording, signature of maker or natural person acting on behalf of maker must be acknowledged according to law or proved by at least two subscribing witnesses. (66-22-101). (See category Documents and Records, topic Acknowledgments.) Deed to or by county court clerk may be acknowledged before judge or chairman of his court, clerk and master or notary public. (66-22-105).

For circumstances in which spouse must join, see categories Debtor and Creditor, topic Homesteads; Family, topic Husband and Wife.

**Recording.**—Deeds are not good as against third persons until noted for recordation in office of register of county where land lies, but unrecorded deeds are good as between parties thereto and privies. (66-26-101). Lands held by unrecorded deeds are subject to debts of vendor. (66-26-103).

See category Documents and Records, topic Records, subheads Recordable Instruments; Requisites for Recording or Registration.

**Recording Fees.**—See category Documents and Records, topic Records, subhead Recording Fees.

**Tax.**—See category Taxation, topic Property Taxes, subhead Real Estate Conveyance Tax.

**Form of Warranty Deed**

This indenture, made this . . . . . day of . . . . ., (year) . . . . ., between . . . . . of the County of . . . . . and State of . . . . . of the one part, and . . . . . of the County of . . . . . and State of . . . . . of the other part.

Witnesseth: That the said . . . . . for and in consideration of . . . . . dollars to . . . . . in hand paid by the said . . . . . the receipt whereof is hereby acknowledged, hereby sells and conveys unto the said . . . . . heirs and assigns forever the certain tract of lands situated and being in the County of . . . . ., State of Tennessee:

(Description of property conveyed).

To have and to hold, the aforesaid land, with all and singular the hereditaments and appurtenances of and to the same belonging or in anywise appertaining to the said . . . . . heirs and assigns forever; and the said . . . . . for . . . . . heirs and representatives do covenant and agree to and with the said . . . . . heirs or assigns that . . . . . lawfully seized in fee of the aforesaid premises; that the same are free of all encumbrances; (insert encumbrances here if there are any) that they have good right to sell and convey the same to . . . . . as aforesaid; and that the before granted land and premises they will warrant and defend against all lawful claims whatever.

In witness whereof, the said parties have hereto set their hands and affixed their seals the day and year above written. (Signatures.) (Acknowledgment)

**Form of Quit-Claim Deed**

Know all men by these presents, That . . . . . for and in consideration of . . . . . DOLLARS, does hereby bargain, sell, remise, release, quit claim and convey unto . . . . . the following described real estate located in . . . . . County of . . . . ., State of . . . . ., to-wit:

(Description of property conveyed).

In testimony whereof, I have executed this instrument this the . . . . . day of . . . . . (year) . . . . . (Signatures.) (Acknowledgment.)

**Corporate Form of Warranty Deed.**—Modify individual form to show that corporation was organized and exists under laws of state of . . . . ., and that deed is being executed by corporation by and through its duly authorized officers.

See also topic Real Property; categories Debtor and Creditor, topic Homesteads, subhead Alienation or Encumbrance; Family, topic Husband and Wife, subhead Conveyance or Encumbrance of Property.

**DEEDS OF TRUST:**

See category Mortgages, topic Mortgages of Real Property.

**DOWER:**

Dower, unless vested, abolished as of Apr. 1, 1977. (31-2-102). For rights of surviving spouse, see category Estates and Trusts, topics Descent and Distribution, and Wills, subhead Election.

**ESCHEAT:**

See topic Absentees, subhead Escheat; categories Business Regulation and Commerce, topic Banks and Banking, subhead Unclaimed Deposits; Estates and Trusts, topics Wills, subhead Unclaimed Legacies, Descent and Distribution, subhead Escheat, Executors and Administrators, subhead Distribution of Share Not Feasible.

**LANDLORD AND TENANT:**

**Kind of Tenancy.**—Tenancy for term, periodic tenancy, tenancy at will and by sufferance are recognized.

**Maintenance of Residential Rental Property in Certain Urban Areas.**—Owners of "residential rental property" or unoccupied residence, in counties having metropolitan government, or counties having in excess of 800,000 in population in 2000 federal census, must maintain exterior of property and lot at level no less than community standards in that area. (13-16-101 et seq.). Municipality may adopt ordinance to inspect deteriorating residential rental dwelling units. (13-21-301 et seq.).

**Residential Tenancies.**—As to certain rental agents for, see category Business Regulation and Commerce, topic Consumer Protection, subhead Rental Location Agents.

Residential tenancies in Anderson, Blount, Bradley, Davidson, Hamilton, Knox, Madison, Maury, Montgomery, Sevier, Shelby, and Wilson Counties only (including Nashville, Chattanooga, Knoxville and Memphis) governed by Uniform Residential Landlord and Tenant Act (66-28-101 et seq.), modified as discussed below. General Sessions and Circuit Courts have jurisdiction under Act. Significant variations from Uniform Act include: (1) Party has notice only if he has actual knowledge or has been given notice at last known mailing address (66-28-106); (2) landlord acceptance of rent without lease agreement and without reservation creates month-to-month tenancy, and tenant deemed trespasser if he takes possession without signing lease, making oral lease or paying rent (66-28-202); (3) lease provision regarding landlord attorney fees not prohibited, and tenant limited to actual damages for landlord's willful inclusion in lease of provisions prohibited by statute (66-28-203); (4) security deposits governed by 66-28-301, non-uniform provision, under which deposits must be in account only for that purpose with lender regulated by Tennessee or U.S. agency, prospective tenants must be informed of location of account, landlord must sign and supply within three business days of termination of occupancy, but prior to any repairs or cleanup of premises, itemized damage list and repair cost estimate, tenant must either sign list or sign and give landlord written itemized dissent therefrom, and landlord must send written notice of deposit refund amount to tenant's last known or reasonably determinable address and receive no response for 60 days before permanently retaining refund amount; (5) landlord and tenant maintenance obligations do not expressly include plumbing, heating and sewer and water service (66-28-304-401); (6) no provision allowing tenant to defend action for rent or possession on ground of landlord's material noncompliance with lease, and no procedure by which tenant may terminate lease for such noncompliance, but right to terminate is implicitly recognized (66-28-501); (7) tenant must give landlord written notice of failure of essential services (66-28-502); (8) no provision allowing tenant self-help for minor defects or lease termination for landlord failure to deliver possession; (9) month-to-month tenancy terminated upon 30 days prior written notice, and landlord limited to actual damages plus attorney fees for tenant's wrongful holdover (66-28-512); (10) no statutory presumptions regarding landlord retaliatory conduct (66-28-514); (11) nonuniform provision allows termination by landlord upon three days written notice if tenant or person on premises with tenant's consent willfully or intentionally commits violent act or behaves in manner endangering or threatening health, safety or welfare of others on premises (66-28-517); (12) if written rental agreement requires tenant to have utility services placed in tenant's name, tenant's failure to do so within ten days of occupancy allows landlord to terminate existing services if services are in landlord's name, but only if landlord exercises such right within 45 days of occupancy by tenant (66-28-521).

**Residential Ground Leases.**—Ground leases of residential property for term exceeding 15 years regulated by 66-30-101 et seq.

**Condominium Conversions.**—Before converting any leased space (residential, commercial or otherwise) to condominium, in Davidson, Hamilton, Knox and Shelby Counties only, owner or lessor must give tenant at least two months actual notice of conversion and continue renting at same rate for notice period even if lease sooner terminates. Until proper notice given, tenant rights are superior to any purchaser's. (66-27-123).

**Leases** for more than one year must be in writing. (29-2-101). Authentication is necessary only for registration.

Tenant who has taken possession under parol lease for more than one year becomes tenant from year to year. (14 S.W. 314 [1890]).

**Security Deposits.**—In addition to 66-28-301, discussed supra, subhead Residential Tenancies, 66-28-104 (12), defines security deposits in Tennessee.

**Recording.**—Leases for more than three years from date of making must be registered in county in which land lies. (66-7-101, 66-24-103).

**Rent.**—In absence of express provision for rent, mere occupancy implies agreement to pay rent.

**Refusal to Let Lessee into Possession.**—Measure of damages for refusal of lessor to let lessee into possession is difference between rental stipulated and value of leasehold interest.

**Injury from Defective Condition of Premises.**—Landlord is liable to tenant or tenant's guest for injury resulting from defective condition of leased premises where he knew or ought to have known of defective condition and injured person had no reason to know and did not know of it.

**Liens.**—Landlord or a person controlling land by lease or otherwise has lien: (1) For rent, for one year, on crops grown on land during year, which lien inures for benefit of assignee; (2) for payment for supplies of necessary food, fuel or clothing, supplied to tenant or sharecropper during year, on crops grown on land during year; (3) for payment for necessary fertilizer, implements, work stock, feed for stock, seed, labor, and insecticides, furnished tenant or sharecropper during year, on crops grown on land during year.

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.



**LANDLORD AND TENANT . . . continued**

Such liens are prior to all other liens or levies, and to any other contracts or encumbrances, regardless of date thereof. They continue until July 1 of year following year crop was grown, and if proceedings for enforcement have been instituted before that date, until termination of such proceedings. They may be enforced in any court having jurisdiction. Purchasers of such crops are liable for amounts of such liens, if delivery is made to them before July 1 of year following crop year, but suit against purchasers must be brought within one year. (66-12-101).

**Termination of Tenancy.**—Notice to terminate tenancy from year to year must be given six months prior to end of term. Notice to terminate tenancy from quarter to quarter, and nonresidential tenancy from month to month or week to week, must be given quarter, month and week, respectively, before end of term. (193 S.W.2d 100 [1945]). Occupant's tenancy may be terminated where premises are knowingly used to commit crimes involving controlled substances or prostitution. Failure of landlord or owner either to comply with notice requirements to district attorney, or to prosecute such evictions diligently and in good faith, will allow district attorney to evict tenants committing such crimes. (66-7-107). Tenancy may be terminated where premises or area immediately surrounding premises is knowingly used or occupied in whole or in part to buy, sell, or possess drugs, in violation of 39-17-417, 39-13-513, 515. (66-7-107[a]). See also subheads Residential Tenancies and Condominium Conversions, *supra*.

**Holding Over.**—Tenant holding over may be held, at landlord's election, to another like term. (290 S.W. 972 [1926]).

**Dispossession.**—Property may be repossessed by landlord by writ of forcible or unlawful detainer. (29-15-101). Action will not lie against tenant who has paid all rent due for current occupancy and is not in violation of any law and not in breach of written lease. (29-18-104).

Action is before justice of the peace and judgment may be for possession, rent, interest and damages regardless of amount. (29-18-125).

**Uniform Residential Landlord and Tenant Act.**—See subhead Residential Tenancies, *supra*.

**PERPETUITIES:**

Perpetuities are barred by Tennessee Constitution. (Art. I, §22). Uniform Statutory Rule Against Perpetuities was adopted in 1994, effective retroactively. (66-1-201 et seq.). Exclusions from Rule, in addition to those covered in Uniform Rule include charitable trusts (35-1-114), employee benefit trusts (35-50-106), and possibilities of reverter (707 S.W.2d 854). See category Estates and Trusts, topic Trusts.

**PERSONAL PROPERTY:**

Personal property may be owned as tenants by the entirety. (197 Tenn. 367, 273 S.W.2d 151).

**POWERS OF ATTORNEY:**

**Attorneys in Fact.**—Authority to execute deed or mortgage must be by instrument duly acknowledged and recorded in county where land lies. (66-24-101). Power of attorney duly executed in writing by principal who at time of execution or thereafter becomes member of Armed Forces of U.S. is not terminated by death of principal until actual knowledge of such death is brought home to agent. Affidavit executed by attorney or agent that he has not received notice of revocation or termination of power by death or otherwise is prima facie evidence of non-revocation or nontermination of power. (58-1-608-10).

Instruments in relation to real or personal property, executed by an agent or attorney, may be signed by such agent or attorney for his principal, or by writing the name of the principal by him as agent or attorney, or by simply writing his own name or his principal's name, if the instrument on its face shows the character in which it is intended to be executed. (66-5-104).

**Durable Power of Attorney.**—Uniform Act adopted. (34-6-101 et seq.). Provisions also permit creation of durable power of attorney to make health care decisions for principal if specifically authorized. Instrument must be notarized and signed by at least two witnesses. Certain persons are prohibited from acting as witnesses.

**REAL PROPERTY:**

The usual estates are recognized. Estates tail, special or general, have been abolished, and when created they are changed into estates in fee simple, etc. (66-1-102).

**Survivorship** in joint tenancy has been abolished. Heirs of joint tenant inherit just as if the estate were in common. (66-1-107-08). However, right of survivorship may be created by instrument creating joint tenancy if such intention is clearly shown. (40 S.W.2d 1027 [1930]).

**Time-share Estate.**—Creation, development, offerings and management of time shares and vacation clubs governed by 66-32-101 et seq. Violation of time-share act is Class C misdemeanor. (66-32-118).

**Tenancies by the entirety** are recognized. (36-3-505 and 66-1-109). See also topics Curtesy, Deeds, Dower; and category Family, topic Husband and Wife.

**Rule in Shelley's Case** has been abolished. (66-1-103).

**Condominium** is recognized as an estate consisting of undivided interest in common together with separate interest in space in apartment building. (66-27-101-23). Ground lease of condominium property for term exceeding 15 years regulated by 66-30-101 et seq.

See also topics Curtesy, Deeds, Dower, Landlord and Tenant; categories Civil Actions and Procedure, topic Partition; Debtor and Creditor, topic Homesteads; Family, topic Husband and Wife; Mortgages, topic Mortgages of Real Property.

**TRUST DEEDS:**

See category Mortgages, topic Mortgages of Real Property.

**ZONING:**

Test as to whether municipality regulation or ordinance must follow statutory zoning procedures is whether it substantially affects property owner's use of land. (152 S.W.3d 466).

**TAXATION****ADMINISTRATION:**

**Taxable Property.**—All property, whether real, personal, or mixed, shall be assessed for taxation for state, county, and municipal purposes except such as is declared exempt. (67-5-101).

**State Taxes.**—Commissioner of Revenue is vested with authority over collecting agencies of state. (4-3-1903). Real and personal property taxes are collected by County Trustee. (8-11-104). Licenses generally are collected by county court clerk. (18-6-105). Address inquiries to Department of Revenue, 1200 Andrew Jackson State Office Bldg., Nashville, TN 37242-1099, (615) 741-2461.

