

PUBLIC LIBRARY LAWS OF TENNESSEE

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TITLE 10
CHAPTER 1
Public Libraries, Archives and Records

Part 1
General Provisions.

SECTION

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10-1-101. Division of public libraries and archives.

A division of public libraries and archives is hereby created within, and administratively attached to, the office of the secretary of state. The authority, powers, and duties formerly vested by law in the commissioner of education shall be vested in the secretary of state and are to be administered through and by the division of public libraries and archives. The division shall have transferred and attached to it.

10-1-103. Elements of the state library system.

The state library system shall consist of the existing state library, archives, regional library for the blind and physically handicapped and library extension properties and services, and such other properties and services as may from time to time be assigned to the division of public libraries and archives, excluding the law library of the state, which functions under the direction of the supreme court.

10-1-104. Responsibilities of the secretary of state for the division of public libraries and archives.

(a) The functions of the secretary of state, acting through the division of public libraries and archives, shall include the following:

(1) Collecting, preserving and providing public access to archival material and materials of historical, documentary and reference value, and literary works or printed matter that may be considered by the division of special interest to the citizenship of this state;

(2) The distribution and exchange of publications of the state that may become available from time to time;

(3) The collection and distribution of reference material to state officials and employees and public agencies that may be entitled to the reference material;

(4) The encouragement of library development throughout the state by means of advice, guidance, and library extension services, in the course of which the division is empowered to enter into local, regional or interstate contracts with competent agencies in the furtherance of library services. The contracts are subject to the prior approval by the secretary of state; and

(5) Other functions that may be designated and authorized from time to time or that may properly belong to the administration of an up-to-date library and archives for the state.

(b) The enumeration of the specific items in subsection (a) shall not be deemed to exclude any other activities that the division may think proper to be handled by it and by the state librarian and archivist.

10-1-105. Policies, rules and regulations for the system and its properties.

The secretary of state, acting through the division of public libraries and archives, shall be responsible for the proper administration of this chapter, and shall establish policies to govern the administration of the state library system. The division shall have custody of and be responsible for the properties of the state library system, including properties that may be assigned to it in the future. The secretary of state is authorized to establish policies, rules, and regulations that may be necessary to govern the use of the properties and the use and disposition of materials under the secretary's jurisdiction, including the circulation of books from the library.

10-1-106. State library system program and budget.

The secretary of state shall develop a state library program calculated to meet the needs of the state and the requirements of its citizens for such services. The secretary of state shall annually prepare and submit to the governor and to the general assembly a budget consistent with such program and shall operate the state library system within the financial resources available. The secretary of state shall take appropriate action each year to encourage adoption of the budget proposal.

10-1-107. Personnel -- Hiring, dismissal, training and education.

(a) The secretary of state has the authority to create positions necessary to effectively carry on library programs. The secretary of state is authorized to make appointments or dismissals to positions deemed necessary to conduct the affairs of the library program.

(b) The secretary of state is authorized to expend funds for the special training and formal education of library personnel; provided, that the personnel shall agree to work in the state library system for at least two (2) years after the completion of the training and education.

10-1-108. Authority for cooperation with other agencies.

The secretary of state has the authority to call upon other state agencies for information, publications and related material needed to discharge the secretary's duties, and may confer and cooperate with other agencies, whether federal, state or local, in order to more effectively carry out the program. It is the legislative intent that this chapter shall be broadly construed and applied in the interest of making the state library function to the best advantage of the citizenship of the state.

10-1-109. Authority for accepting funds from public or private agencies.

The secretary of state is authorized to accept and administer funds or material made available for library, archival and historical purposes from public or private sources either by grant, bequest, donation or otherwise, and this may include any available grants from the federal government or cooperation with the federal government in the advancement of library activities when agreements to that effect are approved.

10-1-110. Library services for the blind and physically handicapped.

The secretary of state is authorized to:

- (1) Cooperate with the division for the blind and physically handicapped in the library of congress in planning and conducting a program of bringing free reading materials and related services and other library services to blind and physically handicapped residents of the state;
- (2) Establish and implement eligibility and certification standards and rules and regulations for these services;
- (3) Produce and distribute, and contract with competent organizations and agencies for the production and distribution of reading materials, and related library services, in the conduct of this program;
- (4) Cooperate in making sound reproduction equipment and other reading equipment available to the blind and physically handicapped persons; and
- (5) Establish and maintain local or regional centers as the library of congress may designate for the loan of reading materials, reproducers and other library materials to eligible readers in the state; provided, that nothing in this section shall be construed to interfere with or supersede the rules and regulations of the library of congress in the loan of library materials and reading equipment for blind and physically handicapped persons.

10-1-111. Black history and the Beck Cultural Exchange Center.

(a) The secretary of state, acting upon the recommendation of the state librarian and archivist, is hereby authorized to contract with the Beck Cultural Exchange Center, Knoxville, for the appropriate deposit, display, and/or preservation at the center of such:

- (1) Archival material;
- (2) Historical, documentary, and reference materials; and
- (3) Literary works or printed materials;

as may be mutually deemed by the secretary of state and by the center to be of special interest to the black citizens of Tennessee.

(b) The terms of any such contract shall ensure that adequate steps are undertaken to protect and preserve all such items for the benefit of future Tennesseans.

**Part 2
State Librarian and Archivist.**

SECTION

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|-----------|--------------------------------------------------------------------------|
| 10-1-201. | Appointment, authority and responsibilities. |
| 10-1-202. | Ability to hire special consultants. |
| 10-1-203. | Preservation of records of soldiers and sailors serving in World War 1. |
| 10-1-204. | Acceptance of and responsibility for Federal funds for library programs. |

10-1-201. Appointment, authority and responsibilities.

A state librarian and archivist shall be appointed by the secretary of state. The person appointed as librarian and archivist shall be appointed without regard to political affiliation or place of previous residence. The state librarian and archivist shall serve as chief administrative officer of the state library system and shall be responsible to the secretary of state.

10-1-202. Ability to hire special consultants.

Upon recommendation of the state librarian and archivist, the secretary of state, within the limitation of funds available, may engage the services of special consultants who are qualified in particular fields of library or archival administration to make special investigations, studies and reports looking to the proper development of methods and procedures by means of which the state library service may be strengthened, extended or made more efficient.

