

## Notice of Rulemaking Hearing

### Tennessee Human Rights Commission - 1500

There will be a public hearing before the Tennessee Human Rights Commission to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-202 et seq. and 4-21-202. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-204 and will take place at the following locations on the dates and times specified:

- 1) Knoxville, Tennessee: February 20, 2007, 1:30 p.m. (Eastern Time), Knoxville State Office Building, 7th Floor, 531 Henley Street, Conference Room A, Knoxville, TN 37902;
- 2) Nashville, Tennessee: February 21, 2007, 1:30 p.m. (Central Time), Cornerstone Square Building, 530 Church Street, 4th Floor Conference Room, Nashville, TN 37243;
- 3) Memphis, Tennessee: February 22, 2007, 1:30 p.m. (Central Time), Second Floor Auditorium, Donnelley J. Hill State Office Building, 170 North Main Street, Memphis, TN 38103.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Human Rights Commission to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the division to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Human Rights Commission's ADA Coordinator, Renee Jackson, at 312 8th Avenue N. 16th Floor Tennessee Tower, Nashville, Tennessee 37243, (615) 741-1343.

For a copy of the entire text of this notice of rulemaking hearing, contact: Shalini V. Rose, General Counsel, Tennessee Human Rights Commission, located at 530 Church Street, Suite 305, Nashville, Tennessee 37243, 615-741-5825.

## Substance of Proposed Rules

### Tennessee Human Rights Commission

#### Chapter 1500-1

#### Rules for Acting Upon Complaints of Discrimination

#### Repeals

Chapter 1500-1, Rules for Acting Upon Complaints of Discrimination, is repealed.

Authority: T.C.A. §§ 4-5-202 et seq. and 4-21-202.

## New Rules

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#### 1500-1-.01 Purpose.

The purpose of the following rules is to establish a uniform system for the administration and handling of complaints of discrimination made to the Tennessee Human Rights Commission (THRC). The rules establish guidelines for the Commission, the Commission's staff, employers, housing providers, real estate brokers, salespersons or operators, financial institutions, and persons owning or operating places of public accommodation, resort or amusement. These rules are subject to any superseding federal or state law and are not to be construed as limiting the rule of the Commission in other areas.

Authority: T.C.A. § 4-21-202.

#### 1500-1-.02 Practice and Procedure.

- (1) Nature of discriminatory practice notices and who must post. Every employer, employment agency, labor organization, real estate broker, salesperson, or operator, and financial institution subject to Tennessee Code Annotated (T.C.A.), Title 4, Chapter 21 and Tennessee Code Annotated Title 8 Chapter 50, Section 103, hereinafter referred to as the Tennessee Human Rights Act, and Tennessee Handicap Act, or Act, shall post and maintain at their establishments fair employment practice notices and/or fair housing practice notices furnished by the Tennessee Human Rights Commission indicating the substantive provisions of the Tennessee Human Rights Act, where complaints may be filed, and such other information as the Tennessee Human Rights Commission deems pertinent.
- (2) Where employers, employment agencies, real estate brokers, salespersons, or operators, and financial institutions must post. With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible areas frequented by employees and applicants for employment, and at or near each location where the employees' services are performed. With respect to real estate brokers, salespersons, or operators, and financial institutions, such notices must be posted conspicuously in areas frequented by residents and individuals seeking housing opportunities.
- (3) Where labor organizations must post. With respect to labor organizations, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by members and applicants for membership.
- (4) Definitions. When used in this regulation:
  - (a) "Act" includes the Tennessee Human Rights Act, T.C.A Title 4, and Chapter 21, and the Tennessee Handicap Act, T.C.A. Title 8 Chapter 50 Section 103.