**Assessment of Taxes.**—Assessment is by assessor elected in each county. (67-1-502). Personal property, both tangible and intangible, and real property are assessed annually and as of Jan. 1 for year to which assessment applies. (67-5-504). Assessment of property and capital stock of Tennessee insurance companies is governed by 67-5-1201-08. Value of all property is ascertained from "evidences of its sound, intrinsic and immediate value, for purposes of sale between willing seller and willing buyer without consideration of speculative values" (67-5-601), except that easement, as defined in 67-5-1004, valued according to current use; land classified under 67-5-1005 as agricultural, forest, or open space, value according to formula (67-5-1008); and dwelling house, as defined in 67-5-601, valued according to current use (67-5-1008, 67-5-601). If use of property classified under 67-5-1005-07 as agricultural or forest land, open space land, or easement is changed, owner is liable for certain back taxes unless changed classification results from lack of certification under 67-5-1005 and property continues to be used for agricultural purposes. (67-5-1005). If sale of such property results in change of use, seller is liable for back taxes unless written contract provides otherwise. (67-5-1008). If use or ownership of property classified as dwelling house under 67-5-601 changes, property owner has duty of informing assessor. If assessor is not timely notified, taxpayer is liable for difference in taxes, including penalty and interest. (67-5-601). Real property, except vacant or unused property or property held for use is assessed at 55% of value for public utility property, 40% for residential and commercial property, and 25% for residential or farm property. Real property that is vacant, unused, or held for use is classified according to its immediate most suitable economic use (67-5-801), except as to agricultural, forest, and open space lands and easements discussed above, which, so long as so used, are classified as farm property (67-5-1008). Tangible personal property classified as public utility, industrial, or commercial property, except merchandise inventories held by person taxable under business privilege tax, is assessed at 55% of value for public utility property and 30% of value for industrial or commercial property. All other tangible personal property is assessed at 5% of value but deemed to have no value. (67-5-901).

Upon sale or termination of business, seller must notify assessor and pay taxes, interest, and penalties owing within 15 days. Successor is required to withhold specified sum from purchase money until issuance of certificate and receipt by assessor confirming payment. Upon failure to do so, successor is deemed not innocent purchaser and is jointly liable on tax obligations. (67-5-513).

**Tax Enforcement Procedures Act.**—Commissioner of Revenue may collect delinquent taxes by levy upon all property and rights to property and by seizure and sale of same whenever any person liable therefor does not pay within ten days after notice and demand. (67-1-404 through 408). Commissioner may place padlocks on doors of businesses delinquent in filing or paying state taxes or may permit such business to continue operation in order to pay tax or fee owed. (67-1-1442). Entry of premises without prior approval of Commissioner is Class C misdemeanor. (67-1-1410).

**Recovery of Erroneous Tax Payments.**—Governed by 67-1-707 et seq. Provisions apply to all taxes collected by counties and municipalities. (67-1-912; 67-1-707).

**Protest of Taxes Assessed by Board of Equalization.**—County Board of Equalization, consisting of five members, meets first day in June and thereafter until equalization has been completed, but no longer than for stated period depending on county population, for purpose of equalizing assessments, hearing complaints, etc. (67-1-401 through 404).

State Board of Equalization hears and settles complaints as to, and equalizes evaluation of, all classes of property in state, which board has appellate jurisdiction over assessment of all private property. Action of board is subject to judicial review. (67-1-301 et seq.; 67-5-1501 et seq.). Board has limited authority to determine location of county boundaries if necessary to settle tax disputes. (5-2-115 through 116).

**Exemptions.**—(1) All property of U.S., of State of Tennessee, or of any county, incorporated city, town or taxing district when used exclusively for public, county or municipal purposes, including not-for-profit general welfare corporations financed by U.S. agency for below-cost housing to elderly persons so long as they qualify as exempt charitable or social welfare organizations under Internal Revenue Code, provided however, that in lieu of such taxes, such not-for-profit corporations shall make payments to local government for improvements, facilities, or services furnished. Real property purchased for investment purposes by Tennessee Consolidated Retirement System subject to property tax; and nonprofit corporations operated to recycle or dispose of waste products to convert same to heat or cooling for public buildings where reversionary interest in corporate property is in state or any political subdivision (67-5-203 through 208); (2) real, personal and leased property of religious, charitable, scientific or nonprofit educational institutions to extent that as determined by tax assessor it is used exclusively for such purposes, or used by another exempt institution for purpose for which it was created under 67-5-212(a)(1)(A), amended 2006, c. 740; church parsonage on lot three acres or less is exempt; property of labor and fraternal organizations are exempted from federal income tax by 26 U.S.C. §501(c)(5), to extent determined by tax assessor that it is used for religious, charitable, scientific, and educational activities; property or portion thereof

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**ADMINISTRATION . . . continued**

containing one residential dwelling located in community park open to public, where dwelling is owned by nonprofit religious, charitable, educational or scientific organization, maintained to discourage vandalism and is not income producing or compensatory to occupant; certain property on which caretaker's dwelling is located if owned by nonprofit member organization chartered by U.S. Congress (67-5-212); (3) cemeteries and monuments of dead (67-5-214); (4) roads, streets, alleys and promenades dedicated or thrown open for public use without charge (67-5-204); (5) growing crops, direct product of this state, or any state of U.S. (260 S.W. 449 [1923]), in hands of producer or his immediate vendee; articles manufactured from such produce and in hands of manufacturer; livestock and poultry in hands of producer or his immediate vendee for farm use (67-5-216); (6) money in individual's personal or family checking or savings account and \$7,500 worth of household goods, wearing apparel, and other tangible personal property or \$15,000 worth if jointly owned by husband and wife, with exemption not used by minor child living at home applicable to tangible personal property used by family in common (67-5-215); (7) property protected by valid charter or contract exemption (67-5-211); (8) real estate owned by nonprofit educational institutions and used primarily for dormitory purposes or residence of its chief executive officer; certain real property owned by nonprofit college or university or nonprofit secondary school (that boards students) and used as residence of faculty or staff; and certain real property owned by nonprofit college or university and used as bookstore (67-5-213); (9) principal and interest on state, county and municipal bonds of this state (67-5-205); (10) property, bonds and notes of housing authorities, and interest and income derived therefrom (67-5-206); (11) personal property which either (a) is moving through State in interstate commerce or (b) is consigned to warehouse in State for storage in transit from outside State to final destination outside State (67-5-217); (12) personal property transported to plant, warehouse, or establishment in state from outside state for storage or repackaging and held for eventual sale or other disposition, other than at retail, to destination outside state (67-5-217); (13) runways and aprons of private public use airports (67-5-219); (14) solar or wind powered heating, cooling or electric generation systems (67-5-210); (15) certain personal property imported from outside U.S., held in foreign trade zone for sale, manufacture, processing or display and sent thereafter to location outside State (67-5-220); (16) land held by charitable institution for purpose of constructing one or more single family dwellings to be conveyed as residence for low-income household for certain periods of time, depending on types and number of dwellings (67-5-221); (17) real and personal property owned or operated by religious or charitable institution, exempt under §501(c)(3) of Internal Revenue Code and having thereon certain kinds of thrift shops (67-5-212[n]); but land not necessary to support exempt structures may not be exempt (67-5-212). There are limited exemptions for members of armed forces.

Persons totally and permanently disabled and persons 65 or older and receiving less than \$10,550 in 1996 (and, for subsequent years adjusted amount reflecting cost of living adjustments determined by Social Security Administration) annual income from all sources are entitled to reimbursement from state of all or part of local taxes on first \$25,000 of property used as residence for one year prior to assessment. (67-5-702 through 708). Tax relief is limited to one recipient for given property for any tax year, and no taxpayer is entitled to relief on more than one residence for any tax year. (67-5-701). State pays all or part of local tax on first \$150,000, for tax year beginning on Jan. 1, 2006, \$175,000 for tax year beginning on Jan. 1, 2007 of property used by disabled veterans (as defined by statute) and certain surviving spouses as residence for one year prior to assessment. (67-5-704). Counties and municipalities have option of freezing property taxes on residences of persons 65 and over with \$12,000 or less combined annual income (67-5-705) or, if metropolitan form of government, legislative body may provide for appropriations for tax relief for elderly low-income homeowners (67-5-701).

When transferring or conveying property results in status of property changing from exempt to nonexempt or vice versa, grantor or lessor of property must promptly report to assessor change affecting status. (67-5-201[a][3] and 67-5-201[b][4]).

**Penalties.—**

*Ad Valorem Tax.*—See topic Property Taxes, subhead Payment and Collection.

*Income Tax.*—See topic Income Tax.

*Inheritance Tax.*—See topic Inheritance Tax, subheads Returns, Assessment and Payment.

*Sales or Use Tax.*—See topic Sales and Use Taxes.

*Franchise, Excise and Gross Receipt Taxes.*—See category Business Organizations, topic Corporations, subheads Excise Tax and Franchise Tax, and this category, topic Business Taxes, subheads Excise Tax and Franchise Tax.

*Privilege Tax.*—See topic Business Taxes, subhead Privilege Taxes.

*Waiver.*—Commissioner authorized to waive penalties of \$1,000 or less and to authorize subordinate officials to waive penalties of \$15,000 or less and to authorize to waive penalties greater than \$15,000, but Attorney General may require prior review and approval. (67-1-803). County Trustee may waive interest and penalty on personal property tax for 90 days from billing date where billing could not be made before delinquent date. (67-5-1803). Commissioner may abate statutory penalty in connection with Department of Revenue audit if Commissioner determines that payment of amount less than that due relates to taxable period covered by timely-filed return and is not result of negligent or intentional disregard of tax law or rules and regulations or fraudulent underpayment of tax. (67-1-802).

**Interest.**—In addition to any penalty, interest shall accrue and be payable at rate that is in effect at time payment becomes delinquent or deficient, subject to any changes in rate of interest until such deficiency or delinquency is paid. This provision applies to any tax collected or administered by Commissioner of Revenue. (67-1-801).

Special provisions govern penalty and interest on delinquent property tax assessments which are appealed by taxpayer or are based on reappraised property values. (67-5-1512).

Interest not imposed on delinquent payments of litigation taxes. (67-1-801[a][b]).

**Interstate Co-operation.**—Uniform Interstate Arbitration of Death Taxes and Uniform Interstate Compromise of Death Taxes Acts adopted. (67-8-501 et seq.).

**ALCOHOL, BEVERAGES AND TOBACCO TAXES:**

**Alcoholic beverage tax** imposed by 57-3-301 et seq. Additional tax on beer barrels. (57-5-201).

**Soft drink tax** imposed by 67-4-402.

**Tobacco tax** imposed by 67-4-1001 et seq.

**BUSINESS TAXES:**

**Excise Tax.**—Tax Revision and Reform Act adopted in 1999. For tax years beginning on or after July 1, 1999, with certain exceptions described below, all persons doing business in Tennessee, including corporations, limited liability companies, registered limited liability partnerships, limited partnerships, cooperatives, joint stock associations, business trusts, regulated investment companies, real estate investment trusts, banks, savings and loan associations and other organizations must pay annual excise tax of 6½% of net earnings for business done in state. (67-4-2007). Following are exempt from this excise tax: (1) General welfare and certain industrial development corporations; (2) corporations formed to operate certain fraternal lodges; (3) regulated investment companies or investment funds taxable as grantor trusts under 26 U.S.C. §§671-677 if not less than 75% of value of investments is in any combination of bonds of U.S., State of Tennessee, or any county, municipality or other subdivision of state; (4) federal credit unions, credit unions organized under laws of other taxing jurisdictions, production credit associations, or certain investment companies; (5) venture capital funds if such fund is limited liability company, limited liability partnership or limited partnership, formed and operated for purpose of buying, holding and/or selling securities, primarily in nonpublicly traded companies on its own behalf and not as broker, and capital of which fund is primarily derived from investments by entities and/or individuals who are neither related to nor affiliated with fund or investments by one or more affiliates if such affiliates also qualify as venture capital fund; (6) limited liability companies, limited partnerships and limited liability partnerships if (a) at least 66.67% of entity's activity is farming or holding personal residences in which one or more members resides, and (b) at least 95% of voting rights, capital interest or profits of entity are owned either by natural persons who are relatives of one another or by trusts for their benefit; (7) limited liability companies, limited liability partnerships or limited partnerships existing on May 1, 1999, which were at least 98% owned by corporate members of affiliated group that was organized for purpose of acquiring evidence of indebtedness from its members, that had assets that secure third party's borrowings and at least 80% of its income is included in income of corporation doing business in Tennessee; (8) limited liability companies, limited partnerships, and limited liability partnerships all of whose members or partners are fully liable for debts, obligations and liabilities of entity and who have filed appropriate documentation with Secretary of State, provided that entity is not owned, in whole or in part, directly or indirectly, by corporation other than not-for-profit corporation; (9) any limited partnership or limited liability company organized exclusively for purpose of providing affordable housing that (a) has received allocation of low income housing tax credits pursuant to §42 of Internal Revenue Code and (b) "extended low-income housing commitment" under §42(h)(6)(B) of Internal Revenue must be in effect for each residential building owned by entity during period covered by return; (10) entity classified as partnership or trust in accordance with 26 U.S.C. §7701 or which has elected to be treated as real estate mortgage investment conduit under 26 U.S.C. §860D or as financial asset securitization investment trust under 26 U.S.C. §860L and sole purpose of which is asset backed securitization of debt obligations; and (11) any family-owned noncorporate owned entity where substantially all of activities of entity are production of passive investment income, and certain qualifying diversified investing funds. (67-4-2008).

Excise tax levied on unauthorized substances possessed actually or constructively by dealers. (67-4-2803).

**Computation.**—Net earnings and net losses, adjusted as prescribed by 67-4-2006, and provisions are specifically made applicable to refund arising from application of 67-6-507(e)(5). (67-4-2006). Credits against excise tax allowed for insurance companies, provided certain requirements under 67-4-2009 are met. Any amount taxpayer entitled to receive under Part 4 or Part 5 of Title 67, c. 4 for excise taxes paid or as refund under 67-1-1802 may be applied as credit. Expenditures incurred for construction of child day care facilities may be credited against excise tax provided requirements of 67-4-2009 are met. Specified percentage of purchase price of industrial machinery allowed as credit against excise tax, but such credit is subject to partial recapture if industrial machinery sold or removed from state during useful life. (67-4-2009). Hospital companies filing franchise/excise tax return on combined basis shall also be allowed credit against combined franchise/excise tax and further credit for cost of medical supplies and medical equipment used or placed in service by members in state during tax year. (67-4-2009). Credit against excise tax permitted for five years for certain unbudgeted property taxes associated with low income housing tax credit property. (67-4-2009). Where taxpayer does business both within and without state, allocation and apportionment must be in accordance with formula in 67-4-2010-2012. Special allocation and apportionment rules prescribed for railroads, motor carriers, rail and motor carriers, pipelines, air express carriers, air carriers and insurance companies. (67-4-2013). Taxpayer who is member of "affiliated group" or financial institution affiliated group may elect to compute its net worth on consolidated basis provided each member of group is required to compute its net worth on consolidated basis. (67-4-2013[d]).