10-1-203. Preservation of records of soldiers and sailors serving in World War I.

The compilation of the records of the soldiers and sailors who served in World War I by enlistment from the state of Tennessee, compiled by Mrs. Rutledge Smith of Nashville, and a committee working under Mrs. Smith's supervision, consisting of separate volumes for each county, are declared to be public records of the state, and shall be carefully preserved by the state librarian and archivist as a part of the official records of this state, and copies thereof, duly certified by the state librarian and archivist, shall be receivable in evidence in all courts of competent jurisdiction in this state as to the truth of the facts therein recited.

10-1-204. Acceptance of and responsibility for Federal funds for library programs.

The secretary of state is authorized and empowered to make agreements with the United States and its agencies in regard to the administration of library programs, and to accept federal funds upon such terms and conditions as may be required by act of congress or rules and regulations issued in accordance with such act; provided, that state funds shall not be obligated for participation in any federal program unless the same are paid from current appropriations or operating funds. If required, the state treasurer shall give receipt for such funds, make a special bond for the same, or keep special accounts of such funds. At the end of this or succeeding bienniums, such funds shall not become a part of the state's general fund but shall be expended only for such library purposes as may have been agreed upon.

**Part 3
Tennessee Electronic Library.**

SECTION

- 10-1-301. Creation.
- 10-1-302. Components.
- 10-1-303. Purpose.
- 10-1-304. Participants.
- 10-1-305. Design and Implementation.

10-1-301. Creation.

There is hereby created the Tennessee Electronic Library which shall be administered by the office of the secretary of state, division of Tennessee state library and archives, which has the authority to coordinate the delivery of electronic databases and other similar services to all libraries, both public and private, within Tennessee which desire to participate in the Tennessee Electronic Library. The office of the secretary of state, through the division of the state library and archives, has the authority to contract with vendors, for the purpose of purchasing services under state rules and regulations, to administer and facilitate the operation of the Tennessee Electronic Library. Notwithstanding the appropriation of funds, the costs of funding the project during the initial year of operation may be paid out of funds existing within the department of state.

10-1-302. Components.

The Tennessee Electronic Library, in close cooperation with Tennessee's libraries and other organizations interested in and supportive of expanding and promoting superior library services, shall be composed of four (4) integrated components:

(1) Subscriptions to commercial online products both through a free core database access package composed of products of general interest to all Tennesseans available to all libraries and other subscriptions of specific interest paid for by libraries participating in the Tennessee Electronic Library;

(2) Organization and technical support for start-up and ongoing services;

(3) Computing storage capacity; and

(4) Training for Tennessee librarians and library users.

10-1-303. Purpose.

The Tennessee Electronic Library may provide access to, but shall not be limited to:

(1) Available online catalogs of the holdings of participating libraries in Tennessee;

(2) Local produced databases of specialized collections in Tennessee; and;

(3) Other holdings, collections, and subscriptions deemed appropriate by the participating libraries and agencies.

10-1-304. Participants.

Participants in the Tennessee Electronic Library shall be limited to Tennessee public and not-for-profit, academic and school libraries within Tennessee, and any agency of state government whose mission is to provide support services to public or educational libraries.

10-1-305. Design and Implementation.

The design and implementation of the Tennessee Electronic Library shall include the following considerations:

(1) Close cooperation among all participating libraries and agencies;

(2) Use of related federal, state, local, and private sector expertise and funding as appropriate;

(3) A focus on participating library circumstances, opportunities, and solutions;

(4) Minimizing duplication of effort and maximizing cost-savings through centralized and coordinated support and purchasing;

(5) Emphasis on both statewide benefit as well as local benefit; and

(6) Specific goals for the effective and efficient use of technology in public libraries and school libraries to improve the services they provide to the public and to students.

**CHAPTER 3
PUBLIC LIBRARIES IN COUNTIES AND CITIES**

SECTION

- 10-3-101. Creating and maintaining public libraries.
- 10-3-102. Using tax funds to support libraries.
- 10-3-103. Appointment of library board; terms of board members.
- 10-3-104. Authority and responsibilities of library board.
- 10-3-105. Library building and equipment funds.
- 10-3-106. Placement of county/city tax funds, withdrawing funds, audits.
- 10-3-107. Residency requirements for library use.
- 10-3-108. Fees for lost and damaged library property.
- 10-3-109. County population under 3,500 and the County library board.

- 10-3-110. Property and donations.
10-3-111. Annual budget and report to county.

10-3-101. Creating and maintaining public libraries.

The legislative body of a county or the governing body of an incorporated city or town shall have the power to establish and maintain, under state and local law, a free public library, or give support to any free public library already established therein, or contract with another library for library service for the use of the inhabitants of the county, city or town, or enter into contractual agreements with one (1) or more counties or cities for joint operation of a free public library.

10-3-102. Using tax funds to support libraries.

(a) Upon the decision of such county legislative body and/or city governing body to establish, maintain or support a free public library, or to contract with another library for library service, or to contract with one (1) or more counties or cities for joint operation of a free public library, it shall levy for the purpose a property tax, or shall use therefor funds raised by taxes for county or municipal purposes, such a library service being declared to be a county or municipal service.

(b) If a portion of a county is already taxed for maintenance of a free public library, the county legislative body is empowered to levy a tax for a free library on all the property in the county, or the county legislative body may levy a tax on only the property of such portion of the county as is not already taxed for maintenance of a free public library. If a general county-wide tax levy is made for this purpose, the county trustee shall keep the funds raised thereby separate and apart from all other tax funds coming into such county trustee's hands, and shall make quarterly distribution of the same between the county library board and the governing body of the free public library of the city or cities within the limits of the county on the basis of the population enumerated by the most recent federal census. Subject to the preceding sentence, funds raised under §§ 10-3-101 - 10-3-108 may be contributed toward the maintenance of any free public library maintained by a municipality in such county as provided in § 10-3-101.

10-3-103. Appointment of library board; terms of board members.