- (b) “Administrative Determination” means the determination reached by the Commission pursuant to the investigative findings made, and legal conclusions drawn, following an investigation under the Act.
- (c) “Chairman” means the duly elected Chairman of the Tennessee Human Rights Commission or, in the event of his or her absence or inability to act, the Vice-chairman, who has been designated by the Commission, or if such Vice-chairman is unable to act, a Commissioner designated by the Commissioners.
- (d) “Commission” means the Tennessee Human Rights Commission.
- (e) “Commissioner” or “Commissioners” mean any person appointed by the Governor to serve on the Commission.
- (f) “Complainant” means the person by whom or on whose behalf a complaint is filed.
- (g) “Discriminatory Practice” means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice which constitutes different treatment or preference of a person or persons based on race, creed, color, religion, sex, age or national origin.
- (h) “Employer” includes the state, or any political or civil subdivision thereof, any person employing eight (8) or more persons within the state, or any person acting as an agent of an employer, directly or indirectly;
- (i) “Employment agency” means any person or agency, public or private, regularly undertaking, with or without compensation, to procure employees for an employer or to procure for persons opportunities to work for an employer.
- (j) “Executive Director” means the individual appointed by the Commissioners pursuant to Commission bylaws as the administrative head of the Commission. The Executive Director shall be empowered with the authority to appoint the necessary professional, technical, and clerical staff, which shall be covered by and subject to the provisions of the rules and regulations, to carry out the provisions of the Act and these rules. Any powers vested in the Executive Director, and any duties imposed upon him or her by the Act or these rules and regulations, may be exercised or discharged by the Executive Director or the Executive Director’s designee in his or her absence. In the event the Executive Director becomes incapacitated to the extent that he or she can no longer perform his or her duties, such duties may be performed by the Deputy Director, or, in the absence of the Deputy Director, a designee selected by the Executive Director before incapacitation.
- (k) “Financial institution” means a bank, banking organization, mortgage company, insurance company or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance or improvements of real property, or an individual employed by or acting on behalf of a financial institution.
- (l) “Handicap” means, with respect to a person:
  1. A physical or mental impairment that substantially limits one (1) or more of such person’s major life activities;

2. A record of having such an impairment; or
  3. Being regarded as having such an impairment.
  4. "Handicap" does not include current, illegal use of, or addiction to, a controlled substance.
- (m) "Hearing examiner" means one (1) or more persons or Commissioners, designated by the Commission to conduct a hearing. The Commission has the sole power to determine qualifications of the hearing examiner.
- (n) "Housing accommodation" includes improved and unimproved property and means a building, structure, lot or part thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one (1) or more individuals.
- (o) "Investigator" shall mean a member of the Commission staff designated by the Executive Director, or an approved contractor designated by the Executive Director, empowered to investigate the allegations of a complaint.
- (p) "Labor organization" includes any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment or any agent acting for a labor organization.
- (q) "National origin" includes the national origin of an ancestor.
- (r) "No Reasonable Cause" means that after an investigation, the Commission has determined by a preponderance of the evidence that the respondent has not engaged in a discriminatory practice.
- (s) "Person" or "Persons" includes one (1) or more individuals, governments, governmental agencies, public authorities, labor organizations, corporations, legal representatives, partnerships, associations, trustees, trustees in bankruptcy, receivers, mutual companies, joint stock companies, trusts, unincorporated organizations or other organized groups of persons.
- (t) "Places of public accommodation, resort or amusement" includes any place, store or other establishment, either licensed or unlicensed, that supplies goods or services to the general public or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds, except that:
1. A bona fide private club is not a place of public accommodation, resort or amusement if its policies are determined solely by its members; and
  2. Its facilities or services are available only to its members and their bona fide guests.
- (u) "Real estate broker" or "real estate salesperson" means an individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who with the intention or expectation of receiving

or collecting the same, lists, sells, purchases, exchanges, rents or leases real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate on behalf of others such activity; or who advertises or holds such individual out as engaged in such activities; or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance upon a transfer of real estate, or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby such individual undertakes to promote the sale, purchase, exchange, rental, or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of a real estate broker or salesperson.

- (v) "Real estate operator" means any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or other legal or commercial entities, or the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental or lease of real estate; or an individual employed by or acting on behalf of a real estate operator.
  - (w) "Real estate transaction" includes the sale, exchange, rental or lease of real property.
  - (x) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in these.
  - (y) "Reasonable Cause" means that after an investigation, the Commission has determined by a preponderance of the evidence that the respondent has engaged in a discriminatory practice.
  - (z) "Respondent" means the person, employer, employment agency, labor organization, housing providers, real estate brokers, salespersons or operators, financial institutions, and persons owning or operating places of public accommodation, resort or amusement against whom a complaint is filed.
  - (aa) "Verified" means sworn to or affirmed before a notary public, or supported by a declaration in writing under penalty of perjury.
- (5) Complaint. Who may file:
- (a) Any individual claiming to be aggrieved by a discriminatory practice or about to be injured by a discriminatory practice, may, individually, or through his or her authorized representative, make, sign, and file with the Commission a written verified complaint. Assistance in drafting and filing complaints, including language interpretation, shall be available to complainants at the Commission's offices or from any Commission staff member who has been duly authorized to do so by the Executive Director. A person who is incompetent of filing for oneself or a person who has not attained eighteen (18) years of age must file through a legal parent, legal guardian or legal custodian.
  - (b) A Commissioner may also make and file a written verified complaint.