**Report and Payment.**—Return must be filed on or before 15th day of fourth month following close of taxpayer's taxable year. Taxpayers who have combined franchise and excise tax liability of \$5,000 or more for prior or current tax year must make four quarterly estimated franchise and excise tax payments for its current tax year according to following schedule: first payment due on the 15th day of fourth month of current tax year, second on 15th day of sixth month, third on 15th day of ninth month, and final payment on 15th day of first month of next succeeding year. (67-4-2015).

**Delinquency.**—Penalty of 5% for each month of underpayment, not to exceed total of 25%, and interest at rate prescribed by 67-1-801, shall be assessed in event of delinquency or deficiency. Extension of six months to file return may be granted. (67-4-2015).

**Franchise Tax.**—Tax Revision and Reform Act adopted in 1999. All persons subject to excise tax (see subhead Excise Tax, supra) doing business in state, except those having

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**BUSINESS TAXES . . . continued**

not-for-profit status, must pay privilege tax of 25¢ per \$100 or major fraction thereof of taxpayer's net worth. (67-4-2106). Tax imposed by this section shall only be levied on first two billion dollars of taxpayer's apportioned net worth or real and tangible property owned or used in Tennessee. (67-4-2121[a]). Minimum franchise tax payable is \$100. (67-4-2119).

**Computation.**—Measure of tax may be diminished by loss or deficit arising from business losses such as fire, flood, tornado or other natural disasters, or operating deficits that impair value of corporation's capital stock. Value of taxpayer's interest in any other taxpayer in state shall be deducted from tax of first taxpayer. In certain circumstances, debt owed to or guaranteed by parent or affiliate of taxpayer is deemed part of capital, surplus and profit of taxpayer. (67-4-2107). Measure of tax is not less than value of property owned or used in state. Property rented in state included according to formula prescribed by 67-4-2108. Credit against franchise tax is allowed for net amount of gross premiums tax paid. Credit also allowed in amount equal to 25% of expenditures incurred by taxpayer in construction of child day care facilities, provided requirements of 67-4-2109 are met. (67-4-2109). Credits for job creation also allowed, provided certain requirements are met. (67-4-2109). Credit against franchise tax permitted for five years for certain unbudgeted property taxes associated with low income housing tax credit property. (67-4-2109[f]).

**Allocation and Apportionment.**—If taxpayer does business both within and without state, allocation and apportionment shall be in accordance with 67-4-2110-12. Special allocation and apportionment rules are prescribed for railroads, motor carriers, rail and motor carriers, pipelines, insurance companies domiciled in state, insurance companies not domiciled in state, air carriers and air express carriers.

**Report and Payment.**—Return must be filed on or before 15th day of fourth month following close of taxpayer's taxable year. Taxpayers who have combined franchise and excise tax liability of \$5,000 or more for prior or current tax year must make four quarterly estimated franchise and excise tax payments for current tax year according to following schedule: first payment due on 15th day of fourth month of current tax year, second on 15th day of sixth month of said tax year, third on 15th day of ninth month of said tax year, and final payment on 15th day of first month of next succeeding year. (67-4-2115).

**Delinquency.**—Penalty of 5% for each month of underpayment, not to exceed total of 25%, and interest at rate prescribed by 67-7-801 shall be assessed in event of delinquency or deficiency. Extension of six months to file return may be granted. (67-4-2115).

**Failure or Refusal to File.**—Taxpayer who fails to file statement or franchise and excise tax return or pay certain fees or taxes may have its charter or certificate of domestication revoked if more than 90 days delinquent. Same may be reinstated upon filing of all reports and payment of all fees, taxes, penalty and interest. (67-4-2116).

**Premium tax** on insurance companies, see category Insurance, topic Insurance Companies.

**Privilege taxes** are imposed by state, counties, and municipalities on most businesses selling goods or services at retail and on wholesale businesses. (67-4-701 et seq.). Tax is computed as percentage of gross sales, at rates determined by class of business. (67-4-707 through 67-4-709). Tax is no longer levied on privilege of filing most documents with and receiving certain services from Tennessee Secretary of State. Annual tax of \$200 is levied for persons actively engaging in following vocations and professions: registered lobbyists, licensed broker-dealers, agents and investment advisors, licensed or registered accountants, engineers, architects, landscape architects, brokers, chiropractors, dentists, physicians, pharmacists, psychologists, optometrists, veterinarians, audiologists, osteopathic physicians, podiatrists, speech pathologists, sports agent as defined in 49-7-2101(12), and attorneys. (67-4-1702 and 67-4-1703). Privilege tax levied of 4.5% of gross charge for sale, use, consumption, distribution and storage of aviation fuel used to operate airplanes or aircraft motors. (67-4-2701).

**Deductions** are allowed for: (a) cash discounts allowed; (b) returned items; (c) trade-in allowance; (d) unpaid balance on repossessed goods in excess of \$500; (e) amounts actually paid during business tax period to subcontractor or other persons for real estate improvements, if contractor advises appropriate clerk of name and address of subcontracting firm and amount subcontracted; (f) sales of services substantially performed in other states; (g) proceeds from sale of school supplies and meals on elementary and secondary school campuses except those sales by private contractors; (h) for party making direct payment and that party's subsequent vendees licensed in state, federal excise taxes on beer, gasoline, motor fuel, and tobacco and specified Tennessee taxes on gasoline, motor fuel, tobacco, beer, petroleum products, liquefied gas, and alcohol sales for on-premises consumption; and (i) unpaid balances found worthless and charged off for federal income tax purposes. (67-4-711).

**Exempt Businesses and Services.**—Following types of businesses and services are exempt: religious; nonprofit organizations operating on nonprofit membership basis for promotion of members' interest; charitable; domestic; educational; public utilities; banking; insurance; real estate lessors except hotels, motels, rooming houses, camps and trailer parks; promoters licensed by Tennessee Athletic Commission; farmers; manufacturers subject to ad valorem tax. (67-4-708).

**Exempt Parties.**—Following parties are exempt: blind persons under certain circumstances and disabled veterans; any person in respect to his employment in capacity of employee or servant as distinguished from independent contractor; manufacturers paying ad valorem taxes; vending machine operators electing to pay gross receipts tax under 67-4-503; person paying receipts tax under 67-4-401 et seq., with respect to receipts taxable thereunder; newspaper carriers; charitable and religious institutions, with respect to profits earned from sale of items donated to or produced by same; persons conducting shows, displays, or exhibits sponsored by nonprofit organization of gun collectors, other than person regularly engaged in business as dealer in guns or who sells guns for future delivery; residents whose only taxable business activity during tax period is conducted at state, or only one county, fair; organizations exempt under IRC §501(c)(3) which operate historical sites or societies with respect to gross proceeds derived from admission if exempt organization controls and conducts entire function; gross sales made in state of livestock, horses, poultry, nursery stock, and other farm products direct from farm, provided such sales are made directly by producer, breeder, or trainer; businesses in state

having total value of sales of less than \$3,000 per year; qualified businesses doing business from location within enterprise zone for five years from date such business originally certified as qualified business. (67-4-712).

**Report and Payment.**—Requirements vary according to class of business. (67-4-714-19).

**Penalties.**—See topic Administration, subhead Interest.

**CORPORATE TAXES:**

See category Business Organizations, topic Corporations, subheads Taxation of Corporate Property, Income Tax, Excise Tax, and Franchise Tax.

**EMPLOYMENT TAXES:**

**Unemployment compensation tax**, in guise of "contributions", is imposed. (50-7-101).

Contributions are exacted from every employer who, for some portion of day (not necessarily simultaneously) in each of 20 different weeks (not necessarily consecutive) in current or preceding calendar year, employed four or more individuals, regardless of whether same individuals were employed on each day. (50-7-206 through 50-7-401).

Religious, charitable, and educational employers are exempt unless same elect coverage. (50-7-207).

Standard contribution rate is 5.5% of wages paid during calendar year; rate is varied according to employer's experience record. (50-7-402 through 403).

Contributions are payable to Tennessee Unemployment Compensation Division on or before last day of month following quarter for which due.

No further contributions are required if tax imposed by Title 9 of Federal Social Security Act, or any other federal tax against which these contributions may be credited, is repealed, amended or held unconstitutional by U. S. Supreme Court. (50-7-104).

No contributions are required from employees and employer's contributions may not be deducted, in whole or in part, from employees' wages.

**ESTATE TAX:**

Estate tax is imposed by State pursuant to Part 2, c. 8, Title 67 of Tennessee Code for purpose of supplementing inheritance tax to assure State secures total tax at least equal to "State Death Tax Credit" allowed by IRC §2011. Tennessee estate tax is thus equal to amount by which credit against federal estate tax exceeds inheritance tax. (67-8-201 et seq.).

**Franchise, excise, and gross receipts taxes** on corporations, see category Business Organizations, topic Corporations.

**Apportionment Against Inter Vivos Disposition.**—Federal estate taxes are prorated equitable among beneficiaries and other persons interested in estate. (30-2-614 et seq.).

**GASOLINE AND SPECIAL FUELS TAXES:**

Taxes are assessed on gasoline and most other petroleum products and on motor vehicle fuel use. (67-3-201). Aviation gasoline exempt. (67-3-409). Farmers and operators of nurseries may obtain refund of taxes paid on gasoline used for agricultural purposes as defined by statute. (67-3-411). Certain governmental purchases exempt. (67-3-402). "Environmental assurance fee" of .04¢ per gallon is levied on petroleum imported into Tennessee. (68-53-110).

**Nuclear Materials Tax** imposed by 67-4-1101.

**GENERATION SKIPPING TAX:**

Generation skipping transfers which are taxed under IRC §2601 are also subject to state tax if made on or after Jan. 1, 1979, in amount allowable under IRC §2604 as credit for state inheritance taxes. Apportionment formula provided if taxpayer transfers property outside Tennessee. Return on Commissioner's form and copy of federal return must be filed with Commissioner by federal filing deadline. (67-8-601-05).

**GIFT TAX:**

Gift tax applies to gifts, whether in trust or not and whether direct or indirect, and is imposed on gifts of real property in state and tangible personal property having situs in state, whether donor is resident or nonresident, and also on gifts of intangible personal property where donor is resident. Gift tax also applies to transfer of "qualifying income interest for life", as defined in IRC §2056(b)(7), where Tennessee marital deduction (under 67-8-315 or 67-8-105) has been allowed on property. (67-8-101). Spouse transferring property on which Tennessee marital deduction has previously been allowed is entitled to recover gift tax payable on said transfer from those who receive such property. (67-8-110). Gift tax is imposed on net gifts during calendar year, which means total amount of gifts less value of all property transferred to U.S., State of Tennessee, political subdivision thereof, or public institution in Tennessee or in state which grants like exemption to such institutions in Tennessee, for exclusively public purposes, or any corporation, society, association, or trust formed for charitable, educational, scientific, or religious purposes where property transferred must be used exclusively for such purposes.

**Exemptions, Etc.**—For each calendar year, there are single exemptions of \$10,000 for all gifts to all Class A donees (husband, wife, lineal ancestor, or descendant, brother, sister, stepchild, son-in-law, daughter-in-law, person related as result of legal adoption, and nieces and nephews of donors having neither children nor grandchildren) and \$5,000 for all gifts to all Class B donees (any other person, association, or corporation). If aggregate gifts for any calendar year exceed single exemptions, tax is applicable only to extent that gifts (other than of future interests) to each Class B donee exceed \$3,000 and to each Class A donee exceed following: \$3,000 for gifts in 1983; \$5,000 for gifts in 1984; \$7,500 for gifts in 1985; and \$10,000 for gifts after 1985. Transfer to trust established for benefit of minor in compliance with IRC §2503(c) will not be gift of future interest. Also exempt are transfers for educational and medical expenses not treated as transfer of property under IRC §2503(e). Gift to spouse is deductible in full

**GIFT TAX . . . continued**

subject to IRC §2523(b)-(g), provided election specified in §2523(f) is made with Tennessee Department of Revenue. At election of both spouses made under rules of Commissioner, gift by one spouse other than to other spouse is deemed made one-half by each spouse unless donor creates general power of appointment in spouse. Election, if made, applies to all gifts during calendar year of election while electing parties are married, so long as neither electing party remarries during year. (67-8-101-05).

**Rates** apply to gifts during calendar year, regardless of gifts during any preceding taxable year, and are computed according to total gifts to all members of class and not according to gifts to each individual member. Rates for gift tax for Class A donees are same as for inheritance tax as set out below. There are higher rates of gift taxes to Class B donees. (67-8-106).

**Returns and Payment.**—Tax is imposed on donor, who must make return and pay tax to Commissioner of Revenue on or before Apr. 15 of year following year in which gifts were made. (67-8-108, -110-11).

As to credit on inheritance tax, see topic Inheritance Tax, subhead Transfers Taxable.

**Lien.**—If tax is not paid by donor when due, and if distress warrant against donor's property is returned nulla bona, donee of gift is personally liable for tax to extent of value of such gift. (67-8-115).

**INCOME TAX:**

No general income tax, although for-profit corporations, cooperatives, joint-stock associations, state or national banks, and business trusts must pay tax based on earnings. (See category Business Organizations, topic Corporations, subhead Excise Tax.)

There is tax of 6% on incomes from dividends on corporate stock and interest on bonds which includes notes not maturing within six months. (67-2-101-02). Income from stocks and bonds held by fiduciary and set aside for educational, religious, or like institution organized for general welfare and not for profit or individual gain is exempt. (67-2-104). Returns must be made and tax paid to Commissioner of Revenue not later than 15th day of fourth month commencing after end of taxpayer's tax year. (67-2-112).

Tax is imposed on every person, partnership, association, trust, and corporation having legal domicile in Tennessee or maintaining residence in Tennessee more than six months in tax year. (67-2-101).