(a) (1) Except as provided in subdivision (a)(2), where a county legislative body and/or the governing body of a city or town, in lieu of giving support to a free public library already established, or of contracting with another library for library service, or of contracting with other counties or cities for the joint operation of a free public library, establishes an independent free library of its own, it shall appoint a board of seven (7), nine (9), or eleven (11) members. Not more than one (1) official each of the county and of the city governing bodies shall serve on the board. The members shall serve without salary, at least three (3) for one (1) year, two (2) for two (2) years, and two (2) for three (3) years. If the board expands to more than seven (7) members as provided in this subdivision (a)(1), the additional members shall be appointed by the county and city legislative bodies to terms of one (1), two (2) or three (3) years. All successors shall serve for terms of three (3) years. Board members may serve two (2) consecutive terms and may be reappointed after a minimum three-year break in service.

(2) In counties having a population of four hundred thousand (400,000), according to the 2010 federal census, or any subsequent federal census, in which the mayor has assumed the powers of the library board as provided In subsection (c) the terms of advisory board members shall be established as provided in subdivision (a)(1) with the exception that board members may serve as many consecutive terms as stated in their by-laws.

(b) Where a county legislative body, city governing body, or a county having a charter form of government elects to participate in joint operation of a public library maintained by the county and one (1) or more cities within the county, the library board responsible for administering the library shall be appointed by one (1) of the following methods:

(1) (A) Except as provided in subdivisions (b)(2) and (3), a library board of seven (7), nine (9), or eleven (11) members may be appointed by the county legislative body and city governing bodies that are parties to the agreement, the number appointed by each to be determined according to the ratio of population in each participating city and in those areas of the county that lie outside the cities, based on the most recent federal census; provided, that each governmental body shall appoint at least one (1) member. Terms of office, qualifications of members and powers and duties of the board shall be in accordance with the provisions of §§ 10-3-101 - 10-3-108. Board members may serve two (2) consecutive terms and may be reappointed after a minimum three-year break in service;

(2) [A library board may be appointed] in accordance with a contract as provided in § 5-1-113; or

(3) In accordance with a private act.

(c) A county or city having a population of more than four hundred thousand (400,000) may, by a two-thirds (2/3) majority vote of its legislative body, vest supervisory authority over the public library system with the mayor. The mayor in the county or city shall exercise all powers which would otherwise be exercised by the library board pursuant to § 10-3-104. A library board shall be retained in the county or city in accordance with this section, but shall serve in an advisory capacity to the county or city mayor, as applicable.

10-3-104. Authority and responsibilities of library board.

The members of the library board shall organize by electing officers and adopting bylaws and regulations. The board has the authority to direct all the affairs of the library, including the authority to appoint a library administrator. The library administrator shall direct the internal affairs of the library, including hiring and directing such assistants or employees as may be necessary. The board may make and enforce rules and regulations and establish branches of service at its discretion. The board may expend funds for the special training and formal education of library personnel; provided, that such personnel shall agree to work in the library for at least two (2) years after completion of such training and education. The board may receive donations, devises, and bequests to be used by it directly for library purposes. The board may hold and convey realty and personal property and negotiate leases for and on behalf of such library. The board shall furnish to the state library agency such statistics and information as may be required, and shall make annual reports to the county legislative body or city governing body.

10-3-105. Library building and equipment funds.

A county legislative body and/or city governing body has power to borrow money for the purchase of realty and the erection or purchase of suitable buildings for the library and its branches, and for their equipment. The title to such property may be vested in trust in the library board and its successors, which shall be responsible for disbursing bond proceeds as provided in § 10-3-106.

10-3-106. Placement of county/city tax funds, withdrawing funds, audits.

(a) All county or city tax funds for library purposes, raised by bonds or taxation, shall be held by the county or city treasurer separate from other funds.

(c) All library accounts of every character shall be audited annually by or under the county legislative body or city governing body.

10-3-107. Residency requirements for library use.

Libraries so established or supported shall be free to the inhabitants. The board may extend the privileges and facilities of the library to persons residing outside the county or city upon such terms as it may deem proper.

10-3-108. Fees for lost and damaged library property.

The library board has the power to make and enforce rules providing penalties for loss of or injury to library property. Nothing in this chapter shall be construed to prohibit a library board from charging library users a reasonable fine for late-returned library materials and charging for special services including, but not limited to, the loan of equipment and the use of photocopiers.

10-3-110. Property and donations.

The title to all property acquired by a library board operating under this chapter shall be taken in the name of the county or city for the use and benefit of the public library, and the proceeds from all activities conducted by the library board or from any disposition of its assets shall be taken in the name of the county or city for the use and benefit of the public library.

10-3-111. Annual budget and report to county.

Such library board shall furnish a report to the county or city legislative body, at its first meeting of each fiscal year, setting forth its capital and operational receipts and expenditures for the preceding fiscal year.

**TITLE 10
CHAPTER 5
REGIONAL LIBRARY BOARDS**

**Part 1
General provisions.**

SECTION

- 10-5-101. Participating counties to create a regional board; non-regional libraries access to regional contract services.
- 10-5-102. Regional board members
- 10-5-103. Responsibilities of regional boards.
- 10-5-104. Appropriations to the regional board by County/City government and reporting of such funds.
- 10-5-105. Regional library staff members.
- 10-5-106. Regional donations, purchases, leasing of property and closing of regional libraries.
- 10-5-107. Regional board representation not required.

10-5-101. Participating counties to create a regional board; non-regional libraries access to regional contract services.

Two (2) or more counties that have qualified for participation in the state's multi-county regional library program and that have been recognized as a region by the secretary of state and have made the minimum local appropriation of funds that may now or hereafter be required by the secretary of state, are empowered and authorized to execute contracts with each other to create a regional library board to assist the secretary of state, acting through the division of public libraries and archives, in administering and controlling the regional library services within the region. Each county shall be represented by two (2) members of the regional library board. The contract shall be authorized by a resolution of the legislative body of the county desiring to participate and the county mayor shall execute the contract as authorized in the resolution, and the contract shall be attested by the county clerk. After the governing body

of a county authorizes participation, municipalities within the county may participate in the regional library service so long as the county participates. A city in a county not participating in a region can, with approval by the secretary of state, join the state regional system as related to state purchasing contracts. The secretary of state shall assess fees, from participating cities, for any additional cost of services under the state contracts. Counties and municipalities may appropriate funds for this purpose. A single county that is large enough to constitute a region and has been so recognized by the secretary of state may also create a regional library board by executing a contract between the county and one (1) or more cities within the county. There shall be at least seven (7) board members apportioned among county and municipalities according to the ratio of population in each participating municipality and in the county outside the municipalities, based on the most recent federal census.