- (c) Upon receiving a complaint submitted by the United States Equal Employment Opportunity Commission (EEOC) or the United States Department of Housing and Urban Development (HUD), the Executive Director, or his or her designated representative, acting in the name of the Commission, may issue a verified complaint in writing and attach thereto the materials, if any, submitted by the federal government.
- (6) Complaint Form. The complaint shall be in writing and verified. The Commission shall make available to the public a standardized complaint form upon request. The complaint shall contain the following:
- (a) The full name and address of the complainant.
  - (b) The name and address of the person, employer, labor organization, employment agency, government agency, place of public accommodation, real estate broker, salesperson or operator, or financial institution against whom the complaint is made.
  - (c) A short and plain statement of the claim showing that the complainant is entitled to relief under the Tennessee Human Rights Act.
  - (d) The dates and times of the alleged discriminatory practice, if known, and, if the alleged discriminatory practice is of a continuing nature, the dates between which those continuing acts of discrimination are alleged to have occurred, if known.
  - (e) A statement as to whether any action, civil or criminal, instituted by the complainant in any other forum, based upon the same grievance as is alleged in the complaint, has been instituted, together with a statement as to the status or disposition of such other action.
  - (f) The Complainant is responsible for keeping the Commission informed of any changes in his or her contact information.
- (7) Time of filing complaint. A complaint alleging discrimination must be filed within one hundred eighty (180) days after the alleged discriminatory practice occurs. If the alleged discriminatory practice is of a continuing nature, the date of occurrence is the date of the last discriminatory act, or the date of which the complaint shall have been filed if the discriminatory practice continues.
- (8) Place of filing complaint. A complaint may be filed with the Commission at any of the Commission's offices.
- (9) Manner of filing complaint. A complaint may be filed by personal delivery, express delivery, ordinary mail, registered mail, certified mail, or electronic facsimile. The original copy of a complaint filed by electronic facsimile shall be physically delivered to the Commission within ten (10) business days of electronic transmission.
- (10) Amendment of complaint. The Commission, the presiding hearing examiner, or the complainant may reasonably and fairly amend a complaint, subject to the following limitations:
- (a) The power to amend a complaint may be exercised before the issuance of a notice of filing by the Commission's staff with the consent of the complainant,

and after the issuance of a notice of filing by the presiding hearing examiner upon motion by the Commission.

- (b) The power to amend a complaint may be exercised before the issuance of a notice of filing by the complainant as a matter of right, and after the issuance of a notice of filing at the discretion of the presiding hearing examiner if he or she determines such amendment serves the interest of justice.
- (c) A complaint may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(11) Substitution and Addition of Parties.

- (a) A complaint may be amended by the complainant to substitute or name additional parties as respondent(s) if such parties are successors or assigns of a named respondent. Mere misnomer of a party shall not be grounds for dismissal and may be cured at any time by amendment of the complaint. A person may be added as party respondent, even if that person is not a successor or an assignee of the named respondent, if the following terms and conditions are met:
  - 1. The charge in the case was filed within one hundred eighty (180) days of the date of the discriminatory practice allegedly committed by the person sought to be added as a party respondent;
  - 2. The failure to join the person as a party respondent was inadvertent;
  - 3. The person sought to be added as a party respondent was given notice of the filing of the charge at the time the original charge was filed;
  - 4. The nature of the original charge was such that the person sought to be added knew, within the one hundred eighty (180) day period, that the charge grew out of a transaction or occurrence involving or concerning him, her or it;
  - 5. The addition of the person sought to be named as a party respondent does not raise new factual questions which were not considered by the Commission in its investigation; and
  - 6. The cause of action alleged against the person sought to be made a party respondent in the case arises out of the same transaction or occurrence set out in the original complaint.
- (b) If a party to a complaint dies, the proper party or parties may be substituted upon motion to the Commission. If a motion to substitute is not filed within ninety (90) days after the death is suggested of record, the complaint may be dismissed as to the deceased party.
- (c) No party shall be added as a party respondent except as provided in this section.

(12) If a complaint is amended after a reasonable cause finding, a hearing date postponement may be granted to the respondent upon request to the hearing examiner. In no

event shall such hearing date be more than ten (10) days later than the original hearing date.