Following exemptions are provided: Income not in excess of \$1,250 for each individual return, or \$2,500 for each joint return, from stocks and bonds; all such income by person 65 or older receiving less than \$9,000 annual income from all sources; all such income by spouses filing joint return where one spouse is 65 or older and joint annual income from all sources is less than \$15,000 per year; income from obligations of U.S. and from bonds of State of Tennessee or any political subdivision thereof, and exempt-interest dividends from certain regulated investment companies; income from stocks and bonds held by corporation as part of property assessed for ad valorem taxes or as part of assets which determine value of shares assessed to stockholder for ad valorem taxes; income from corporate stock where value of shares is assessed to stockholder for ad valorem taxes; income from stock of state or national bank doing business in Tennessee; dividends from building and savings and loan association to its members, shareholders, or accountholders (45-3-904); income from stocks and bonds of nonprofit general welfare institutions whose property is exempt from ad valorem taxes, provided such income does not go to private individuals or corporations for profit or gain; income from stocks and bonds owned by blind persons; income from stocks and bonds of pension trusts and profit-sharing trusts exempt from Federal income taxation; distributions made pursuant to decrees ordering divestiture of stock in enforcement of antitrust statutes; income from stocks and bonds held by fiduciary and paid to or irrevocably set aside for benefit of educational, religious, or other like institution organized for general welfare and not for profit or individual gain exempt under 67-5-212; stock or properties held in fiduciary capacity by not-for-profit trust corporation providing fiduciary services to trust created for perpetual care of private cemetery and income from such trust fund if corpus does not exceed \$50,000; income from stocks and bonds, mortgages and notes held by persons who are blind or quadriplegic; all income from interest on loan to qualified business for improvement, expansion, or operation, or for real property, within enterprise zone as defined in 13-28-101; income from stock in any publicly traded real estate investment trust as defined in 67-4-2004 (67-2-104, am'd 2006, c. 1019). There are limited exemptions for members of Armed Forces.

Penalty and interest not applicable to persons serving in Armed Forces or in support of Armed Forces in combat zone. (67-2-114).

Commissioner may grant extensions without penalty on good cause shown by written application. If return not filed and tax not paid within time allowed by extension, tax is subject to penalty of ½ of 1% from original due date for each month of delinquency, not to exceed 10% in aggregate. (67-2-114). See also topic Administration, subhead Interest.

**INHERITANCE TAX:**

**Following property is taxable**, under 67-8-303:

A. When transfer is from resident decedent of this state of: (1) real property situated within state; (2) tangible personal property except such as has its actual situs without this state; (3) all intangible personal property; (4) proceeds of insurance policies except as otherwise provided; (5) proceeds of certain employee benefit trusts and plans; (6) property in which decedent held "qualifying income interest for life", defined under 67-8-304; and

B. When transfer is from nonresident decedent of: (1) real property situated within this state; (2) tangible personal property which has its actual situs within this state.

**Transfers Taxable.**—Under 67-8-304, taxable transfers are: (1) transfer by will; (2) transfer by statutes of descent and distribution; (3) transfer by gift within three years prior to death, but excluding bona fide sale for adequate and full consideration; (4) transfer by gift or grant prior to death of transferor but intended to take effect in enjoyment or possession at or after death of grantor; (5) transfer subject to charge, estate, or interest determinable by death of decedent or at any period ascertainable only by reference to death of decedent, as well as any increase accruing to any person or corporation upon

termination of such charge, estate, or interest; (6) transfer pursuant to power of appointment held by decedent to same extent taxable under IRC §2041 except unexercised general power granted by will probated prior to Nov. 1, 1978 and held by decedent who died between May 1, 1980 and May 28, 1981 (67-8-304); (7) annuity or other payment taxable under IRC §2039; (8) property in which decedent held "qualifying income interest for life", as defined in IRC §2056(b)(7)(B)(ii), where marital deduction was allowed with respect to interest under 67-8-315, by reason of its incorporation of IRC §2056(b)(7), or under 67-8-105 by reason of its incorporation of IRC §2523(f), and election specified in IRC §2056(b)(7) or §2523(f) was made with Tennessee Department of Revenue. Decedent's estate is entitled to recover inheritance tax payable because of 67-8-304 from those persons receiving such property. (67-8-417).

If transfer specified in (3), (4) or (5) above is made for valuable consideration, so much thereof as is equal in money value to money value of present consideration received by transferor is not taxable. (67-8-304). Amount included in estate is value on date of transfer, less exemptions under 67-8-104. Gift taxes paid on lifetime transfer are also included in estate, but will serve as credit against assessed inheritance taxes.

Other taxable transfers are: (1) transfer at death of person having ownership interest in property held by decedent jointly with spouse, in which case one-half of value is property held by decedent jointly with someone other than spouse, in which case entire value of property is included in estate of first to die, except that: (a) where property is acquired for full and adequate consideration in money or money's worth, deduction is allowed for portion of value proportionate to consideration clearly shown to have been contributed by survivor, and (b) where property is acquired for other than full and adequate consideration, such fractional part as was acquired by survivor may be deducted from value (67-8-305); (3) transfer by deed of trust reserving to transferor, alone or in conjunction with others, power of revocation, etc., upon exercise of which such property would revert to decedent, to extent of property subject to such powers, and with reference to which such powers remain unexercised (67-8-307); (4) bequest or devise to executors or trustees in lieu of commissions, insofar as it is in excess of reasonable compensation for services rendered (67-8-308); (5) transfer by operation of law upon death of any person (67-8-309); (6) passing of proceeds of insurance policies payable to named beneficiaries, decedent's estate, or in such manner as to be subject to claims against his estate, including proceeds of paid-up, investment, or annuity policy contracts (67-8-306).

**Valuation Basis and Date.**—Stocks and bonds listed on recognized exchange are valued at quoted value on date of death or nearest exchange business day thereafter, and other property is valued at full and true value at date of death, except that: (1) at election of decedent's personal representative, value is determined at date of disposition of property disposed of within six months from death and at six months from death for other property; and (2) under conditions and limitations of IRC §2032A, other than those of subsections (b)(1)(C)(ii) and (c)(6)(B), special valuation for farm or other property is available, but if used, property is subject to lien comparable to that under IRC §6324B. (67-8-412).

**Deductions.**—In determining net taxable estate, following deductions are allowed: (1) value of otherwise taxable property transferred to U.S., State of Tennessee or any political subdivision thereof or public institution therein exclusively used for public purposes, or any corporation, society, association, or trust therein, or in state which grants like exemptions to such institutions in Tennessee, formed for charitable, educational, scientific or religious purposes, provided property is to be used exclusively for such purposes; (2) taxes on real and tangible personal property within state which were lien on such property at date of death; (3) taxes on intangible personal property of decedent or income therefrom which constituted personal obligation of decedent during his lifetime or was lien on such property at date of death; (4) federal income taxes accrued upon income of decedent at date of death; (5) death duties paid or payable to other jurisdictions on intangible personal property, but no deduction for any federal estate taxes; (6) special assessments which at time of decedent's death were lien on real property within state; (7) actual funeral expenses and all other expenses reasonably and actually incurred for purchase of memorial or monument to decedent if resident of state; (8) expenses of administration, including accounting and appraisal fees, court costs, compensation of executors, administrators or trustees and their attorneys, actually allowed and paid, not in excess of lawful rates; (9) federal estate taxes paid pursuant to IRC §§6161, 6166, and interest on Tennessee inheritance taxes paid pursuant to 67-8-419(b) for period of 21 months or less; (10) debts of decedent which constituted lawful claims against estate at date of death, provided that in case of resident decedent there shall not be allowed debt secured by property outside this state, except when property by which debt is secured is included in measure of tax imposed, and except when such debt exceeds value of property securing it, in which case excess may be deducted; (11) amount equal to value of any interest in property which passes or has passed from decedent to surviving spouse, but only to extent that such interest is included in determining value of gross estate. In determining amount qualifying for marital deduction, limitations, restrictions, definitions, elections and requirements set out in IRC §2056(b) and (c) as to "qualifying terminable interest property", shall be applicable, provided that election specified by IRC §2056(b)(7) must be made to Tennessee Department of Revenue. (67-8-315).

In case of transfer other than by will or by intestate laws, only deductions permitted are liens subject to which transfer is made and transfer taxes paid or payable to other jurisdictions on intangible personal property. (67-8-315).

In case of estate of nonresident, only such portion of deductions enumerated (1) through (10) above is allowed as is properly chargeable against property transfer which is subject to taxation. (67-8-315).

No deduction is allowed on account of any claim against estate arising from contract made by decedent and payable by its terms at or after death unless such claim is supported in whole or in part by valuable consideration, in which event only so much thereof as is equivalent in money value of consideration received by decedent shall be allowed as deduction. (67-8-315).

**Credits.**—If gross estate includes property upon transfer of which to decedent tax was imposed by State of Tennessee within five years previously, or property which was received by decedent in exchange for property upon which tax was so imposed, credit on account of such tax actually so previously paid is allowed against tax imposed with respect to particular property. Credit is lesser of: (1) tax paid in previous estate times total

**INHERITANCE TAX . . . continued**

property amount transferred to present estate divided by taxable estate of prior estate; or (2) tax due in present estate times total property amount received from prior estate divided by taxable estate of present estate. (67-8-317). Credit allowed for tax imposed for transfer of property by unexercised general power of appointment, irrevocable prior to Nov. 1, 1978, if property was previously included in taxable estate of decedent spouse and if credit for transfer of that property is not allowable under 67-8-317. Credit is computed according to statutory formula. Estate may apply for refund for failure to take credit. (67-8-304).

**Exemptions and rates,** under 67-8-314-16 are:

Transfers to husband, wife, lineal ancestor or descendant, brother, sister, stepchild, son-in-law, daughter-in-law or person related as result of legal adoption (collectively "Class A donees") and transfers to all other donees ("Class B donees") qualify for shared exemption of \$600,000 for decedents dying after Jan. 1, 1990, with exemption amount increasing to \$625,000 on or after July 1, 1998 and increasing to \$1,000,000 in 2006. (67-8-316). For amounts left to these beneficiaries, rates to be applied against taxable estate are:

<i>Net taxable estate</i>	<i>Rate</i>
not over \$40,000,	5.5% of net taxable estate
over \$40,000 but not over \$240,000	\$2,200, plus 6.5% of excess over \$40,000
over \$240,000 but not over \$440,000	\$15,200, plus 7.5% of excess over \$240,000
over \$440,000	\$30,200, plus 9.5% of excess over \$440,000.

(67-8-314).

**Assessment and Payment.**—Tax is assessed by Commissioner of Revenue, who furnishes forms, etc. (67-8-401).

**Returns.**—Copy of will, if any, and return executed under penalty of perjury in duplicate, must be filed by personal representative with Commissioner of Revenue within nine months of decedent's death in all estates in which gross estate exceeds maximum single exemption allowed in 67-8-316.

**Determination of Tax.**—Upon receipt of return, Commissioner makes appraisal and investigation of estate. (67-8-409). For appraisal principles, see subhead Valuation Basis and Date, *supra*.

**Time and Mode of Payment.**—Tax is due and payable no later than nine months after decedent's death. (67-8-419). If return and inventory are not filed until nine months from date of decedent's death, tax must be paid at time return filed, unless extension of time is granted by Commissioner. (67-8-409-11). If payment on due date would impose undue hardship upon estate or necessitate sale of any portion of estate at sacrifice or at inadequate price, Commissioner may extend time for payment or agree to payment in installments. (67-8-419). See also topic Administration, subhead Interest.

**Lien.**—Upon issuance of receipt to administrator or executor who has paid tax imposed by 67-8-301 et seq. and 67-8-501 et seq., executor or administrator is subrogated to any lien or right to proceed against any transferred property which State might have had, provided notice of lien is filed with Register in county where decedent resided, or where any real property affected is situated, within 45 days from issuance of tax receipt. (67-8-414).

**Liability for Taxes.**—Executors, administrators, and trustees are liable for all taxes payable on estate, together with any interest or penalties, but in no case are they liable for greater amount than actually received. (67-8-423).

**MINES, MINERALS AND FISHERIES TAXES:**

**Coal and Mineral Severance Tax.**—Coal severance tax of 20¢ per ton on all coal products. (67-7-101 et seq.). Tax of 3% of sale price of oil and gas. (60-1-301-02). County governments are authorized to levy tax on severance of sand, gravel, sandstone, chert or limestone, not exceeding 15¢ per ton. Operators must submit return. (67-7-201 et seq.).

**Commercial Fishing or Musseling.**—License and fee required for commercial fishing or musseling. (70-2-205).

**PROPERTY TAXES:**

**Assessment.**—Property assessed as follows: (1) to person owning same on first day of Jan. of year; (2) property held by executors and administrators in county, district or ward in which decedent resided at time of death, until distribution: if deceased lived in another state, property assessed where personal representative lives; (3) personal property held by trustees and guardians of minors and lunatics to each guardian or trustee in county, ward, or district where minor or lunatic resides, if resident of state; if nonresident, in county, ward, or district in which guardian or trustee resides; provided that guardian held property must be assessed in county where guardian having control thereof renders annual settlement; (4) mineral, timber or other rights in real estate, not defined as products of soil, assessed separate from and independent of fee; (5) leased personal property used by public utility company assessed to public utility company; (6) other leased personal property which is classified according to lessee's use and assessed to lessee, unless such property is subject of lawful agreement between lessee and local government for payment in lieu of taxes; (7) property of all street, railroad, gas, electric light companies and other public utility companies, including franchises within towns, city, or taxing district where office of company is located outside city, town, or district, but with main property within, is taxed in city, town, or taxing district as if office was situated within; and property, including franchises of corporations and joint-stock companies that lie wholly or mainly within or whose chief business is within, is assessed for taxation in such city, taxing district, or town; provided that all real and tangible personal property be taxed in district where situated; and provided that public utility property (real, tangible personal and intangible personal) must be assessed at 55% of value. (67-5-502). Comptroller of Treasury may establish pilot program for assessing leased tangible per-

sonal property to owner/lessor rather than lessee, participation will be voluntary. (67-5-502[e]).

Leasehold interest assessable under 67-5-502 valued by discounting to present value excess of fair market value over actual and imputed for leased premises, for term of lease including renewal options. Options of lessee to purchase deemed to have no value. (67-5-605).

Improvement of new building has value for assessment purposes when real property upon which same is located is conveyed to purchaser, or when same has been occupied or used or shall be suitable for occupancy or use, or within one calendar year immediately following date on which construction commenced. If after Jan. 1 and before Sept. 1 building or improvement is moved or substantially damaged by fire, flood, wind, or any other disaster and no improvement constructed in its place before Sept. 1 of that year, assessment is made or corrected on basis of value after damage, provided that assessment of improvement must be prorated for part of year prior to damage or move. (67-5-603).

Special provisions govern assessment of railroad, telephone, radio common carrier, telegraph, freight, private car, street car, power, express, pipeline, gas, electric light, public utility, water and sewerage companies, certain motor bus and truck carriers, certain commercial air and water transportation carrier companies, and operating property used predominantly to provide cellular or long distance telephone service or radio common carrier service. Assessment is by Comptroller of Treasury. (67-5-1301 et seq.).

