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 Effective Date: 06/21/2012

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Human Rights Commission
Division:	
Contact Person:	Shalini Rose, General Counsel
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1500-01-01	General Provisions
Rule Number	Rule Title
1500-01-01-.04	Incorporation of Federal Guidelines

Chapter Number	Chapter Title
1500-01-02	Employment, Public Accommodation and Housing Complaints
Rule Number	Rule Title
1500-01-02-.01	Practice and Procedure

Chapter 1500-01-01
General Provisions
Amendments

Rule 1500-01-01-.04 Incorporation of Federal Guidelines is amended by designating the existing paragraph (6) as paragraph (7), and adding the following new paragraph (6):

- (6) The guidelines on "Speak-English-only rules" promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1606.7, are adopted, as hereinafter amended, and are incorporated by reference.

Authority: T.C.A. §§ 4-21-202, 4-21-203, 4-21-401, 4-21-601 and 4-21-602.

Chapter 1500-01-02
Employment, Public Accommodation and Housing Complaints
Amendments

Rule 1500-01-02-.01(1)(r) Practice and Procedure, Definitions is amended by deleting the text of the paragraph in its entirety and replacing it with the following language so that as amended, the paragraph shall read:

- (r) "No Reasonable Cause" means that after an investigation, the Commission has determined that the respondent has not engaged in a discriminatory practice. Such determinations will be made using the standards set forth in the policies, regulations, statutes, and our contracts with the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD).

Rule 1500-01-02-.01(1)(y) Practice and Procedure, Definitions is amended by deleting the text of the paragraph in its entirety and replacing it with the following language so that as amended, the paragraph shall read:

- (y) "Reasonable Cause" means that after an investigation, the Commission has determined that the respondent has engaged in a discriminatory practice. Such determinations will be made using the standards set forth in the policies, regulations, statutes, and our contracts with the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD).

Rule 1500-01-02-.01(1) Practice and Procedure, Definitions is amended by designating the existing paragraph (aa) as paragraph (bb), and adding the following new paragraph (aa):

- (aa) "Sex" means and refers only to the designation of an individual person as male or female as indicated on the individual's birth certificate.

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.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
Commissioner Dennis E. Blalock	X			
Commissioner David J. Cocke	X			
Commissioner Ralph E. Davis	X			
Commissioner Robert Earl Jones				X
Commissioner Stacey Garrett	X			
Commissioner Karla C. Hewitt	X			
Commissioner Paul A. McDaniel	X			
Commissioner Ruby A. Miller	X			
Commissioner Edwin Perry Osborne	X			
Commissioner Patricia A. Pierce	X			
Commissioner Nathan B. Pride				X
Commissioner A.J. Starling	X			
Commissioner Joseph Warren Walker				X
Commissioner Spencer Wiggins	X			
Commissioner Jocelyn Wurzburg	X			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Commissioners, Tennessee Human Rights Commission on 11/18/2011, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/18/2011

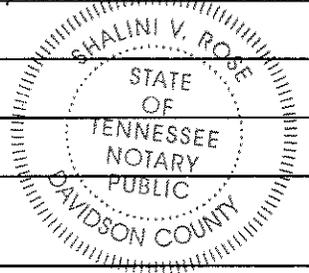
Rulemaking Hearings Conducted on: 01/23/2011, 01/24/2011, and 01/26/2011

Date: February 23, 2012

Signature: Beverly L. Watts

Name of Officer: Beverly L. Watts

Title of Officer: Executive Director



Subscribed and sworn to before me on: 02/23/12

Notary Public Signature: Shalini V. Rose

My commission expires on: 01/09/16

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Attorney General and Reporter
3-2-12

Date

Filed with the Department of State on: 03/23/2012
Effective on: 06/21/2012
Tre Hargett
Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

No oral or written comments were received at the public hearings.

Some typographical errors from the Notice of Rulemaking Hearing were corrected with regard to Rule 1500-01-01-.04(6).

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules and regulations are not expected to have a projected financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

THRC Rule 1500-01-01-.04 "Incorporation of Federal Guidelines" has been amended by adding "Speak-English-only rules" guidelines. This is to help clarify T.C.A. § 4-21-401(c) which was passed in 2010.

THRC Rule 1500-01-02-.01(1), "Practice and Procedure, Definitions" has been amended in 3 different paragraphs. The definition of "sex" is being added pursuant to T.C.A. § 4-21-102(20), passed in 2011. Two definitions, "reasonable cause" and "no reasonable cause" are being amended for clarity.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 4-21-401(c) – "Speak English-only" policy; 29 CFR Part 1606.7 – establishes guidelines by EEOC implementing policies speaking "English-only" in the workplace. T.C.A. § 4-21-102(20) – definition of "sex."

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules should not have a substantial effect on persons or entities affected by our rules, as the rules are either incorporating current law or clarifying the agency's current practice/process.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The promulgation of these rules will have a minimal, if any, fiscal impact on state and local government revenues and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Shalini V. Rose, General Counsel
Beverly L. Watts, Executive Director

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Shalini V. Rose, General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

710 James Robertson Parkway, Suite 100, Nashville, Tennessee 37243, (615) 741-5825, shalini.rose@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

REDLINE

1500-01-01-.04 INCORPORATION OF FEDERAL GUIDELINES.

- (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) The regulations applicable to the Title VI Compliance Program, which appear in 28 Code of Federal Regulations Subpart C, are adopted, as hereinafter amended, and are incorporated by reference.
- (6) The guidelines on "Speak-English-only rules" promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1606.7, are adopted, as hereinafter amended, and are incorporated by reference.
- (67) 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, 4-21-303, 4-21-401, 4-21-601 and 4-21-602. **Administrative History:** Original rule certified June 10, 1974. Amendment filed December 5, 1978; effective January 19, 1979. Amendment filed April 30, 1997; effective August 28, 1997. Amendment filed September 7, 2000; effective January 29, 2001. Amendment filed June 18, 2003; effective October 28, 2003. Repeal and new rule filed August 9, 2007; effective October 23, 2007. Stay of effective date filed by the Joint Government Operations Committee of The State of Tennessee General Assembly for forty-five days; new effective date is December 6, 2007. Repeal and new rule filed November 15, 2010; effective February 13, 2011.

1500-01-02-.01 PRACTICE AND PROCEDURE.

- (1) Definitions. When used in this regulation:
 - (a) "Act" includes the Tennessee Human Rights Act, Tennessee Code Annotated (T.C.A.), Title 4, and Chapter 21, and the Tennessee Disability Act, Tennessee Code Annotated, 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, national origin, or disability.
- (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) "Disability" 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. "Disability" 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. Such determinations will be made using the standards set forth in the policies, regulations, statutes, and our contracts with the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD).
- (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. Such determinations will be made using the standards set forth in the policies, regulations, statutes, and our contracts with the United States Equal Employment Opportunity Commission (EEOC) and the United States Department of Housing and Urban Development (HUD).
- (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) "Sex" means and refers only to the designation of an individual person as male or female as indicated on the individual's birth certificate.
- (aabb) "Verified" means sworn to or affirmed before a notary public, or supported by a declaration in writing under penalty of perjury.

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.
Administrative History: Original rule filed November 15, 2010; effective February 13, 2011.