- (13) No Reasonable Cause determination. If it is determined that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the Commission, Executive Director, or a Commission staff member designated by the Executive Director, shall furnish a copy of the determination letter to the complainant, the respondent, and such public officers and persons as the commission deems proper.
- (14) Reasonable Cause determination. If it is determined that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice, the Commission, Executive Director, or a Commission staff member designated by the Executive Director, shall furnish a copy of the determination letter to the complainant and the respondent, and shall specifically name the statute(s) deemed to have been violated.
- (15) Withdrawal of complaint. Upon the written request of the complainant or the complainant's representative, stating the reasons for such a request, a complaint, or any part thereof, may be withdrawn, subject to approval by the Commission. Such withdrawal shall be without prejudice to the rights of the complainant. A withdrawn complaint may be re-filed, provided such filing occurs within one hundred eighty (180) days of the discriminatory act originally alleged.
- (16) Dismissal of complaint. The Commissioners, the Executive Director, or a Commission staff member designated by the Executive Director, may dismiss a complaint at any time, for reasons including, but not limited to, lack of probable cause, lack of jurisdiction, or lack of complainant cooperation, whether upon the face of the complaint, after investigation, or after conference, conciliation and persuasion. If a complaint is dismissed, the Executive Director, or a Commission staff member designated by the Executive Director, shall notify the parties by mail of such determination and of the complainant's right to apply to the Commission for reconsideration of such dismissal. In any dismissed case that is dual-filed with either EEOC or HUD, the Commission shall refer the complaint to the appropriate federal agency for investigation. In housing cases in which the respondent claims an exemption under T.C.A. Section 4-21-602(a)(1) and (2) for property occupied by a family member, the Commission will forward such complaints to HUD for appropriate action.
- (17) Reconsideration of complaint.
  - (a) The complainant, within thirty (30) days after receiving a copy of the order dismissing the complaint, may file with the Commission an application for reconsideration of the order. Such application must be in writing and must specifically state the grounds upon which it is based. Grounds for reconsideration shall include, but not be limited to, the production of new evidence; evidence not properly considered during the investigation; or evidence obtained from new witnesses.
  - (b) Upon receipt of an application for reconsideration, a Commissioner, the Executive Director, or a Commission staff member designated by the Executive Director shall reconsider the complaint. The Executive Director may designate a different investigator to initiate a new investigation of the complaint. If a new investigation is conducted, the investigator may consider the evidence gathered in the initial investigation. The Commission shall, within thirty (30) days, make a new determination of no reasonable cause or reasonable cause.



- (c) Dismissal of a complaint may be reconsidered by the Commission on its own initiative at any time within thirty (30) days after such dismissal. Notice of such reconsideration shall be provided by the Commission to all parties to the complaint.
- (18) Affirmative action plans. An affirmative action plan filed with the Commission pursuant to T.C.A. §4-21-406(b) that has not been approved in writing within ninety (90) days of its filing with the Commission shall be deemed to be disapproved by the Commission. The Commission shall publish and shall make available upon request guidelines for evaluating or developing such plans.
  - (19) Complaints alleging violations of Title VI of the Civil Rights Act of 1964.
    - (a) Complaints alleging discrimination based on race, color or national origin by parties receiving federal funds should be directed to the Title VI Coordinator/ Director of the State and/or Federal Agency who provides the funding, and/or to the Tennessee Title VI Compliance Commission.
    - (b) In the event such Federal or State Agency is unknown, complaints alleging violations of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d, or T.C.A § 4-21-904, should be filed with the Tennessee Title VI Compliance Commission.
    - (c) Parties who wish to file a complaint against the Tennessee Human Rights Commission for violation of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d, or T.C.A. § 4-21-904, should direct such complaints to the United States Department of Housing and Urban Development Fair Housing and Equal Opportunity Office, the United States Equal Employment Opportunity Commission or the Tennessee Title VI Compliance Commission.

Authority: T.C.A. §§ 4-21-102, 4-21-302, 4-21-406, 4-21-602, 4-21-904, 4-21-905, and 8-50-103.

1500-1-.03 Filing of Reports and Preservation of Records.

- (1) Filing of Reports. The Commission may require employers, employment agencies, and labor organizations in the State of Tennessee subject to Tennessee Code Annotated, Title 4, Chapter 21, Tennessee Code Annotated, Title 8, Chapter 50, Section 103 and/or subject to the Federal Civil Rights Act of 1964, 42 USC Section 2000(e) as amended, to file the appropriate standard employment information reports (i.e., Employer's Information Reports [EEO1]) to the offices designated by the Commission on an annual basis.
- (2) The Commission reserves the right to require reports about the employment practices of individual employers or groups of employers whenever such information has not been furnished to the U.S. Equal Employment Opportunity Commission or to the Tennessee Human Rights Commission as prescribed by the law and the rules and regulations of the two (2) Commissions. In connection with the investigation of a complaint, the Commission reserves the right to require an employer to provide such information that has not been received by the Commission whose information is more than six (6) months out-of-date. Where the appropriate Equal Employment Opportunity form job categories or the appropriate THRC form job categories do not provide a breakdown descriptive of the employer's actual job categories, the Commission may require a more descriptive work force breakdown.