10-5-102. Regional board members.

(a) At least one (1) member shall be elected by the legislative body of each county in a multi-county region for a term of three (3) years in accordance with the contract between the counties and as provided in § 10-5-101. In accordance with the contract between the counties and as provided in § 10-5-101, the governing body of any municipality which contributes as much as one fourth (1/4) of the public funds available for the operation of a joint city-county system may elect one (1) of the two (2) members representing that county for a term of three (3) years. If more than one (1) municipality is entitled to elect a member, these municipalities shall alternate in electing one (1) member for a three-year term.

(b) A member of a regional library board shall represent and reside in the county or municipality from which the member was elected. If a member moves from or no longer resides in the county or municipality from which the member was elected, the member must vacate the member's office. If a vacancy occurs on the board, a successor shall be elected for the unexpired term at the next meeting of the governing body of the county or the municipality in which the vacancy occurred. Members shall be elected for no more than two (2) successive terms and may be reappointed after a minimum three-year break in service. A member of the regional library board who is not an active member of a county library board is designated an ex officio member of the county board. A member of the regional library board may be an active member of a county library board.

10-5-103. Responsibilities of regional boards.

A regional library board has the following duties and functions:

- (1) Review and concur in the appointment of the chief administrative officer of the regional library program within its region;
- (2) Review and submit to the secretary of state recommendations on the annual program for administering for the public library service within its region;
- (3) Review the activities performed in carrying out the annual program and submit comments and recommendations to the secretary of state regarding such activities.

10-5-105. Regional library staff members.

The chief administrative officer of each library program, acting under the direction of the secretary of state and within the limitation of funds available, may employ such personnel as may be necessary for administering the public library service within the region. Any individuals so employed shall be subject to personnel policies and regulations applicable to employees of the department of state, such as leave, compensation, classification and travel requests.

10-5-106. Regional donations, purchases, leasing of property and closing of regional libraries.

(a) The secretary of state, acting through the state librarian and archivist and the division of public libraries and archives, is authorized to accept donations and bequests on behalf of the regional library system.

(b) The secretary of state, acting through the division of public libraries and archives, may lease such real estate as may be necessary for library purposes. Any lease shall be between the state of Tennessee and the lessor and shall contain a clause that its continuance shall be subject to necessary allotments from the secretary of state and the availability of other funds.

TITLE 10 CHAPTER 8 CONFIDENTIALITY OF LIBRARY RECORDS

SECTION

- 10-8-101. Explanation.
10-8-102. Dispensing confidential information prohibited; Exceptions.
10-8-103. Library application.

10-8-101. Explanations.

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

(1) "Library" means:

(A) A library that is open to the public and established or operated by:

(i) The state, a county, city, town, school district or any other political subdivision of the state;

(ii) A combination of governmental units or authorities;

(iii) A university or community college; or

(B) Any private library that is open to the public; and

(2) "Library record" means a document, record, or other method of storing information retained by a library that identifies a person as having requested or obtained specific information or materials from such library. "Library record" does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general.

10-8-102. Dispensing confidential information prohibited; Exceptions.

(a) Except as provided in subsection (b), no employee of a library shall disclose any library record that identifies a person as having requested or obtained specific materials, information, or services or as having otherwise used such library. Such library records shall be considered an exception to the provisions of § 10-7-503.

(b) Library records may be disclosed under the following circumstances:

(1) Upon the written consent of the library user;

(2) Pursuant to the order of a court of competent jurisdiction; or

(3) When used to seek reimbursement for or the return of lost, stolen, misplaced or otherwise overdue library materials.

10-8-103. Library application.

This chapter shall apply to libraries included within chapters 1 and 3-5 of this title.

TITLE 8 CHAPTER 44

PUBLIC MEETINGS

Part 1 General Provisions.

SECTION

- 8-44-101. Policies and decisions as public business.
- 8-44-102. Open meetings explanations and definitions.
- 8-44-103. Public meeting announcements.
- 8-44-104. Public meeting minutes details. Secret votes forbidden.
- 8-44-105. Actions in violation and exceptions.
- 8-44-106. –Courts have jurisdiction; Enforcement.
- 8-44-107. Performing Arts Center Management Corporation.
- 8-44-108. Methods of participation.
- 8-44-109. Communication by electronic means.

Part 2 Labor Negotiations.

SECTION

- 8-44-201. Labor negotiations between public employee union and state or local government.

8-44-101. Policies and decisions as public business.

(a) The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

(b) This part shall not be construed to limit any of the rights and privileges contained in article I, § 19 of the Constitution of Tennessee.

8-44-102. Open meetings explanations and definitions.

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

(b) (1) "Governing body" means:

(A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a community action agency which administers community action programs under the provisions of 42 U.S.C. § 2790 [repealed]. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times;

(B) The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under the provisions of this chapter, and no other matter shall be discussed at such meetings;

(C) The board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more of counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58. The provisions of this subdivision (b)(1)(C) shall not apply to any county with a metropolitan form of government and

having a population of four hundred thousand (400,000) or more according to the 1980 federal census or any subsequent federal census;

(D) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census with heat, steam or incineration of refuse;

(E) (i) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(a) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(b) Receives dues, service fees or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

(c) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

(ii) The provisions of this subdivision (b)(1)(E) shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

(iii) As used in this subdivision (b)(1)(E):

(a) "Proprietary information" means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation; and which if known to a person or entity outside the association or corporation would give such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments; and

(b) "Trade secret" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;

(2) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

8-44-103. Public meeting announcements.

(a) *Notice of Regular Meetings.* Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) *Notice of Special Meetings.* Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

8-44-104. Public meeting minutes details. Secret votes forbidden.