**Reappraisal.**—Over ten-year period beginning Jan. 1, 1981, and thereafter generally at four or six year intervals, all real property in state shall be reappraised, under supervision and approval of State Board of Equalization and State Division of Property Assessments, and board has authority, under certain circumstances, to approve reappraisal cycle beyond six years. Owner shall be notified of appraised value and assessment and shall have opportunity to be heard. Individual assessments may be adjusted within bounds of equality and uniformity designed to be achieved by program. (67-5-1601).

**Deferral.**—Legislative body of county or municipality may provide by resolution for property tax deferral for residence of low income persons 65 years or older, or those totally and permanently disabled, for duration and under terms and restrictions specified by statute. (7-64-101 et seq.). County or municipality may also provide for deferral for same general classes of applicants of amount of tax in excess of 1979 taxes (or tax in year applicant became eligible) for duration and under terms and restrictions specified by statute. (7-64-201 et seq.).

Where exempt real property is transferred and transfer renders property nonexempt, transferee pays tax from date of transfer to end of taxable year; tax lien attaches on date of transfer, and transferee's liability is not affected by subsequent transfer. (67-5-201).

Legislative body, municipality or county may create grant program for revitalization of substandard residential rental property or real property located in older residential neighborhood. (13-5-101 through 107).

**Evaluation of Assessment.**—Program for evaluation of county appraisals of property of public utilities and railroads has been instituted for purposes of equalization and adjustment of such property in connection with Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. §26(c). Program is administered by Board of Equalization pursuant to criteria specified by statute. (67-5-1605).

**Lien.**—Taxes on property, together with all penalties, interest, and costs accruing thereon, shall be and remain first lien upon property taxed, as well as personal debt of property owner or owners, from Jan. 1 of each year for which such taxes are assessed (67-5-2101). Taxes are lien on fee in property, and not merely on interest of person to whom said property is, or ought to be assessed; but to any and all other interests in said property, whether in reversion or remainder, or of lienors, or of any nature whatever. There is no lien assessed against lessee with respect to leased personal property. (67-5-2102). Partial payment of property taxes, if accepted, does not release tax lien on property. (67-5-1801 et seq.).

Liens for inheritance and gift taxes discussed *infra* this category, topic Inheritance Tax, subhead Lien. Lien for all other state taxes, fees, penalties, interest and costs administered by Commissioner of Revenue, from time of initial assessment, attaches to all property of party against whom assessment made. Notice of lien must be recorded with register of deeds of each county where taxpayer's business, residence or other property interest is located. Recordation is notice of both original assessment and all subsequent assessments against same party. Upon request of legally entitled party, Department of Revenue must disclose amount of lien claim at given date. Lien is prior to all other liens, etc., except: (1) County and municipal ad valorem taxes; (2) deeds of trust recorded prior to recordation of lien notice; (3) Commercial Code security interest perfected by proper filing or under 47-9-310(b) prior to recordation of lien notice. (67-1-1403).

**Payment and Collection.**—The whole proceeding for collection of taxes from the assessment to sale for delinquency is a proceeding in rem and not invalid on account of such land having been listed or reassessed for taxation to any one as owner, or to any person not the owner, or to unknown owners. (67-5-2103).

All taxes, state, county and municipal (except taxes for municipalities governed by charter or other special act) are payable the first Monday in October. (67-1-701).

In most cases, penalty of ½% of State and county tax and interest of 1% is added on first of each month beginning Mar. 1 after tax is due. (67-1-801). See also topic Administration, subheads Interest, Penalties. State, county and municipal taxes (unless by special charter provision the municipality has its own collector) are collected by county trustee or agent thereof. (67-5-1801). Municipality or county may adopt ordinance or resolution providing for discount for early payment. (67-5-1804).

Municipal taxes (except when governed by charter or other special act) bear interest after delinquent date. In most cases, penalty of ½% and interest of 1% is added on first of each month beginning Feb. 1 after tax is due. (67-1-801).

After taxes become delinquent, the county trustee, who collects all taxes (except for municipalities under special laws), may appoint deputy collectors and furnish certified list of delinquencies. (67-5-2001). This officer must collect such taxes thereafter, and on Jan. 1 following must make settlement with county trustee of taxes in his hands for collection. (67-5-2006).

Delinquent taxes collected by trustee by distress warrant and sale of personal property liable therefor; tax books and delinquent lists as aforesaid having force and effect of

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**PROPERTY TAXES . . . continued**

judgment and execution, and being authority to officer to distrain and sell sufficient personalty to pay taxes, penalties, interest and costs. Prior to distraint of personal property county trustee must give ten days notice of intended distraint by either: (1) delivering such notice in person; (2) leaving such notice at dwelling place or usual place of business of taxpayer; or (3) mailing such notice to taxpayer's last known address. Ten days notice must also be posted in three public places in county, one being at court house door. Property must be present at sale. Leased personal property on which lessee is assessed tax may not be distrained and sold. (67-5-2003). Officer may also proceed by garnishment. (67-5-2004).

On or before Jan. 1 following receipt of delinquent lists, officer holding such must return them to the trustee with a return as to what he has done in each instance. (67-5-2006).

Between Jan. 1 and Feb. 1 trustee must advertise by notice in newspaper of county once a week for two consecutive weeks, that suits for delinquent land taxes will be filed after Feb. 1st, imposing additional penalties and costs and forward notice of delinquency to property owner. (67-5-2401-02). Thereafter, between Feb. 1 and Apr. 1, trustee must deliver delinquent lists to attorney who must file suits for all delinquent taxes due state, county and municipality. (67-5-2404). Upon filing suit, 10% penalty accrues on all taxes, which is allowed attorney. (67-5-2410). Suit is filed in chancery or circuit court and tried according to chancery practice, and must be prosecuted to sale within five years of filing. Upon failure of county trustee or executive to employ attorney to institute collection suits, District Attorney General must employ attorney or maintain action for writ of mandamus to compel employment of attorney. Each suit must include at least 25 defendants, if that many are delinquent. Sale is for cash subject to equity of redemption. If outside bid is not received sufficient to cover amount due for taxes, interest, penalties and costs, state must bid such amount, unless appropriate county legislative body determines that environmental risks are sufficient to make ownership not in best interest of state. (67-5-2405-2414-15; 2501-2506). Sale by decree of court in such suit must be advertised by one notice in newspaper in county or by handbills, as court may direct. Notice to parties or others in delinquent tax suits and sales is made as provided in Tennessee Rules of Civil Procedure for service on parties. Notice may be forwarded to address of owner as reflected in office of assessor of property. Search of public records for persons having interest in property to be sold shall be made by delinquent tax attorney, who shall give notice of sale to persons identified by search. Upon sale of severed mineral interest, assessor to notify owner of surface interest who has recorded declaration of surface interest. (67-5-2502).

Certain municipalities may make back assessments and reassessments, and property owners may appeal. (67-1-1003).

**Adjustment and Refunds.**—Procedure to obtain adjustment or refund of taxes previously assessed is set forth in 67-1-707.

**Redemption** of land sold for taxes is allowed within time and on terms specified in 67-5-2701 et seq. Upon sale of severed mineral interest, surface owner has 120 days to purchase mineral interest beneath tract for percentage of sale amount. (67-5-2502). See category Debtor and Creditor, topic Executions.

**Beneficial use tax** is imposed under 67-4-1503 for certain uses of real property exempt from ad valorem taxation.

**Real Estate Conveyance Tax.**—Prior to recordation of real estate transfer, tax of 37¢ per \$100 must be paid on greater of actual consideration for or actual value of property conveyed, except that tax on quit claim deed is based on actual consideration. Tax collection fee of \$1 must be paid with tax. Grantee must make affidavit on instrument to be recorded as to greater of actual consideration for or actual value of property conveyed, or, in case of quit claim, as to actual consideration for transfer. Exempt transactions are leases, creation or abolition of estates by entireties, divisions in kind of realty held by tenants-in-common, releases of life estates to remaindermen, domestic settlement decrees and decrees or deeds adjusting property rights between divorcing parties, deeds executed by executor to implement testamentary devise, transfers of real estate to revocable living trust, and transfers to state or state subdivision or agency. No tax is due until title to property is transferred by deed. (67-4-409).

As to trust deeds, mortgages, and vendor's liens (whether or not evidenced by separate instrument), see category Mortgages, topic Mortgages of Real Property, subhead Tax.

**SALES AND USE TAXES:**

Sales or use tax based on sale or cost price is imposed on sale or furnishing at retail, delivery in this state at retail, renting, leasing, using, consuming, and storing for use or consumption, of tangible personal property (except stocks, bonds, notes, insurance or other obligations or securities), or selling of merchandising space, charging fee for or subscription to access to satellite or cable television services, occasional and isolated sales or transactions of aircraft, vessels or motor vehicles between corporations and their stockholders, including transactions caused by merger, consolidation or reorganization, and between partnerships and their partners or other partnerships, and of certain services, including repair and installation of tangible personal property, hotel lodging, laundry and dry cleaning, and garage and parking lot storage, etc., on cost-plus or toll enrichment fee basis. (67-6-201 through 205). Also taxed are proceeds of sales of certain health and amusement services. (67-6-212).

State general rate is 7%. (67-6-201 through 67-6-205). Certain food items are still taxed at 6%. (67-6-228). No tax imposed on sales of industrial machinery and farm equipment and lease and rental payments for farm equipment and machinery. (67-6-206 through 67-6-207). Tax of 1½% imposed on sales of electricity and liquefied gas, coal, wood, wood products, wood by-products, and fuel oil to farmers or nurserymen used directly in production of food or horticulture products. (67-6-218). Tax on health and amusement services is at rate of 6.75%. Local tax permitted not exceeding 2¾% for sales of personal property (on industrial machinery, farm equipment and machinery and water sold to or used by manufacturers, not exceeding ½% if general local rate greater than 1%, otherwise not exceeding ¼%). Local tax on sale of tangible personal property to common carrier for use outside state at rate of 1.5%. Local tax shall apply only to first \$1,100 on sale or use of single item of personal property. Dealers with no location in Tennessee may choose to pay local tax of 2¼% in lieu of local tax otherwise authorized.

Sale of tangible personal property on which state sale and use tax is levied is subject to local sales and use tax of 2.25% when obtained from vending machine or device. (67-6-702). Local tax on sales of health and amusement services has upper limit.

Property imported from another state is subject to tax with credit for sales tax, if any, paid in such state; provided, other state grants similar credit for taxes paid in this state. No use tax is levied on personal effects of person moving to Tennessee. (67-6-210). Tax credit available for purchases of equipment used to bring purchaser into compliance with pollution emission control standards imposed by regulation. (67-6-346 through 67-6-507).

Newly expanded or constructed facilities housing international, national, or regional headquarters of corporation or its lessor and costing at least \$50 million shall receive tax credit for all sales and use taxes, except taxes for ½%, on building materials, machinery, and equipment. Investment must be made between one year prior to start of construction and one year after substantial completion, up to six years. (67-6-224). Taxpayer that establishes qualified facility to support emerging industry shall receive credit for all sales and use taxes, except taxes for ½%, on sale or use of qualified tangible personal property. (63-6-224[a]).

Sales in ordinary course of business that were contractually committed to or paid for prior to any increase in local option portion of sales and use taxes are exempt from such increase. (67-6-713).

**Electronic Commerce.**—Commissioner of Revenue is authorized to conduct discussions with other states and to participate in pilot project to test means for treating transactions in competitively neutral manner. (67-6-804).

**Exemptions.**—Following property or transactions are exempt from this tax: (1) Sales of livestock, nursery stock, poultry and other farm or nursery products directly from farmer or nurseryman to one other than consumer if 50% of such products are grown or produced in calendar year by such farmer or nurseryman (if less than 50%, exemption applies only to sales of products actually produced by farmer or nurseryman); (2) sales of agricultural commodities by one other than producer to any other person who purchases not for direct consumption but for purpose of acquiring raw products for use or sale in process of preparing, finishing, or manufacturing such agricultural commodities for ultimate retail consumer trade (67-6-301); (3) sales, use, storage, or consumption of aircraft owned or leased by commercial interstate or international air carriers and parts, accessories, materials, and supplies sold to or used by commercial interstate or international air carriers for use in servicing and maintaining aircraft used principally in interstate or international commerce (exemption not applicable to fuel, petroleum products, shop equipment, and tools) (67-6-302); (4) proceeds of and payments on all leases and rentals of tangible personal property owned by airport authority to business primarily engaged in repair of commercial aircraft (67-6-302); (5) sale of motor vehicle to member of uniformed service who either: (a) Has been called into military service and is stationed outside U.S. during hostilities; or (b) is stationed at military reservation located partially within boundary of Tennessee and partially within another state or at naval air station located entirely within Tennessee or at Air Force base engineering development center located entirely within this state, when such vehicle is registered in Tennessee, and sale or use of motor vehicle purchased and used outside U.S. but titled and registered in Tennessee by member of uniformed service stationed or military reservation located outside U.S. (67-6-303, am'd 2006, c. 1019); (6) sale of human blood, blood plasma, or any part thereof by institution or organization exempt under I.R.C. §501 (c)(3) (67-6-304); (7) transfer by dealer in personal property of any item from inventory to be used by dealer, agent, or representative for demonstration or display purposes provided that such article of personal property be returned to inventory for sale in usual course of trade within 120 days (67-6-305); (8) transfer between spouses of automobile when such transfer is result of decree of divorce (67-6-306); (9) portion of consideration received from sale of steam produced by energy or resource recovery facility owned or operated by municipality which is used to satisfy indebtedness to state if facility has no more than one customer (67-6-307); (10) sale or lease of tangible personal property or services to U.S. or any agency thereof created by Congress, for consumption or use directly by it through its own government employees (67-6-308); (11) rental for films to theaters which pay admissions or receipts tax; (12) rental for films, transcripts, and recordings to radio stations and television stations operating under certificate from Federal Communications Commission (67-6-309); (13) proceeds derived from sales at gun shows, displays or exhibits, sponsored by nonprofit organization of gun collectors (67-6-310); (14) sale, transfer, or lease of industrial machinery and construction machinery between parent corporation and wholly-owned subsidiary to extent that sales or use tax previously paid by such parent or subsidiary (67-6-311); (15) retail sale of insulin and insulin syringes (67-6-312); (16) repair services performed within Tennessee on machinery and equipment and associated parts for extracting or removing natural resources, building or improving roads or highways, land clearing, excavation, construction, loading and unloading of containers or truck trailers on and off cars, ships, barges, or aircraft where such property is shipped out of Tennessee; (17) repair service labor performed with respect to aircraft engine equipment and mainframes on aircraft used by commercial interstate or international air carriers; (18) repair parts and labor performed on fire protection equipment and associated parts owned by fire departments in states other than Tennessee; (19) repair services to equipment used primarily in interstate commerce where such repairs are performed outside of Tennessee and original purchase of such equipment was exempt from sales and use tax; (20) repair parts, accessories, material and supplies for certain designated common carrier vehicles, where purchased items are shipped, via purchasing carrier, out of state and purchaser and seller are 100% affiliated corporations (67-6-313); (21) repair services with respect to railroad rolling stock, where such repairs are initiated, performed or completed within Tennessee; (22) sales of helicopters or airplanes within state to non-Tennessee residents, when intended to have situs outside state and are indeed removed within 15 days of purchase; (23) repair and refurbishment services for such helicopters and airplanes (67-6-313); (24) computer media exchange services where resulting media are shipped out of Tennessee, or to government agency, or non-taxable entity located within Tennessee (67-6-313); (25) repair and refurbishment services within Tennessee with respect to airplane component parts which have their situs outside of Tennessee and are removed within 15 days from completion of such repairs if repairs or refurbishments are performed pursuant to and by registered owners of