- (3) The provisions respecting confidentiality of information contained in Section 709(e) of the U.S. Civil Rights Act of 1964, T.C.A. § 10-7-504, T.C.A. § 4-21-303(d), 29 CFR Parts 1601.22 and 1601.26 shall be observed by all Commissioners and Commission staff of the Tennessee Human Rights Commission.
- (a) The Commission's complaint files, investigative files, and complaint record-keeping system shall be confidential, except that the Commission shall make the investigative file available to the complainant, the respondent, their attorneys, and any state or federal law enforcement agency seeking to enforce anti-discrimination statutes, upon written request and after legal review. The identity of individuals interviewed as witnesses shall remain confidential except when the disclosure of their identity becomes necessary at the time of public hearing. The Commission may charge a reasonable fee for any copies made pursuant to a file copy request.
  - (b) Review and removal of confidential material from investigative files provided to parties or their attorneys shall be conducted or supervised by a Commission staff attorney and shall be conducted in a manner to protect the privacy of all involved parties and non-parties. Material to be removed shall include, but shall not be limited to, confidential witness information; intra-Commission notes; memoranda or other items which would reveal recommendations, impressions, strategy, or deliberative process relating to the investigation, settlement or litigation; credit reports; arrest and/or conviction records; and all attorney work product. All sensitive medical information and sensitive personnel file information concerning the complainant or others, provided by persons other than the party requesting the file and which is not relevant to the issues raised in the charge, shall be removed. Where such information concerning persons other than the complainant is relevant to the issues raised in the charge, names and other identifying information shall be redacted before disclosure in order to protect the persons' privacy.
  - (c) The Executive Director, or Commission staff member designated by the Executive Director, is authorized and empowered to certify all documents or records which are a part of the files and records of the Commission.
- (4) Any personnel or employment record made or kept by an employer (including, but not limited to, application forms submitted by applicants; other records having to do with hiring, promotion, demotion, transfer, layoff or termination; rates of pay or other terms of compensation; and selection for training or apprenticeship) shall be preserved by the employer for a period of six (6) months from the date of the making of the record or termination of an employee. The personnel records of an individual terminated shall be kept for a period of six (6) months from the date of the making of the record or termination of an employee. Where a complaint of discrimination has been filed, the respondent employer shall preserve all personnel records relevant to the complainant until final disposition of the complaint. The term "personnel records relevant to the complaint," includes, but is not limited to, personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant, as well as application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the complainant applied and was rejected. The date of "final disposition of the complaint" means the date of the statutory period within which the complainant, the intervenor, or the Commission may bring an action in chancery or circuit court, or the date on which such litigation is terminated, whichever is later.

- (5) If a person fails to make, keep, or preserve records or make reports in accordance with these regulations, the Commission may seek an order requiring compliance from chancery or circuit court.
- (6) The Commission may require all employers, labor unions, and employment agencies subject to the jurisdiction of the EEOC to file a duplicate of information furnished to EEOC with the Commission for whichever reporting interval required of them by EEOC.
- (7) Any record made or kept by real estate brokers, salespersons, or operators, and financial institutions, (including, but not limited to, application forms submitted by applicants; leases; rental payment histories; loan agreements and terms thereto; credit reports; complaints and lease violations; and other records having to do with the provision of housing) shall be preserved by the real estate brokers, salespersons, or operators, and financial institutions for a period of six (6) months from the date of the making of the record or the termination of a lease or loan agreement. The records of an evicted individual or an individual denied a housing opportunity shall be kept for a period of six (6) months from the date of the making of the record or the denial of the opportunity. When a complaint of discrimination has been filed, the respondent real estate brokers, salespersons, or operators, and financial institutions shall preserve all housing records relevant to the complainant until final disposition of the complaint. The term "housing records relevant to the complaint," includes, but is not limited to, application or housing records relating to the complainant and to all other applicants or tenants holding or seeking opportunities similar to that held or sought by the complainant, as well as application forms or papers completed by an unsuccessful applicant or by all other applicants for the same opportunity as that for which the complainant applied and was rejected. The date of "final disposition of the complaint" means the date of the statutory period within which the complainant, the intervenor, or the Commission may bring an action in chancery or circuit court, or the date on which such litigation is terminated, whichever is later.

Authority: T.C.A. §§ 4-21-202, 4-21-303, 4-21-308, and 10-7-504.

1500-1-.04 Investigation and Conciliation.

- (1) Investigation. After the filing of a complaint, the Executive Director or a subordinate supervisor designated by him or her shall designate an investigator from the Commission staff or from a group of approved contract investigators to investigate the complaint. The Chairman may at his or her discretion designate a Commissioner to direct the investigation as chief investigator. The designated investigator(s) shall make a prompt and thorough investigation of the allegations of the complaint.
- (2) Production of evidence:
  - (a) An investigator may at any reasonable time request production of or access to premises, records, and documents relevant to the complaint.
  - (b) If a respondent fails to produce or fails to permit access to relevant evidence requested by the Commission, the Commission may apply to the chancery court of Davidson County or circuit court for the county in which such person is found, resides, or has such person's principal place of business, for an order requiring the respondent to produce or to permit access to such evidence. The Commission may also, in such situations and when presented with an un rebutted prima facie charge of discrimination, issue a finding of reasonable cause to believe that a discriminatory practice has occurred.