(a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, "public vote" means a vote in which the "aye" faction vocally expresses its will in unison and in which the "nay" faction, subsequently, vocally expresses its will in unison.

8-44-105. Actions in violation and exceptions.

Any action taken at a meeting in violation of this part shall be void and of no effect; provided, that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.

8-44-106. Courts have jurisdiction; Enforcement.

(a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.

(b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.

(c) The court shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation.

(d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry, and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part.

8-44-107. Performing Arts Center Management Corporation.

The board of directors of the Tennessee Performing Arts Center Management Corporation shall be subject to, and shall in all respects comply with, all of the provisions made applicable to governing bodies by this chapter.

8-44-108. Methods of participation.

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

(1) "Governing body" refers to boards, agencies and commissions of state government, including state debt issuers as defined in this section and municipal governing bodies. For the purpose of this section only, "municipal governing bodies" means only those municipal governing bodies organized under title 6, chapter 18, and having a city commission of three (3) members, and having a population of more than two thousand five hundred (2,500), according to the 2000 federal census or any subsequent federal census;

(2) "Meeting" has the same definition as defined in § 8-44-102;

(3) "Necessity" means that the matters to be considered by the governing body at that meeting require timely action by the body, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by electronic or other means of communication is necessary; and

(4) "State debt issuers" means the Tennessee state funding board, Tennessee local development authority, Tennessee housing development agency, and Tennessee state school bond authority, and any of their committees.

(b) (1) A governing body may, but is not required to, allow participation by electronic or other means of communication for the benefit of the public and the governing body in connection with any meeting authorized by law; provided, that a physical quorum is present at the location specified in the notice of the meeting as the location of the meeting.

(2) If a physical quorum is not present at the location of a meeting of a governing body, then in order for a quorum of members to participate by electronic or other means of communication, the governing body must make a determination that a necessity exists. Such determination, and a recitation of the facts and circumstances on which it was based, must be included in the minutes of the meeting.

(3) If a physical quorum is not present at the location of a meeting of a governing body other than a state debt issuer, the governing body other than a state debt issuer must file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of secretary of state no later than two (2) working days after the meeting. The secretary of state shall report, no less than annually, to the general assembly as to the filings of the determinations of necessity. This subdivision (b)(3) shall not apply to the board of regents, to the board of trustees of the University of Tennessee or to the Tennessee higher education commission.

(4) Nothing in this section shall prohibit a governing body from complying with § 8-44-109.

(c) (1) Any meeting held pursuant to the terms of this section shall comply with the requirements of the Open Meetings Law, codified in this part, and shall not circumvent the spirit or requirements of that law.

(2) Notices required by the Open Meetings Law, or any other notice required by law, shall state that the meeting will be conducted permitting participation by electronic or other means of communication.

(3) Each part of a meeting required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting. Any member participating in such fashion shall identify the persons present in the location from which the member is participating.

(4) Any member of a governing body not physically present at a meeting shall be provided, before the meeting, with any documents that will be discussed at the meeting, with substantially the same content as those documents actually presented.

(5) All votes taken during a meeting held pursuant to the terms of this section shall be by roll call vote.

(6) A member participating in a meeting by this means is deemed to be present in person at the meeting for purposes of voting, but not for purposes of determining per diem eligibility. However, a member may be reimbursed expenses of such electronic communication or other means of participation.

8-44-109. Communication by electronic means.

(a) A governing body may, but is not required to, allow electronic communication between members by means of a forum over the Internet only if the governing body:

(1) Ensures that the forum through which the electronic communications are conducted is available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;

(2) Provides adequate public notice of the governing body's intended use of the electronic communication forum;

- (3) Controls who may communicate through the forum;
- (4) Controls the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year after the date of the communication; provided, that access to the archived electronic communications is user-friendly for the public; and
- (5) Provides reasonable access for members of the public to view the forum at the local public library, the building where the governing body meets or other public building.
- (b) Electronic communications posted to a forum shall not substitute for decision making by the governing body in a meeting held in accordance with this part. Communications between members of a governing body posted to a forum complying with this section shall be deemed to be in compliance with the open meetings laws compiled in this part.
- (c) Prior to a governing body initially utilizing a forum to allow electronic communications by its members that meets the requirements of this section, including the public notice required in subsection (a), the governing body shall file a plan with the office of open records counsel. The plan shall describe how the governing body will ensure compliance with subsection (a). Within thirty (30) days of receipt of the plan, the office of open records counsel shall acknowledge receipt of the plan and shall report whether or not the plan and the proposed actions comply with subsection (a). If the office determines that compliance with subsection (a) has not been met, the office shall provide written comments regarding the plan to the governing body. Until such time as the governing body complies with the written comments provided by the office and the office issues a report of compliance, the governing body shall not be allowed to establish or utilize such forum. This subsection (c) shall not apply to any governing body that had established a forum pursuant to this section prior to May 7, 2009.
- (d) No member participating in an electronic communication pursuant to this section is deemed to be eligible for per diem for such participation.
- (e) As used in this section, "governing body" means the elected governing body of a county, city, metropolitan form of government or school board.

8-44-201 Labor negotiations between public employee union and state or local government.

- (a) Notwithstanding any other provision of Tennessee law to the contrary, labor negotiations between representatives of public employee unions or associations and representatives of a state or local governmental entity shall be open to the public, whether or not the negotiations by the state or local governmental entity are under the direction of the legislative, executive or judicial branch of government.
- (b) Nothing contained in this section shall be construed to require that planning or strategy sessions of either the union committee or the governmental entity committee, meeting separately or with the entity it represents, be open to the public.
- (c) Nothing contained in this section shall be construed to grant recognition rights of any sort.
- (d) Both sides shall decide jointly and announce in advance of any such labor negotiations where such meetings shall be held.

[Acts 1979, ch. 41, § 1; T.C.A., § 8-4421; Acts 2009, ch. 293, § 1.]

**TITLE 39
CHAPTER 14
OFFENSES AGAINST PROPERTY**

Part 1 - Theft

SECTION

- 39-14-101. Theft offenses consolidated.
39-14-102. Definitions in this part of law.