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**SALES AND USE TAXES . . . continued**

"supplemental type certificate" issued by Federal Aviation Administration (67-6-313); (26) sales of artificial limbs, items necessary for use or wearing thereof, and necessary maintenance service thereon; (27) sales of wheelchairs and necessary maintenance service thereon; (28) necessary maintenance service on lift devices; (29) sales or repairs of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports, and other similarly medical corrective or support appliances and devices including sale of computer software designed to treat individuals with learning disabilities, having no residual value for other purposes, and prescribed by licensed practitioner (67-6-314); (30) charges made by optometrists, opticians, or ophthalmologists to their patients for transfer of tangible personal property used in practice of such professions (67-6-316); (31) sales of disposable, non-prosthetic ostomy products (67-6-317); (32) sales of oxygen prescribed or recommended for medical treatment by licensed practitioner of healing arts and equipment necessary to administer such oxygen (67-6-318); (33) pharmaceutical samples produced or stored in Tennessee for distribution elsewhere, including prescription drugs distributed by manufacturer free of charge (67-6-319); (34) prescription drugs or medicines, and certain disposable medical supplies issued by licensed pharmacists in accordance with individual prescription; (35) sale of any drug, including over-the-counter drugs, for human use dispensed pursuant to prescription; sale or use of insulin, sale or use of oxygen and supplies to use oxygen where dispensed pursuant to prescription; dispensable medical supplies, prescribed by physician and dispensed by licensed pharmacist, used in intravenous injections of human patients outside of hospitals, skilled nursing facilities or ambulatory surgical treatment center (67-6-320); (36) transfer by dealer of railroad rolling stock or of vessels or barges of 50 tons or over displacement where purchaser gives seller affidavit that such vessels or rolling stock are being purchased for use in interstate commerce or outside Tennessee; (37) sales, use, storage, or consumption of parts and accessories, material and supplies, not including fuel or petroleum products or shop equipment or tools, used in servicing and/or maintaining railroad rolling stock currently being used or reasonably intended to be used in interstate commerce (67-6-321); (38) tangible personal property or taxable services sold, given, or donated to church, university, college, school, orphanage, foster home placement service, home for aged, hospital, girls' club, boys' club, community health council, volunteer fire department, organ bank for transplantable tissue, USO, state historical property, nonprofit community blood bank, senior citizen service center, nonprofit talent or beauty pageant in which contestants compete for scholarships, organization exempt under I.R.C. §501(c)(3), labor organizations, not-for-profit cemetery companies, war-time era veterans' organization chartered by Congress and exempt under I.R.C. §501(c)(4), Tennessee corporation or LLC that is directly or indirectly controlled by not-for-profit entity organized to preserve or rehabilitate property listed on National Register of Historic Places (67-6-322); (39) use, sale, or distribution of religious publications to or by churches or other religious or charitable institutions for use in customary religious or charitable activities (67-6-323); (40) replacement of faulty parts and equipment under warranty (67-6-324); (41) sales of tangible personal property to telephone cooperatives for their own use and consumption (67-6-325); (42) sales of tangible personal property to commercial marine vessels for use by such vessels where deliveries of such property are made in midstream of waterways constituting geographical boundaries of this state (67-6-326); (43) repair services performed on vessels and barges of 50 tons and over displacement used principally in interstate or international commerce and component parts so used (exemption not applicable to fuel and other petroleum products or to shop equipment and tools) (67-6-327); (44) sales of tangible personal property to watershed districts for use and consumption by such districts (67-6-328); (45) gasoline upon which privilege tax per gallon is paid or gasoline or diesel fuel used for agricultural purposes; (46) motor vehicle fuel tax (67-3-201, 67-3-402); (47) newspapers; (48) advertising supplements or other printed material printed in Tennessee and distributed with newspapers; (49) seeds, seedlings, plants grown from seed and cuttings which will produce food or fiber for human or animal consumption and fertilizer and pesticides to be used in growth and development of such seeds, seedlings, or plants; (50) containers for farm products and plastic or canvas used in care of plants, seeds, or seedlings which will produce food or fiber for human or animal consumption or in covering feed bins, silos, and other similar storage structures; (51) livestock and poultry feeds, livestock warmers, livestock medications, and instruments used for administration thereof; (52) natural or artificial substances used in reproduction of livestock, including semen or embryos; (53) adjuvants and surfactants solutions sold exclusively for mixture with insecticides, pesticides, fungicides, or herbicides or for use as soil conditioner intended to aid growth and development of food or fiber for human or animal consumption; (54) shoppers' advertisers distributed in Tennessee or within 25 mile radius thereof at regular intervals provided without charge to shoppers; (55) caskets and burial vaults not to exceed \$500; (56) parking privileges sold by colleges, universities, technical institutes, or area vocational technical schools to students; (57) school books and school lunches; (58) sales made to State of Tennessee or any county or municipality thereof; (59) motor vehicle fuel taxed per gallon by c. 3, Part 2 of Title 67; (60) liquified gas taxed by 67-3-1101 et seq.; (61) film, including negatives, used in business of printing or provided to obtain services of such business; (62) typesetting, or materials necessary for such, used in business of printing or provided to obtain services of such business; (63) magazines and books distributed and sold to consumers by U.S. mail or common carrier where only activities of seller or distributor in Tennessee have to do with printing, storage, labeling, and/or delivery to U.S. mail or common carrier, or maintenance of raw materials with respect to such activities; (64) seeds, seedlings, plants which will produce food or fiber for human or animal consumption, fertilizer and pesticides, and containers pesticides, etc. used to aid in growth and development thereof sold directly to nurseryman; (65) gross proceeds from sale of transient occupancy by not-for-profit entity approved by Tennessee Oconee Development Agency when provided during events sanctioned by International Olympic Committee, International Canoe Federation, Atlanta Committee for Olympic Games, or U.S. Canoe and Kayak Team (67-6-329); (66) admission, dues, or fees from activities sponsored by public or private schools grades K-12; (67) gross proceeds or receipts from admissions to county or agricultural fairs; (68) first \$150 per member per annum of membership, dues or fees of recreation club or community service organization (exemption not applicable to membership dues or fees of country clubs); (69) membership application fees, dues, or contributions, except that portion attributable to admission

prices, paid to institutions and organizations exempt pursuant to I.R.C. §501(c)(3), (8), and (19); (70) membership fees or dues of those organizations listed in Major Group No. 86 of Standard Industrial Classification Manual of 1972, as amended; (71) gross proceeds from amusement or recreational activities conducted or provided by nonprofit museums, historical societies and operators of historical sites, or by organizations eligible for exemption under I.R.C. §501(c)(3), when such activities are conducted and controlled exclusively by such organization; (72) fees resulting from production of television, film, radio or theatrical presentations (dues and admission charges not exempt); (73) events or activities conducted upon rivers and waterways in this state whose continued use for recreational purposes is contingent upon revenue produced pursuant to agreements entered into between State of Tennessee and federal government or agency thereof, which agreements provide for establishment of trust fund for such purposes, provided that annual distribution of funds to state from such trust fund exceeds that amount of revenue to state which would have otherwise been produced if amusement tax were imposed on such events or activities; (74) receipts from coin-operated amusement devices subject to tax under 67-4-504; (75) all sales contractually committed or for which money has been paid prior to June 1, 1984; (76) athletic events for participants under 18 years of age sponsored by civic or not-for-profit organizations; (77) gross proceeds derived from admissions to amusement or recreational activities or facilities conducted, produced, and controlled by municipalities or counties; (78) membership assessments for capital improvements made by recreation club, community service organization, or country club against members; (79) gross proceeds derived from admissions to beauty pageants or rodeos produced by nonprofit civic organization (exemption applicable only to such events held in same city for 30 years or longer); (80) gross proceeds derived from admissions to musical concerts conducted by not-for-profit community group associations; (81) events or activities held by employers solely for benefit of employees; (82) fishing tournament registration fees collected from tournament participants; (83) dues, membership application fees, admission fees, contributions or rental charges for equipment paid to any corporation or enterprise which offers on regular full-time basis services or facilities for development or preservation of physical fitness through exercise or athletics, provided statutory conditions are met; (84) any entry fee or charge which allows entrant to participate in contest or tournament or charity horse show; (85) purchase of amusement activities provided free of charge to public in connection with activity conducted by organization exempt under I.R.C. §501(c) or listed in Major Group No. 86 of Standard Industrial Classification Manual of 1972, as amended (67-6-330); (86) transfer by dealer of motor vehicles with gross vehicle weight rating of class three or above and trailers, semi-trailers and pole-trailers used exclusively in service of passenger or cargo transportation by common carrier in interstate or foreign commerce under federal government or state regulatory agency authority (67-6-331); (87) sums paid or property or services contributed to municipal or county utility, electric cooperative or electric membership corporation by any person required as condition for utility service to make such payment as contribution in aid of capital construction (67-6-332); (88) charges made by taxidermists for taxidermy (67-6-333); (89) gas, electricity, fuel oil, coal and other energy fuels sold directly to consumer for residential use (67-6-334); (90) charges made by dentists to patients in connection with sale or transfer of tangible personal property used in practice of dental profession (67-6-335); (91) sale or use of used factory-manufactured structure to extent sales or use tax paid at initial sale or use in this state (67-6-336); (92) sales for which consideration is food stamps or food coupons or supplied by electronic debit card or other electronic device approved by Department of Human Services and issued by such department or by federal government, to purchase eligible food products (67-6-337); (93) sales for which consideration is voucher issued under Special Supplemental Food Program for Women, Infants and Children, 42 U.S.C. §1786 (67-6-338); (94) materials sold to or used by structural metal fabricator for use in performance of contract outside this state (67-6-339); (95) charges made by local exchange carriers to interexchange carriers and long distance resellers for providing access to local exchange area and charges made by local exchange carriers to cellular telephone companies for interconnection to landline network; (96) charges made between local exchange carriers and interexchange carriers for use of intercompany facilities pursuant to shared network facility arrangements (67-6-342); (97) occasional and isolated sales of vessels, motor vehicles, or aircraft described at 67-6-102(1), and subject to tax imposed by 67-6-202; (98) sales of vessels, motor vehicles, or aircraft removed from state within three days of purchase for use in another state; (99) leases of motor vehicles, vessels, or aircraft subject to tax imposed by (67-6-204); (100) sales of motor vehicles exempt from tax pursuant to 67-6-303 (67-6-343); (101) sales or use of direct mail advertising materials that are distributed in Tennessee from outside state by person engaged solely and exclusively in business of providing cooperative direct mail advertising (67-6-344); (102) sale, gift or donation of tangible personal property or taxable services to national organizations of state legislators, or any nonprofit corporations acting as agents for such organizations, in connection with national meetings held in Tennessee; (103) occasional or isolated sales of goods or services by one not in such business, and occasional or isolated sale of aircraft, vessels, or motor vehicles between persons who are married, lineal relatives or spouses of lineal relatives, or siblings; (104) machinery used to package manufactured items used by person in principle business of fabricating or processing tangible personal property for resale (67-6-102); (105) chemicals and supplies used in air or water pollution control equipment and machinery (67-6-329); (106) repair services, (including parts and labor) to equipment used in connection with aircraft used for purposes of medical evacuation by not-for-profit hospitals, medications, or government entities (67-6-347); (107) retail sale of used clothing by 501(c)(3) institution or organization (67-6-348); (108) services by corporation for affiliated corporation of which own 100% capital stock or 100% capital stock of both owned by parent organization (67-6-350); (109) consideration received from sale of U.S. or state flags by nonprofit organization up to amount paid by organization for flags; (110) sales of commemorative bricks by Tennessee Bicentennial Commission or Tennessee 200, not-for-profit corporation (67-6-329); (111) aviation fuel actually used in operation of aircraft (67-6-386); (112) diesel fuel sold to or used by common carrier and actually used in operation of locomotive (67-6-386); (113) personal property sold to common carrier for use outside Tennessee (67-6-385); (114) fabrication of computer software by person for such person's own use; (115) tax liability arising solely from movement of taxable aircraft into Tennessee in conjunction with establishing new "headquarters facility"

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**SALES AND USE TAXES . . . continued**

(67-6-391); (116) purchases of detailing services and repair services performed on motor vehicles held for resale by licensed motor vehicle dealer or licensed auto auction (67-6-392); (117) private communication services utilized for communications with computer or telecommunications center located in Tennessee when taxpayer of its affiliate has qualified for headquarters tax credit (67-6-389). Notwithstanding above exemptions, sale of tangible personal property by retailer without place of business in state to consumer in state or another person for redelivery to consumer in state pursuant to retail sale by retailer to consumer is taxable. Sales of tangible personal property or taxable services to public or private school, grades K-12, or school support group where such property or services are intended for resale taxable. (67-6-102). Notwithstanding any contrary provisions, pharmacies and home health care providers are consumers or users of tangible personal property or taxable services, and sellers of same must collect appropriate tax on sale unless pharmacy or home health care provider is exempt under 67-6-322. (67-6-352).

Proceeds paid by insurer to owner of leased motor vehicle, which was rendered salvage vehicle, nonrepairable or flood vehicle, and then transferred to insurer, are exempt from sales and use tax imposed on gross proceeds of motor vehicle leases. (67-6-398).