- (3) Conference, conciliation, and persuasion:
  - (a) If the staff determines after investigation that reasonable cause exists to substantiate the allegations of the complaint, the investigator or Commission attorney shall report his or her recommendations to the Executive Director, who shall make a finding and report to the Commission. Upon a reasonable cause determination, the Commission is deemed a proper party to the action and the Complainant becomes an aggrieved party.
  - (b) After a reasonable cause determination, the Commission staff shall endeavor to eliminate the unlawful discriminatory practice by conference, conciliation, and persuasion.
  - (c) The Commission staff shall notify the respondent(s) that a particular meeting or conversation is for the purpose of attempting to conciliate the complaint. These requirements shall not be construed to limit the power of the Commission to conduct further investigations in preparation for a hearing or for other purposes in connection with its statutory duties, nor shall they be construed to prohibit the use of evidence obtained through such investigations.
  - (d) If a complaint subsequently proceeds to a hearing, no testimony shall be given or received concerning any offers or counteroffers made in an effort to conciliate the case.
- (4) If, as a result of conference, conciliation, or persuasion, the commission staff is able to secure voluntary compliance that eliminates any unlawful discriminatory practice, a conciliation agreement shall be prepared. The conciliation agreement shall set forth all measures to be taken by the parties, including provisions for compliance reports, and shall be signed by the respondent(s) and the Executive Director of the Commission. The complainant may sign as an aggrieved party. During conference, conciliation or persuasion, the Commission is not bound to, but shall consider, reasonable damages proposed by the Complainant. If a conciliation agreement is entered into, the commission shall issue and serve on the complainant an order stating its terms. A copy of the order shall be delivered to the respondent, and such public officers and persons as the commission deems proper.
- (5) Administrative Closure. Upon the execution of a conciliation agreement, the Commission shall administratively close the complaint, and the Executive Director shall notify the complainant, respondent and the Commissioners of the terms of such disposition. Disposition of a case by conference, conciliation, or persuasion shall not preclude the Commission, whenever justice so requires, from reconsidering the terms of such conciliation at any time and from taking such further action as it may deem necessary upon notice to the parties.
- (6) In all cases in which a real estate operator claims as a defense a lack of evidence of financial ability of the complainant or tester under T.C.A. § 4-21-602(c), the Commission will investigate to see whether the requirement of financial ability is applied consistently regardless of the prospective applicant's membership in a protected class.
- (7) No exemption for familial status shall be allowed under T.C.A. § 4-21-602(f) for dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, unless the U.S. Department of Housing and Urban Development has already determined that the state or federal program is specifically designed and operated to assist elderly persons.

- (8) With regard to housing complaints, the Commission staff shall complete the investigation and any attempts at conciliation, and make any determination of reasonable cause to believe that discrimination took place, within ninety (90) days of the filing of the complaint, unless such completion is impracticable. If the investigation cannot be completed within ninety (90) days, the Commission staff shall notify the complainant(s) and the respondent(s) in writing of the reasons for not doing so.

Authority: T.C.A. §§ 4-21-202, 4-21-303, 4-21-601, and 4-21-602.

1500-1-.05 Commission Hearing.

- (1) When hearing ordered:
  - (a) Discrimination in Employment Practices and Public Accommodations. Unless the Commission has issued an order of conciliation pursuant to T.C.A. § 4-21-303 it shall, within ninety (90) days of an administrative determination of reasonable cause to believe that discrimination took place, serve on the Respondent by mail or in person a written notice, together with a copy of the complaint as amended and a copy of the letter or determination, requiring the respondent to answer the allegation of the complaint at a hearing before a hearing examiner, or hearing examiners at a time and place designated by the hearing examiner. A copy of the notice shall be furnished to the Complainant and such other persons the Commission deems necessary.
  - (b) Discrimination in Housing Practices. Unless the complaint has been resolved through a conciliation agreement pursuant to T.C.A. § 4-21-303, or if neither the complainant or respondent has elected for a civil action pursuant to T.C.A. § 4-21-312, or if the Commission has not acted upon the complaint pursuant to T.C.A. § 4-21-312, then upon a finding of reasonable cause, the Commission shall commence a hearing in the same manner as subsection (a).
- (2) Selection of Hearing Examiner. The Commission may in its discretion appoint a person or persons, who it deems qualified to act as a hearing examiner or hearing examiners to preside over the Commission Hearing. The Commission may also elect to request the appointment of an Administrative Law Judge from the Secretary of State Administrative Procedures Division, or employ any other method of selection within the scope of its authority under the Act.
- (3) Hearing Procedure. All hearings shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq.
  - (a) Representation at Hearing. At the hearing, Commission attorneys, or any other party as designated by the Commission who is licensed and qualified to practice law in the State of Tennessee, shall endeavor to support the allegations of the complaint and the determination made upon the resolution of the investigation of Commission staff. The complainant or complainants shall become an aggrieved party, or aggrieved parties, in the matter. A respondent, who has filed an answer or whose default in answering has been set aside for good cause shown, may appear at the hearing with or without representation, may examine and cross-examine witnesses and the complainant, and may offer evidence.
  - (b) Commencement of Action and Notice of Appearance and Filing. To commence a hearing, the Commission staff shall file a Notice of Appearance and Filing with the hearing officer. The notice shall include a copy of the complaint, a copy of