- 39-14-103. Property theft.
- 39-14-104. Services theft.
- 39-14-105. Grades of property or services theft

- 39-14-130. Intent to injure or defraud; Destruction of valuable papers.

Part 6 - Tennessee Personal and Commercial Computer Act of 2003

- 39-14-601. Definitions in this part of law.
- 39-14-602. Offenses and Penalties.
- 39-14-603. Unsolicited bulk electronic mail.
- 39-14-604. Filing a civil action.
- 39-14-605. Venue of offense or violation.
- 39-14-606. Local exchange company transmitting electronic signals.

39-14-101. Theft offenses consolidated.

Conduct denominated as theft in this part constitutes a single offense embracing the separate offenses heretofore known as: embezzlement, false pretense, fraudulent conversion, larceny, receiving/concealing stolen property, and other similar offenses.

39-14-102. Definitions in this part of law.

The following definitions apply in this part unless the context otherwise requires:

- (1) "Cable television company" means any franchise or other duly licensed company which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one (1) or more television stations and redistributing such signals by wire, cable or other device or means for accomplishing such redistribution to members of the public who subscribe to such service, or distributing through such company's antennae, poles, wires, cables, conduits or other property used in providing service to its subscribers and customers any television signals whether broadcast or not;
- (2) "Credit card" means any real or forged instrument, writing or other evidence, whether known as a credit card, credit plate, charge plate or by any other name, which purports to evidence an understanding to pay for property or services delivered or rendered to or upon the order of a designated person or bearer;
- (3) "Debit card" means any real or forged instrument, writing or other evidence known by any name issued with or without a fee by an issuer for the use of a depositor in obtaining money, goods, services or anything else of value, payment of which is made against funds previously deposited in an account with the issuer;
- (4) "Expired" credit or debit card means a card which is no longer valid because the term shown on it has expired;
- (5) "Issuer" means the business organization or financial institution or its duly authorized agent which issues a credit or debit card;
- (6) "Library" means any:
 - (A) Public library;
 - (B) Library of educational, historical or eleemosynary institution, organization or society;
 - (C) Archives; or
 - (D) Museum;
- (7) "Library material" includes any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microfilm, sound recording, audio-visual materials in any format, magnetic or other tapes, electronic data, processing records, artifacts or other documentary, written or printed materials, regardless of physical form or characteristics, belonging to or on loan to or otherwise in the custody of a library;

(8) "Microwave multi-point distribution system station" or "MDS" means any franchise or other duly licensed company which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one (1) or more television stations, and redistributing such signals by microwave transmissions to members of the public who subscribe to such service, or distributing through such company's antennae, conduits, or other property used in providing service to its subscribers and customers any television signals whether broadcast or not;

(9) "Receiving" includes, but is not limited to, acquiring possession, control, title or taking a security interest in the property; and

(10) "Revoked" credit or debit card means a card which is no longer valid because permission to use it has been suspended or terminated by the issuer.

39-14-103. Property theft.

(a) A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent.

(b) (1) As a condition of pretrial diversion, judicial diversion, probation or parole for a violation of subsection (a) when the violation occurs as set out in subdivision (b)(2), the person may be required to perform debris removal, clean-up, restoration, or other necessary physical labor at a location within the area affected by the disaster or emergency that is in the county where the offense occurred.

(2) The condition of pretrial diversion, judicial diversion, probation or parole containing the requirement set out in subdivision (b)(1) may be used if the violation of subsection (a) occurs:

(A) During or within thirty (30) days following the occurrence of a tornado, flood, fire, or other disaster or emergency, as defined in § 58-2-101;

(B) Within the area affected by the disaster or emergency; and

(C) When, as a result of the disaster or emergency, the owner of the property taken, or the person charged with custody of the property, is unable to adequately guard, secure or protect the property from theft.

(3) Subdivision

(b) (2) shall apply regardless of whether a state of emergency has been declared by a county, the governor, or the president of the United States at the time of or subsequent to the theft.

(4) Any period of physical labor required pursuant to subdivision (b)(1) shall not exceed the maximum sentence authorized pursuant to § 39-14-105.

39-14-104. Services theft.

(a) A person commits theft of services who:

(1) Intentionally obtains services by deception, fraud, coercion, false pretense or any other means to avoid payment for the services;

(2) Having control over the disposition of services to others, knowingly diverts those services to the person's own benefit or to the benefit of another not entitled thereto; or

(3) Knowingly absconds from establishments where compensation for services is ordinarily paid immediately upon the rendering of them, including, but not limited to, hotels, motels and restaurants, without payment or a bona fide offer to pay.

(b) Any individual directly or indirectly harmed by a violation of subsection (a) shall have legal standing to report such violations to law enforcement and testify in support of corresponding criminal charges.

39-14-105. Grades of property or services theft.

(a) Theft of property or services is:

(1) A Class A misdemeanor if the value of the property or services obtained is five hundred dollars (\$500) or less;

(2) A Class E felony if the value of the property or services obtained is more than five hundred dollars (\$500) but less than one thousand dollars (\$1,000);

(3) A Class D felony if the value of the property or services obtained is one thousand dollars (\$1,000) or more but less than ten thousand dollars (\$10,000);

(4) A Class C felony if the value of the property or services obtained is ten thousand dollars (\$10,000) or more but less than sixty thousand dollars (\$60,000);

(5) A Class B felony if the value of the property or services obtained is sixty thousand dollars (\$60,000) or more but less than two hundred fifty thousand dollars (\$250,000); and

(6) A Class A felony if the value of the property or services obtained is two hundred fifty thousand dollars (\$250,000) or more.

(b) (1) In a prosecution for theft of property, theft of services, and any offense for which the punishment is determined pursuant to this section, the state may charge multiple criminal acts committed against one (1) or more victims as a single count if the criminal acts arise from a common scheme, purpose, intent or enterprise.

(2) The monetary value of property from multiple criminal acts which are charged in a single count of theft of property shall be aggregated to establish value under this section.

(c) Venue in a prosecution for any offense punishable pursuant to this section shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

39-14-130. Intent to injure or defraud; Destruction of valuable papers.

(a) Any person who takes or destroys any valuable papers with intent to injure or defraud shall be punished as if for theft. If the value of the papers is not ascertainable, the offense is a Class A misdemeanor.