**Each seller must register** with State Commissioner of Finance and Taxation. Report of gross sales and payment of tax for each month must be made before 20th of succeeding month. Commissioner may by regulation establish filing dates other than monthly. (67-6-505). Books and records must be kept subject to inspection for three years from Dec. 31 of year in which associated return required by this chapter was filed. (67-6-523). Out-of-state person making sales in Tennessee, who cannot be required to register for sales and use tax under applicable law but who nevertheless voluntarily registers to collect and remit use tax on items of tangible personal property sold to Tennessee customers, shall be allowed deduction against taxes due of 2% of first \$2,500 on each report and 1.15% of amounts over \$2,500 on each report. This deduction does not apply to Model 1 sellers under Streamlined Sales and Use Tax Agreement (67-6-509). There is penalty of 5% for first 30 days or part thereof of default with 5% for each 30 days thereafter up to 25%. Minimum penalty for delinquent return may be \$5. (67-6-516). See also topic Administration, subhead Interest. Dealer is entitled to credit for overpayment or erroneous payment on transactions in same month before any penalty or interest is computed.

Where articles are taken in trade or part payment for new or used articles the tax is on difference of price of the new or used articles less credit for the articles taken in trade. Further, auto dealer may purchase vehicle for businesses from own inventory and receive same trade-in tax credit as if had purchased from another dealer. (67-6-510).

**STAMP AND SEAL TAXES:**

**Stamp Tax.**—No requirement of documentary stamps.

**TOBACCO TAX:**

See topic Alcohol, Beverages, and Tobacco Taxes.

**TRANSPORTATION****MOTOR VEHICLES:**

**Uniform Vehicle Code** is in effect. Supervision is by Tennessee Motor Vehicle Commission, 500 James Robertson Pkwy., 2nd Floor, Nashville, TN 37243-1153, (615) 741-2711. (55-2-101).

**Vehicle license** required annually. Renewal dates vary. (55-4-104). Issued by county court clerk. (55-4-101). One plate required for passenger vehicles, to be displayed at rear. One plate required for truck, to be displayed at rear if truck does not exceed  $\frac{3}{4}$  ton and has panel or pick-up body style. One plate required for motor home, to be displayed at rear. One plate required for all other trucks and truck-tractors, to be displayed at front. One plate required for trailer, semi-trailer, dealer's vehicle and motorcycle, to be displayed at rear. (55-4-109-10).

Upon sale of vehicle seller must remove plates and surrender them to the county court clerk or transfer them to another vehicle, receiving credit for a proportionate part of the fee due on such other vehicle. (55-4-118). Nonresident owners not regularly operating vehicle about business in state need not register. Where business vehicle is so used but state of registration is subject to reciprocal agreement no registration here is required. Commissioner may enter into reciprocal agreements relating to proportional registration of commercial vehicles in interstate or combined interstate and intrastate commerce. (59-4-121). Each owner of fleet of rental trucks and truck tractors may register in Tennessee proportional part of fleet determined by dividing mileage of all units in fleet driven in Tennessee during year by total mileage of all units in fleet during period. (55-4-123). All other nonresidents using vehicle regularly about business in state must register same. (55-4-120; 55-4-121). No exemptions for members of Armed Forces.

**Operator's License.**—Uniform Motor-Vehicle Code adopted with modifications. Minimum age for operator's license, 16 years; for chauffeur's license, 18 years. (55-7-105). License held by member of Armed Forces continues while he is stationed outside state and for 60 days after separation from service or reassignment to duty within state. (55-7-110).

**Titles.**—Certificate of title must be obtained from Division of Motor Vehicles by application to county court clerk of county wherein vehicle is to be registered, or directly to registrar in case of either proportional or apportioned registrations and in case of state owned vehicles. (55-3-103). Joint ownership is indicated on certificate by use of names, separated by conjunction "and"; all owners must sign to transfer title. (55-3-114; 55-3-118). No certificate of title is required for foreign vehicle, if nonresident owner has valid foreign certificates of title and registration, and if vehicle is to remain registered in foreign state as well. Off-highway motor vehicles must be titled if purchased after June 1, 1983. (55-3-101). In case of new car, bill of sale and statement of lien, if any, must accompany application. (55-3-103). If commissioner is not satisfied as to ownership or that there are no undisclosed security interests, bond may be required as condition to

issuance of certificate. (55-3-103). Motor Vehicle Anti-Theft, Title Reform and Consumer Protection Act of 1996 affects titling of certain damaged and rebuilt passenger motor vehicles. (55-3-301 et seq.).

**Sales.**—Owner must endorse an assignment and warranty of title on certificate of title and deliver certificate to transferee. (55-3-118). Class C misdemeanor for transferor to fail to enter transferee's name on properly endorsed certificate of title. Class C misdemeanor for any person to possess executed certificate of title without name of transferee. (55-3-127). Transferee must obtain new registration and apply for new certificate of title before operating vehicle. (55-3-119). If transferee is dealer who holds vehicle for resale, he need not obtain new registration and certificate of title but may do so if vehicle held for resale outside state. Upon resale, such dealer must endorse certificate to his transferee. (55-3-120). If transferee is dealer and purchases vehicle with intent to dismantle or wreck vehicle, he must mail or deliver certificate of title directly to Division of Motor Vehicles and obtain permit for wrecking or dismantling. (55-3-202). Insurance company that obtains title to motor vehicle as result of paying total loss claim must obtain permit to dismantle vehicle unless vehicle more than ten years old and valued at less than \$1,500. (55-3-120).

**Liens.**—No liens, except possessory liens and certain state tax liens, are valid as to third persons without notice unless lien has been noted on certificate of title by Division of Motor Vehicles. (55-3-114; 53-3-123; 55-3-125-26; 55-3-137). When lien has been discharged, notation to that effect must be entered and acknowledged on certificate of title. (55-3-114). When lien is assigned, assignee must cause new lien to be noted on certificate of title by Division of Motor Vehicles. (55-3-124). 55-3-126 makes provision for perfecting of lien.

**Identification Marks.**—Unlawful to sell automobile after altering or defacing motor or engine number without disclosing fact. (55-3-116).

**Operation Prohibited.**—By persons intoxicated or under influence of drugs. (55-10-401 et seq.). Penalties for this and certain other vehicular offenses enhanced for repeat offenders under Motor Vehicle Habitual Offender Act. (55-10-601 et seq.). Vehicle used in second or subsequent violation is subject to forfeiture in certain circumstances. (55-10-403). Driver not permitted to possess open container of alcohol during operation. (55-10-416). No person possessing learner's permit or intermediate driver's license may operate motor vehicle while using cellular or mobile telephone. (55-50-311).

**Size and Weight Limits.**—Regulated by 55-7-101 et seq.

**Equipment Required.**—Regulated by 55-9-201 et seq.

**Passenger Restraints.**—Unlawful to buy, sell, lease, trade or transfer from or to Tennessee resident, at retail, automobile manufactured after 1963 not equipped with safety belts installed for use in left and right front seats, or automobile manufactured after 1968 not equipped with proper seat belts for every designated seating position. Child passenger restraint system required for transportation of child under age of four. Operator and front seat passengers must wear restraints while vehicle is moving. Use of restraints by passengers of ages 4-15 is responsibility of operator. Failure to use restraint is misdemeanor punishable by fine of \$50. (55-9-602). Violation is not contributory negligence and is inadmissible in civil litigation, except in products liability action, failure to wear safety belt can be admitted as to causal relationship between noncompliance and alleged injuries. (55-9-604).

**Vehicle Air Bags.**—Person who knowingly installs or reinstalls object in lieu of airbag may be guilty of misdemeanor. (59-9-108).

**Motor Vehicle Safety.**—Driver of school bus shall not use hand held mobile phone while vehicle is in motion or transporting children unless contacting or receiving call from central dispatch or equivalent. (55-8-112).

**Lights Required.**—Regulated by 55-9-401-414.

**Accidents.**—Driver must stop and give name, address and registration number to person who, or whose property, was injured, and show him his operator's license. (55-10-103). If accident involves personal injury, death or property damage of \$50 or more, driver must report same immediately to police, if occurs in city. (55-10-106). If driver physically unable to make report, same must be made by other occupant or owner of vehicle, if any. (55-10-109). Garage operators must report any vehicle appearing to have been in serious accident or struck by bullet. (55-10-113).

Any person involved in accident occurring on divided, controlled access highway or interstate highway of this state may remove vehicle from road into safe refuge, provided that accident resulted in no personal injury, death, or extensive property damage. (55-10-117).

Where more than one person was driver of vehicle in accident, only driver contributing to accident may be cited for violation of rules of road. (55-10-118).

See also infra, subhead Proof of Financial Responsibility.

**Owner liable** for negligence of others only when present in the car or car operated by his servant or agent within scope of authority or duty. Owner of car kept for family use liable for negligence of any member of family. Registration prima facie evidence that vehicle was driven by owner or his duly authorized servant or operated with owner's consent at time of accident. (55-10-311).

**Guests.**—No statutory restriction of liability for injury to gratuitous guest.

**Proof of Financial Responsibility** governed by 55-12-101 et seq.

**Accident Reports.**—Motor vehicle operator involved in accident in Tennessee where death or personal injury occurs or property damage is greater than \$400 must report accident in writing to Commissioner of Department of Safety within 20 days. (55-10-107; 55-12-104). If operator fails to make report, owner shall do so as soon as he learns of accident. (55-12-104). Failure to make required report is ground for suspending licenses, operating privileges and registrations, effective 20 days after notice of suspension mailed. Report to Commissioner not required: (1) As to vehicle owned by U.S. or Tennessee or any subdivision or municipality thereof; (2) from owner or operator where there was no physical contact with another vehicle, object or person; (3) from owner of vehicle legally parked at time of accident. (55-12-104).

**Deposit of Security.**—Commissioner, if he finds that owner or operator may be liable and has received notice of claim against owner or operator, must revoke licenses and

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**MOTOR VEHICLES . . . continued**

registrations and, in case of nonresident, privilege of using highways, of potentially liable party, effective no earlier than 20 days after notice of revocation is mailed to such party, unless party files or deposits with Commissioner one of following forms of security: (1) Proof on Commissioner's forms of liability insurance in form of single limit policy not less than \$60,000 or split limits policy in amount of \$25,000 for personal injury or death of one person, \$50,000 for personal injury or death of all persons in one accident, and \$10,000 for property damage; (2) cash deposit or bond in amount of \$60,000 or in amount equal to all damages (\$500 minimum); or (3) notarized releases from all parties filing affidavit of claim with Commissioner. (55-12-102, 105-07). Exceptions to security requirement include: (1) Vehicles owned by self-insurer (under 55-12-111, owner of 25 or more vehicles with certificate of self-insurance issued by Commissioner); (2) operator or owner who is only injured or damaged party; (3) person submitting on or before revocation proof satisfactory to Commissioner that liability is admitted and that agreement satisfactory to injured party for payment of damages has been made, if agreement is performed for at least three years after accident; (4) vehicle owned by U.S. or by Tennessee or any subdivision or municipality thereof, and operator of any such vehicle; (5) vehicle owned and operated by common carrier under jurisdiction of Department of Public Safety; (6) person licensed and engaged in renting or leasing motor vehicles, as to proof of ability to pay judgment against lessee; (7) operator or owner of vehicle legally parked at time of accident; (8) Federal employee if acting within scope of employment at time of accident; (9) operator or owner where there is no physical contact with another vehicle, object or person, unless judgment has been obtained; (10) person against whom all claims for accident have been discharged in bankruptcy, except that such person must maintain proof of financial responsibility as if his privileges had been revoked. (55-12-106).

**Affidavit of damages** or accident report showing amount thereof, for purpose of establishing amount of security to be required, may be filed with Commissioner by any injured party (55-12-110).

**Convictions.**—In case of conviction under 55-12-113 (including bail forfeiture) other than for reckless driving, where license is revoked, proof of financial responsibility must be supplied Commissioner to avoid suspension or revocation of registrations. (55-12-114). When Commissioner receives record of conviction for enumerated offenses, except where record shows that: (1) owner or operator had proper insurance or bond or (2) offending vehicle owned by carrier licensed by U.S. or Tennessee or owned by U.S. or Tennessee or political subdivision thereof and operated with owner's consent, Commissioner must suspend license and registrations and in case of nonresident, privilege of using highways, unless Commissioner receives proof of financial responsibility within 20 days of mailing by Commissioner of demand therefor. (55-12-115). As provided by statute 55-10-603, driver may be sentenced as motor vehicle habitual offender. District attorney general shall file statement at least ten days before trial if defendant should be sentenced as such. If defendant meets criteria, in addition to sentence imposed for habitual offender defense, defendant shall also be sentenced as provided in 55-10-613, 615, 55-10-618.

**Nonpayment of judgment**, unless stayed or payment agreement is made, to extent of limits of financial responsibility set forth in 55-12-102, for over 60 days after Commissioner's receipt of certified judgment copy, results in revocation. (55-12-118).

**Intoxication.**—Evidence that there was .08% or more by weight of alcohol in defendant's blood constitutes violation of 55-10-401, whether or not driving impaired; but evidence also creates presumption that driving was impaired. Vehicular homicide is Class C felony unless it is proximate result of driver intoxication in which case it is Class B felony. (39-13-213). Offender sentenced to period of incarceration shall be required to commence service within 30 days of conviction or if space is not available as soon as space is available. If space will not be available for more than 90 days, alternative facilities shall be used. (55-10-403). If conviction is for 48 hours it shall be served at time when person is off from work. (55-10-403). Any person who drives motor vehicle shall be deemed to have given consent to blood test provided there is reasonable belief of law enforcement officer that driver is under influence of intoxicants or drugs. (55-10-406). Hospital personnel, as established in 55-10-410 and 69-10-217, shall not be held civilly or criminally liable for such blood tests and tests will be considered valid. (55-10-406; 55-10-410; 69-10-217). Person's second or subsequent violation of 55-10-421 creates inference that court should order such offender's motor vehicle be equipped with functioning interlock device. All interlock devices shall be of type that records and stores driver's blood alcohol content at certain intervals. (55-10-412).

**Duration of Suspension or Revocation.**—License and registrations suspended or revoked for failure to make report or deposit security may be renewed and new license or registration issued when: (1) accident report filed, if that was ground for suspension, and \$25 fee paid; (2) final judgment rendered relieving from liability person revoked for failure to deposit security; or (3) proof of financial responsibility given, \$65 fee paid, license examination successfully retaken and (a) proper security is deposited or one year has passed from date of accident without filing of suit, (b) final judgment satisfying all liabilities of revoked person is rendered and paid, (c) notarized releases from all parties filing claims with Commissioner are filed with Commissioner, (d) all claims against revoked person arising out of accident are discharged in bankruptcy, or (e) Commissioner is satisfied that liability is admitted and agreement satisfactory to all injured parties for payment of damages has been made, if agreement is performed for at least three years after accident. (55-12-108). To restore license, etc., suspended or revoked for conviction, proof of financial responsibility must be given, \$100 fee paid and (for residents) license examination successfully retaken. (55-12-114; 55-12-117). To restore license, etc., suspended or revoked for nonpayment of judgment, proof of financial responsibility must be given, \$100 fee paid and license examination successfully retaken. (55-12-118).