the Commission's letter of determination, and a Notice of Appearance by the Commission. The notice shall be copied to the Respondent, or Respondent's authorized or registered agent, by mail or in person.

- (c) Evidence at Hearing. In addition to evidence rules and procedures pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq., the following evidentiary rules shall govern the Commission Hearing:
1. Efforts, statements, or offers made in the course of conference, conciliation, and/or persuasion shall not be admissible at a Commission Hearing.
  2. Testimony taken at a hearing shall be under oath and transcribed pursuant to T.C.A. § 4-21-304.
  3. In a proceeding under this chapter, production of written, visual communications, advertisement or other form of publication, written inquiry, or record, or other document purporting to have been made by a specific person shall be prima facie evidence that it was authorized by the person.
- (4) Intervention by Aggrieved Parties. At the discretion of the Commission, the complainant, the complainant's private attorney, or any person, may intervene, examine and/or cross-examine witnesses, and present evidence.
- (5) Subpoenas. Pursuant to T.C.A. § 4-21-309, upon written application to the commission, a party to a proceeding is entitled as of right to the issuance of subpoenas for deposition or hearing in the name of the Commission. A Commissioner, Commission attorney, or the Executive Director may issue a subpoena or subpoena duces tecum. When a subpoena or subpoena duces tecum is applied for and issued at the request of any party to a hearing or other proceeding, the cost of service, witnesses, and mileage fees, if any, shall be borne by the requesting party. When a subpoena or subpoena duces tecum is initiated and issued by a Commissioner, a Commission attorney, or the Executive Director, the cost of such service, witnesses, and mileage fees, if any, shall be borne by the Commission.
- (6) Default at Hearing. If the Respondent fails to answer the complaint at the Commission Hearing, the Commission may enter the Respondent's default, except pursuant to T.C.A. § 4-21-304(f).
- (7) Public hearings. All Commission hearings shall be open to the public.

Authority: T.C.A. §§ 4-5-101 et seq., 4-21-304, 4-21-309, and 4-21-312.

1500-1-.06 Orders Issued by the Commission.

- (1) After a Commission Hearing, findings of fact, conclusions of law, and Commission Orders shall be issued pursuant to and in accordance with T.C.A. § 4-21-305.
- (2) Judicial Review. The Commission, the Complainant, or the Respondent may seek judicial review of an adverse finding of the Commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, by filing a petition in court.

- (a) Judgment adverse to the Commission. The Commission may petition to rehear in the event the judgment at a Commission Hearing is adverse to its position in the matter. The Commission shall petition pursuant to, and in accordance with, the Rules of the Tennessee Administrative Procedures Division.
- (b) Judgment Adverse to the Complainant or Respondent. The Complainant or the Respondent may appeal an adverse final order of a Commission Hearing, or Commission Order, dismissal of the complaint, or any other final agency determination pursuant to, and in accordance with, T.C.A. § 4-21-307.

Authority: T.C.A. §§ 4-21-202, 4-21-305, and 4-21-307.

1500-1-.07 Construction and Amendment of Commission Rules.

- (1) Availability of rules. The rules and regulations of the Commission and any amendments, additions, or modifications thereof, shall be available to the public at any office of the Commission and at the office of the Tennessee Secretary of State.
- (2) Construction of rules and pleadings.
  - (a) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of Tennessee Code Annotated, Title 4, Chapter 21, and the policies of the Tennessee Human Rights Commission.
  - (b) All pleadings shall be liberally construed with a view to effect justice between the parties.
- (3) Amendment of Rules. New rules may be adopted and any rule may be amended or rescinded by the Commission at a regular or special meeting, provided that notice of the proposed adoption, amendment, or rescission has been given in writing to all members of the Commission at least ten (10) days before the meeting at which action is to be taken. Such ten (10) days notice shall not be required when two-thirds of the membership of the Commission approves in writing any such adoption, amendment, or rescission. All such amendments and the process for amending Commission rules shall comply with Tennessee statutes governing the amendment of Tennessee Administrative Regulations, Tennessee Code Annotated, Title 4, Chapter 5.