(b) For the purposes of this section, "valuable papers" includes:

(1) Any bond, promissory note, bill of exchange, order, or certificate;

(2) Any book of accounts respecting goods, money or other things;

(3) Any deed or contract in force;

(4) Any receipt, release, or defeasant;

(5) Any instrument of writing whereby any demand, right or obligation is created, ascertained, increased, extinguished or diminished; or

(6) Any other valuable paper writing.

Part 6 - Tennessee Personal and Commercial Computer Act of 2003

39-14-601. Definitions in this part of law.

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

(1) "Access" means to approach, instruct, communicate, or connect with, store data in, retrieve or intercept data from, or otherwise make use of any resources of a computer, computer system, or computer network, or information exchanged from any communication between computers or authorized computer users and electronic, electromagnetic, electrochemical, acoustic, mechanical, or other means;

(2) "Authorization" means any and all forms of consent, including both implicit and explicit consent;

(3) "Computer" means a device or collection of devices, including its support devices, peripheral equipment, or facilities, and the communication systems connected to it which can perform functions including, but not limited to, substantial computation, arithmetic or logical operations, information storage or retrieval operations, capable of being used with external files, one (1) or more operations which contain computer programs, electronic instructions, allows for the input of data, and output data (such operations or communications can occur with or without intervention by a human operator during the processing of a job):

(4) "Computer contaminants" means any set of computer instructions that are designed to modify or in any way alter, damage, destroy, or disrupt the proper operation of a computer system, or computer network without the intent or authorization of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms, which are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, modify, destroy, record or transmit data, or in some other fashion usurp the normal operation of the computer, computer system, or computer network. Such contaminants may include viruses or worms, which terms shall have the following meanings:

(A) "Virus" means a migrating program which, at least, attaches itself to the operating system of any computer it enters and can infect any other computer that has access to an "infected" computer; and

(B) "Worm" means a computer program or virus that spreads and multiplies, eventually causing a computer to "crash" or cease functioning, but does not attach itself to the operating system of the computer it "infects";

(5) "Computer network" means a set of two (2) or more computer systems that transmit data over communication circuits connecting them, and input/output devices including, but not limited to, display terminals and printers, which may also be connected to telecommunication facilities;

(6) "Computer program" means an ordered set of data that are coded instructions or statements that, when executed by a computer, cause the computer to process data;

(7) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer system, or computer network whether imprinted or embodied in the computer in any manner or separate from it, including the supporting materials for the software and accompanying documentation;

(8) "Computer system" means a set of connected devices including a computer and other devices including, but not limited to, one (1) or more of the following: data input, output, or storage devices, data communication circuits, and operating system computer programs that make the system capable of performing data processing tasks;

(9) "Data" means a representation of information, knowledge, facts, concepts, or instructions which is being prepared or has been prepared in a formalized manner, and is intended to be stored or processed, or is being stored or processed, or has been stored or processed in a computer, computer system, or computer network;

(10) "Electronic mail service provider" means any person who

- (A) Is an intermediary in sending or receiving electronic mail; and
- (B) Provides to end-users of electronic mail services the ability to send or receive electronic mail;
- (11) "Financial instrument" includes, but is not limited to, any check, cashier's check, draft, warrant, money order, certificate of deposit, negotiable instrument, letter of credit, bill of exchange, credit card, debit card, marketable security, or any computer system representation thereof;
- (12) "Input" means data, facts, concepts, or instructions in a form appropriate for delivery to, or interpretation or processing by, a computer;
- (13) "Intellectual property" includes data, which may be in any form including, but not limited to, computer printouts, magnetic storage media, punched cards, or may be stored internally in the memory of a computer;
- (14) "Local exchange company" includes telecommunications service providers as defined in § 65-4-101; competing telecommunications service providers as such term is defined in § 65-4-101; telephone cooperatives; cellular or other wireless telecommunications providers; and interactive computer service providers as defined in 47 U.S.C. § 230(f);
- (15) "Output" means data, facts, concepts or instructions produced or retrieved by computers from computers or computer memory storage devices;
- (16) "Owner" means an owner or lessee of a computer or a computer network, or an owner, lessee or licensee of computer data, computer programs, or computer software;
- (17) "Property" shall include:
- (A) Real property;
- (B) Computers and computer networks and;
- (C) Financial instruments, computer data, computer programs, computer software, and all other personal property regardless of whether they are:
- (i) Tangible or intangible;
- (ii) In a format readable by humans or by a computer;
- (iii) In transit between computers or within a computer network or between any devices which comprise a computer; or
- (iv) Located on any paper or in any device in which it is stored by a computer or by a human;
- (18) "Services" includes, but is not limited to, the use of a computer, a computer system, a computer network, computer software, computer program, or data to perform tasks;
- (19) "System hacker" means any person who knowingly accesses and without authorization alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network; and
- (20) "To process" means to use a computer to put data through a systematic sequence of operations for the purpose of producing a specified result.

39-14-602. Offenses and penalties.

- (a) Whoever knowingly, directly or indirectly, accesses, causes to be accessed, or attempts to access any telephone system, telecommunications facility, computer software, computer

program, data, computer, computer system, computer network, or any part thereof, for the purpose of:

(1) Obtaining money, property, or services for oneself or another by means of false or fraudulent pretenses, representations, or promises violates this subsection and is subject to the penalties of § 39-14-105;

(2) Causing computer output to purposely be false, for, but not limited to, the purpose of obtaining money, property, or services for oneself or another by means of false or fraudulent pretenses, representations, or promises violates this subsection and is subject to the penalties of § 39-14-105.

(b) Whoever intentionally and without authorization, directly or indirectly:

(1) Accesses any computer, computer system, or computer network commits a Class C misdemeanor;

(2) Alters, damages, destroys, or attempts to damage or destroy, or causes the disruption to the proper operation of any computer, or who performs an act which is responsible for the disruption of any computer, computer system, computer network, computer software, program or data which resides or exists internal or external to a computer, computer system or computer network is punishable as in § 39-14-105;

(3) Introduces or is responsible for the input of any computer contaminant into any computer, computer system, or computer network commits a Class B misdemeanor; or

(4) Accesses, causes to be accessed, or attempts to access any computer software, computer program, data, computer, computer system, computer network, or any part thereof, for the purpose of gaining access to computer material or to tamper with computer security devices, including, but not limited to, system hackers, commits a Class A misdemeanor.