**Financial responsibility proven** by filing or depositing with Commissioner: (1) Certificate of motor vehicle liability insurance with company meeting requirements of 55-12-120-23; (2) cash or bond to extent of limits of financial responsibility set forth in 55-12-102; or (3) as to self-insured party owning 25 or more vehicles, certificate of self-insurance issued by Commissioner. (55-12-119). Where party whose license and

registration is revoked has job requiring motor vehicle operation, employer may produce required proof and license for work only may be issued. (55-12-132). Except in case of reckless driving, proof must be maintained three years. (55-12-126). Department of Safety may release proof of financial responsibility requirement three years after revocation if no civil judgment is unsatisfied. (55-12-125).

**Misdemeanor penalties** provided under 55-12-130 for selling vehicle whose registration is revoked without so informing purchaser.

**Hearings.**—Commissioner must provide hearing upon request made within 20 days of order or act. (55-12-103).

**Insurance.**—No requirement for. But see subhead Proof of Financial Responsibility, *supra*.

Creditor or lender requiring and obtaining collision but not liability insurance as condition of loan, must so notify borrower in writing. (56-7-1106).

Uninsured motorist clause required in all automobile liability policies (excepting excess or umbrella policies) unless prospective insured expressly refuses such coverage in writing. (56-7-1201). Compulsory arbitration requirements in uninsured motorist clause unenforceable. (56-7-1206). Insurer must be served with process if insured intends to rely on uninsured motorist coverage. (56-7-1206).

John Doe warrant must be issued to bring action against unknown owner of motor vehicle under uninsured motorist statutes. (56-7-1206).

Any cause of action belonging to an insured against his automobile liability insurer based upon negligence or bad faith shall survive death of such insured, may be assignable by express act of insured, and shall be assigned by operation of law to trustee, receiver or other representative of insured's creditors. (20-5-120).

**No-Fault Insurance.**—Not adopted.

**Foreign Vehicle.**—Nonresident owner of passenger vehicle not operated for hire may operate vehicle in this state for 30 days or for such period as would be permitted to foreign registered vehicle in state of registration, provided same is duly registered in state of residence and license plates are displayed. This provision applies to vehicles registered in another state or territory or in Canada or Mexico. Nonresident owner operating vehicle for compensation or for transportation of merchandise regularly or for consecutive period of 30 days must register vehicle and obtain certificate of title in this state, except this state will grant exemption for same period allowed in state of registration. Commissioner may also enter into reciprocal agreements with other jurisdictions for operation of vehicles of nonresident owners. (55-4-120, 55-4-121).

**Actions Against Nonresidents.**—Owner of motor vehicle not licensed in Tennessee, who uses highways of state, thereby consents to service of process on him by serving Secretary of State as agent, in any action against him arising out of accident or injury in state in which such vehicle was involved. Resident absent from state for 30 days may be served by serving Secretary of State. Agency of Secretary of State to accept service of process in actions for personal injuries and property damages continues until cause of action barred by statute of limitations. Secretary may be considered resident of county in which action arose or in which plaintiff resides. (20-2-203-05).

**Direct Actions.**—No statutory provision for direct action against insurer by injured party prior to obtaining judgment against insured. However, liability insurance carrier liable for failure to respond to proper demand to disclose information in its possession as to whereabouts of owner or operator of motor vehicle. (56-7-1103-05). (For requisites of demand, see category Civil Actions and Procedure, topic Process.)

**Motor Vehicle Carriers.**—Department of Safety has full control and jurisdiction over busses and trucks (motor carriers) and contract haulers (those operating under individual contracts). (65-15-106; 109). Motor carrier, contract hauler, or exempt for-hire motor carrier must receive permit from department or from any state designated as base jurisdiction state for that carrier pursuant to 49 U.S.C. §11506, as amended. (65-15-107). Tractor and trailer combinations and tractor and semitrailer combinations are subject to safety inspections but need not obtain interstate or intrastate permits. (65-15-113). Before any such permit may issue, applicant must post liability insurance policy and, if intrastate carrier, policy of cargo or passenger insurance, satisfactory to Department. (65-15-110). Department shall inspect and certify homemade or materially reconstructed trailers, semi-trailers, and pole trailers required to be titled or registered for compliance with safety rules. Inspection fee \$25 per trailer. (65-15-113).

**Exemptions** from motor vehicle carrier provisions set out in 65-15-103.

Jitneys for hire are declared common carriers, and a license and \$5,000 bond are required. Counties and incorporated towns and cities may grant permit and impose tax. (65-19-101 et seq.).

As condition precedent to operating on any public thoroughfare in state, any freight motor vehicle must be registered with Department of Revenue; fee from \$48.50 to \$1,332.50 according to weight of vehicle and load plus 2.5% safety inspection fee. (55-4-113). Temporary permit may be obtained; maximum time period seven to 30 days and fee \$5 to \$30, depending on type and weight of vehicle. (55-4-115). Passenger motor vehicle registration fees range from \$37.13 for motor vehicles with not more than seven seats for passengers to \$317.63 for motor vehicles with over 35 seats for passengers. (55-4-112). Freight motor vehicles must display name and address of motor carrier under whose authority it is operated and identifying number on both sides of vehicle. (55-4-114).

**Annual fees** per vehicle of 2.5% of registration fees provided for in 55-4-113, for 1994 and thereafter are provided to protect highways and to promote public safety. (65-15-116).

**Motor Vehicle Trailers.**—After Dec. 31, 2004, new tires, appropriate for weight, are required on new trailers manufactured in, or sold in, Tennessee, if such trailers weigh more than 3,000 pounds; however, buyer may waive this requirement in writing if trailer was not manufactured in Tennessee. (55-9-217).

**Gasoline Tax.**—See category Taxation, topic Gasoline and Special Fuels Taxes.

## COMMERCIAL CODE FORMS

See also categories Business Regulation and Commerce, topic Commercial Code; Mortgages, topic Chattel Mortgages.

THIS SPACE FOR USE OF FILING OFFICER

**FINANCING STATEMENT — FOLLOW INSTRUCTIONS CAREFULLY**

This Financing Statement is presented for filing pursuant to the Uniform Commercial Code and will remain effective, with certain exceptions, for 5 years from date of filing.

A. NAME & TEL. # OF CONTACT AT FILER (optional)				B. FILING OFFICE ACCT. # (optional)			
C. RETURN COPY TO: (Name and Mailing Address)							
D. OPTIONAL DESIGNATION [if applicable]: <input type="checkbox"/> LESSOR/LESSEE <input type="checkbox"/> CONSIGNOR/CONSIGNEE <input type="checkbox"/> NON-UCC FILING							
1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b)							
OR	1a. ENTITY'S NAME						
	1b. INDIVIDUAL'S LAST NAME			FIRST NAME		MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS			CITY		STATE	COUNTRY	POSTAL CODE
1d. S.S. OR TAX I.D.#	OPTIONAL ADD'NL INFO RE ENTITY DEBTOR	1e. TYPE OF ENTITY	1f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION		1g. ENTITY'S ORGANIZATIONAL I.D.#, if any <input type="checkbox"/> NONE		
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b)							
OR	2a. ENTITY'S NAME						
	2b. INDIVIDUAL'S LAST NAME			FIRST NAME		MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS			CITY		STATE	COUNTRY	POSTAL CODE
2d. S.S. OR TAX I.D.#	OPTIONAL ADD'NL INFO RE ENTITY DEBTOR	2e. TYPE OF ENTITY	2f. ENTITY'S STATE OR COUNTRY OF ORGANIZATION		2g. ENTITY'S ORGANIZATIONAL I.D.#, if any <input type="checkbox"/> NONE		
3. SECURED PARTY'S (ORIGINAL S/P or ITS TOTAL ASSIGNEE) EXACT FULL LEGAL NAME - insert only one secured party name (3a or 3b)							
OR	3a. ENTITY'S NAME						
	3b. INDIVIDUAL'S LAST NAME			FIRST NAME		MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS			CITY		STATE	COUNTRY	POSTAL CODE
4. This FINANCING STATEMENT covers the following types or items of property:							
5. CHECK <input type="checkbox"/> This FINANCING STATEMENT is signed by the Secured Party instead of the Debtor to perfect a security interest (a) in collateral already subject to a security interest in another jurisdiction when it was brought into this state, or when the debtor's location was changed to this state, or (b) in accordance with other statutory provisions [additional data may be required]					7. If filed in Florida (check one) <input type="checkbox"/> Documentary stamp tax paid <input type="checkbox"/> Documentary stamp tax not applicable		
6. REQUIRED SIGNATURE(S)					8. <input type="checkbox"/> This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS Attach Addendum [if applicable]		
					9. Check to REQUEST SEARCH CERTIFICATE(S) on Debtor(s) [ADDITIONAL FEE] (optional) <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2		

(1) FILING OFFICER COPY — NATIONAL FINANCING STATEMENT (FORM UCC1) (TRANS) (REV. 12/18/95)

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.

**FINANCING STATEMENT ADDENDUM — FOLLOW INSTRUCTIONS**

THIS SPACE FOR USE OF FILING OFFICER

AdA. NAME OF FIRST DEBTOR ON RELATED FINANCING STATEMENT

ENTITY'S NAME

OR

INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

AdB. MISCELLANEOUS:

Ad1. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (Ad1a or Ad1b)

Ad1a. ENTITY'S NAME

OR

Ad1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

Ad1c. MAILING ADDRESS

CITY

STATE

COUNTRY

POSTAL CODE

Ad1d. S.S. OR TAX I.D. #

OPTIONAL  
ADD'NL INFO RE  
ENTITY DEBTORAd1e. TYPE  
OF ENTITYAd1f. ENTITY'S STATE  
OR COUNTRY OF  
ORGANIZATIONAd1g. ENTITY'S ORGANIZATIONAL  
I.D.#, if any☐

NONE

Ad2. ADDITIONAL SECURED PARTY'S EXACT FULL LEGAL NAME - insert only one name (Ad2a or Ad2b)

Ad2a. ENTITY'S NAME

OR

Ad2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

Ad2c. MAILING ADDRESS

CITY

STATE

COUNTRY

POSTAL CODE

Ad3a. ☐ This FINANCING STATEMENT covers timber to be cut,  
minerals, or mineral-related accounts, or is filed as a fixture  
filingAd3b. ☐ This FINANCING STATEMENT covers crops growing or to  
be grown on the real estate described below

Ad4. Description of real estate:

Ad7. Additional collateral description:

Ad5. Name and address of a RECORD OWNER of above-described  
real estate (if Debtor does not have a record interest):

Ad6. REQUIRED SIGNATURE

Ad8. ☐ Debtor is a TRANSMITTING UTILITY [if applicable]

(1) FILING OFFICER COPY — NATIONAL ADDENDUM (FORM UCC1Ad) (TRANS) (REV. 12/18/95)

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.



## UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
B. SEND ACKNOWLEDGMENT TO: (Name and Address) <div style="position: relative; width: 100%; height: 100%;"> <div style="position: absolute; top: 0; left: 0; width: 50%; height: 50%; border-left: 1px solid black; border-top: 1px solid black;"></div> <div style="position: absolute; top: 0; right: 0; width: 50%; height: 50%; border-right: 1px solid black; border-top: 1px solid black;"></div> <div style="position: absolute; bottom: 0; left: 0; width: 50%; height: 50%; border-left: 1px solid black; border-bottom: 1px solid black;"></div> <div style="position: absolute; bottom: 0; right: 0; width: 50%; height: 50%; border-right: 1px solid black; border-bottom: 1px solid black;"></div> </div>

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #	1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. <input type="checkbox"/>										
2. <input type="checkbox"/> TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing the Termination Statement.											
3. <input type="checkbox"/> CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing the Continuation Statement is continued for the additional period provided by applicable law.											
4. <input type="checkbox"/> ASSIGNMENT (full or partial): Give name of assignee in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignor in Item 9.											
5. AMENDMENT (PARTY INFORMATION): This Amendment affects <input type="checkbox"/> Debtor or <input type="checkbox"/> Secured Party of record. Check only <u>one</u> of these two boxes. Also check one of the following three boxes and provide appropriate information in Items 6 and/or 7. <input type="checkbox"/> CHANGE name and/or address: Give current record name in Item 6a or 6b; also give new name (if name change) in Item 7a or 7b and/or new address (if address change) in Item 7c. <input type="checkbox"/> DELETE name: Give record name to be deleted in Item 6a or 6b. <input type="checkbox"/> ADD name: Complete Item 7a or 7b, and also Item 7c; also complete Items 7d-7g (if applicable).											
6. CURRENT RECORD INFORMATION:											
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 100%; border-bottom: 1px solid black;">6a. ORGANIZATION'S NAME</td> </tr> <tr> <td style="border-bottom: 1px solid black;">OR</td> </tr> <tr> <td style="border-bottom: 1px solid black;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; border-bottom: 1px solid black;">6b. INDIVIDUAL'S LAST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">FIRST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">MIDDLE NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">SUFFIX</td> </tr> </table> </td> </tr> </table>		6a. ORGANIZATION'S NAME	OR	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; border-bottom: 1px solid black;">6b. INDIVIDUAL'S LAST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">FIRST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">MIDDLE NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">SUFFIX</td> </tr> </table>	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX			
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				<input type="checkbox"/> NONE							
8. AMENDMENT (COLLATERAL CHANGE): check only one box. Describe collateral <input type="checkbox"/> deleted or <input type="checkbox"/> added, or give entire <input type="checkbox"/> restated collateral description, or describe collateral <input type="checkbox"/> assigned.											

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here <input type="checkbox"/> and enter name of DEBTOR authorizing this Amendment.											
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 100%; border-bottom: 1px solid black;">9a. ORGANIZATION'S NAME</td> </tr> <tr> <td style="border-bottom: 1px solid black;">OR</td> </tr> <tr> <td style="border-bottom: 1px solid black;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; border-bottom: 1px solid black;">9b. INDIVIDUAL'S LAST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">FIRST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">MIDDLE NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">SUFFIX</td> </tr> </table> </td> </tr> </table>					9a. ORGANIZATION'S NAME	OR	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%; border-bottom: 1px solid black;">9b. INDIVIDUAL'S LAST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">FIRST NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">MIDDLE NAME</td> <td style="width: 20%; border-bottom: 1px solid black;">SUFFIX</td> </tr> </table>	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA											

NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/98)

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as Item 1a on Amendment form)			
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as Item 9 on Amendment form)			
12a. ORGANIZATION'S NAME			
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

See note at head of Digest as to 2007 legislation covered.  
See Topical Index in front part of this volume.