Authority: T.C.A. § 4-21-202.

1500-1-.08 Guidelines for Advertisement.

- (1) It shall be a violation of Tennessee Code Annotated, Title 4, Chapter 21, for any employer, labor organization, or employment agency to cause to be published, printed, circulated, or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities, or any of the terms, conditions, or privileges thereof, which is segregated on the basis of race, color, religion, national origin, or sex, or under any column heading which overtly, subtly, directly, or indirectly expresses any such limitation, specification, discrimination, or preference.
- (2) It shall be a violation of Tennessee Code Annotated, Title 4, Chapter 21, for an employer, labor organization, or employment agency to cause to be published, printed, circulated, or displayed any advertisement or notice relating to employment, employment opportunities, or any of the terms, conditions, or privileges thereof, the language

of which expresses any limitation, specification, discrimination, or preference as to race, color, religion, national origin, or sex. A limitation, specification, discrimination, or preference as to religion, national origin or sex is not a violation where such limitation, specification, discrimination or preference is a “bona-fide occupational qualification” for the particular job advertised, as defined below in subparagraph (4).

- (3) Whenever a “help wanted” advertisement or notice is to contain any job title or job description which is not clearly neutral in terms of sex, and the job advertised is not one for which sex is a bona-fide occupational “qualification” as defined in this regulation, the advertisement or notice should instead utilize a gender neutral job title.
- (4) For the purpose of this regulation, “bona-fide occupational qualification” shall include only those vocational qualifications that are reasonably necessary to the normal operation of the particular business, enterprise, or apprentice or other training program. This exception shall be interpreted so that individuals will be considered for employment on the basis of their individual capacities, and not on the basis of any characteristic(s) generally attributable to their group. The employer, labor organization, or employment agency has the burden of establishing with the Tennessee Human Rights Commission that religion, national origin, or sex is a bona-fide occupational qualification.
- (5) The application of the bona-fide occupational qualification exception is not warranted when based on assumptions of the comparative general employment characteristics of persons of a particular religion, national origin, or sex, such as their turnover rate; stereotypical characteristics of the aforementioned classes, such as their mechanical ability or aggressiveness; customer, client, coworker, or employer preference; historical usage, tradition, or custom; or the necessity of providing separate facilities of a personal nature, such as rest rooms or dressing rooms. The above list is provided for purposes of example, and is not exhaustive or all-inclusive.
- (6) Newspapers and other publications which print employment advertisements are encouraged to maintain lists of discriminatory terms and permissible substitutes and to instruct their employees to advise employers, labor organizations, or employment agencies of these terms and to have copies of these regulations available for distribution to advertisers upon request.
- (7) The use of language or any other word, term, phrase, or expression which tends to influence, persuade, dissuade, encourage, discourage, attract, or repel any person or persons because of their race, color, religion, national origin, or sex shall be considered a discriminatory practice in violation of Tennessee Code Annotated, Title 4, Chapter 21.
- (8) Nothing contained in this regulation shall be deemed to prohibit the Commission from including in any of its orders against any respondent employer, labor organization, or employment agency a provision requiring such respondent to include in any advertisement or notice regarding any employment or licensing opportunity the term “equal opportunity,” or any substantially similar term, in any notice or advertisement.

Authority: T.C.A. § 4-21-202.

1500-1-.09 Incorporation of Federal Guidelines and Regulations.

- (1) The guidelines on religious discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulation Part 1605, are adopted, as hereinafter amended, and are incorporated by reference.



- (2) The guidelines on sex discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1604, are adopted, as hereinafter amended, and are incorporated by reference.
- (3) The guidelines on employment testing issued by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1607, are adopted, as hereinafter amended, and are incorporated by reference.
- (4) The regulations on discriminatory housing advertisements issued by the United States Department of Housing and Urban Development, which appear in 24 Code of Federal Regulations Part 100.75, are adopted, as hereinafter amended, and are incorporated by reference.
- (5) Any federal guideline or regulation adopted and incorporated under this part that is inconsistent with the Tennessee Human Rights Act, or any regulation promulgated thereunder, shall be superseded by the Tennessee Human Rights Act or the appropriate regulation promulgated thereunder.

Authority: T.C.A. § 4-21-202.Legal

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of December, 2006. (12-30-06)