(5) Makes or causes to be made an unauthorized copy, in any form, including, but not limited to, any printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network commits an offense punishable as provided in § 39-14-105.

(c) Whoever receives, conceals, uses, or aids another in receiving, concealing or using any proceeds resulting from a violation of either subsection (a) or subdivision (b)(2), knowing the same to be proceeds of such violation, or whoever receives, conceals, uses, or aids another in receiving, concealing or using, any books, records, documents, property, financial instrument, computer software, program, or other material, property, or objects, knowing the same to have been used in violating either subsection (a) or subdivision (b)(2) is subject to the penalties of § 39-14-105.

(d) Any person who violates this section in connection with an act of terrorism commits a Class A felony.

39-14-603. Unsolicited bulk electronic mail.

(a) It is an offense for a person without authority to falsify or forge electronic mail transmission information or other routing information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers.

(b) Transmission of electronic mail from an organization to its members shall not be deemed to be the transmission of unsolicited bulk electronic mail as prohibited by this section.

(c) Nothing in this section shall be construed to interfere with or prohibit terms or conditions in a contract or license related to computers, computer data, computer networks, computer operations, computer programs, computer services, or computer software or to create any liability by reason of terms or conditions adopted by or technical measures implemented by a Tennessee-based electronic mail service provider to prevent the transmission of unsolicited electronic mail in violation of this section.

(d) As used in this section, "without authority" means a person who uses a computer, a computer network, or the computer services of an electronic mail service provider to transmit unsolicited bulk mail in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider.

(e) The transmission of electronic signals by a local exchange company to the extent that the local exchange company merely carries that transmission over its network shall not be deemed to be the transmission of unsolicited bulk electronic mail as prohibited by this section.

(f) A violation of this section shall be punished according to the damage to the property of another caused by the violation and shall be graded as provided in § 39-14-105.

39-14-604. Filing a civil action.

(a) Any person whose property or person is injured by reason of a violation of any provision of this part may file a civil action and recover for any damages sustained and the costs of the civil action. Without limiting the generality of the term, "damages" shall include loss of profits.

(b) If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person, other than an electronic mail service provider, may also recover attorney's fees and costs, and may elect, in lieu of actual damages, to recover the lesser of ten dollars (\$10.00) for each and every unsolicited bulk electronic mail message transmitted in violation of this part, or one thousand dollars (\$1,000) per day. The injured person shall not have a cause of action against the electronic mail service provider that merely transmits the unsolicited bulk electronic mail over its computer network.

(c) If the injury arises from the transmission of unsolicited bulk electronic mail, an injured electronic mail service provider may also recover attorney's fees and costs and may elect, in lieu of actual damages, to recover the greater of ten dollars (\$10.00) for each and every unsolicited bulk electronic mail message transmitted in violation of this part, or one thousand dollars (\$1,000) per day.

(d) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved in order to prevent possible recurrence of the same or a similar act by another person and to protect any trade secrets of any party. The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

39-14-605. Venue of offense or violation.

For the purposes of venue under the provisions of this part, any violation of this part shall be considered to have been committed:

(1) In any county in which any act was performed in furtherance of any transaction violating this part;

(2) In any county in which any violator had control or possession of any proceeds of the violation or of any books, records, documents, property, financial instrument, computer software, computer program or other material, objects or items which were used in furtherance of the violation; and

(3) In any county from which, to which or through which any access to a computer, computer system, or computer network was made, whether by wire, electromagnetic waves, microwaves or any other means of communication.

39-14-606. Local exchange company transmitting electronic signals.

The transmission of electronic signals by a local exchange company to the extent that the local exchange company merely carries that transmission over its network shall not be deemed to be the transmission of unsolicited bulk electronic mail as prohibited by this part.

TITLE 39
CHAPTER 17
Offenses Against Public Health, Safety and Welfare

Part 9 - Obscenity

SECTION

39-17-911. Types of materials for loan, sale or exhibition to minor children.

39-17-911. Types of materials for loan, sale or exhibition to minor children.

(a) It is unlawful for any person to knowingly sell or loan for monetary consideration or otherwise exhibit or make available to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, video game, computer software game, or similar visual representation or image of a person or portion of the human body, that depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to minors;

(2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording, which contains any matter enumerated in subdivision (a)(1), or that contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, excess violence, or sado-masochistic abuse, and that is harmful to minors.

(b) It is unlawful for any person to knowingly exhibit to a minor for monetary consideration, or to knowingly sell to a minor an admission ticket or pass or otherwise admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct, excess violence, or sado-masochistic abuse, and which is harmful to minors.

(c) A violation of this section is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section that the minor to whom the material or show was made available or exhibited was, at the time, accompanied by the person's parent or legal guardian, or by an adult with the written permission of the parent or legal guardian.

TITLE 40
CHAPTER 39
Sex offender monitoring

40-39-216. Restricting access to public library.

(a) Public library boards shall have the authority to reasonably restrict the access of any person listed on the sexual offender registry. Such authority may be delegated by the board to a library administrator.

(b) In determining the reasonableness of the restrictions, the board shall consider the following criteria:

(1) The likelihood of children being present in the library at the times and places to be restricted;

(2) The age of the victim of the offender; and

(3) The chilling effect of the use of the library by other patrons if the offender is not restricted.

(c) Nothing in this section shall prevent a total ban of the offender's access to a public library so long as the criteria in subsection (b) are considered.

(d) The restrictions of this part shall be effective upon the mailing of notice to the address of the offender as listed on the sex offender registry. The notice shall state with specificity, the time and space restrictions. The director shall state in the notice that the criteria in subsection (b) have been considered.

(e) A registered sex offender who enters upon the premises of a public library in contravention of the restrictions five (5) days after mailing of the notice may, at the discretion of the director, be prosecuted for criminal trespass pursuant to § 39-14-405.