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Sequence Number: 09-16-14
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File Date: 9/17/2014
Effective Date: 12/16/2014

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: Department of Commerce and Insurance
Division: Tennessee Corrections Institute
Contact Person: Joseph Underwood, Chief Counsel of Fire Prevention & Law Enforcement
Address: 500 James Robertson Parkway, 8th Floor, Davy Crockett Tower
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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
1400-04	Criteria for Waivers
Rule Number	Rule Title
1400-04-.01	Submission of Waiver Request
1400-04-.02	Waiver of Pre-Employment Requirements

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Substance of Proposed Rules

Chapter 1400-04

Criteria for Waivers

1400-04-.01 Submission of Waiver Request. A request for waiver of pre-employment requirements must be submitted by the prospective employing agency prior to the employment of the person requiring the waiver. Requests must be submitted no later than thirty (30) days prior to the next scheduled meeting of the Board of Control. Request for waiver filed/submitted by an individual will not be accepted by the Board of Control. The requesting department shall be represented by its designee before the Board of Control. Once a waiver has been granted for a previous pre-employment requirement for a particular employee, that requirement shall be considered waived for future applications for certification.

Authority: T.C.A. §§ 41-4-144 and 41-7-106.

1400-04-.02 Waiver of Pre-employment Requirements. A waiver of pre-employment requirements may be granted under the following circumstances:

- (1) No person may be employed as a jail or workhouse administrator, jailer, corrections officer or guard in any county jail or workhouse, who requires a waiver under this section, until such waiver is granted.
 - (a) Military History - The Board of Control may waive pre-employment requirements relating to the military history on an individual basis and depending on the circumstances.
 1. Waivers may be granted from pre-employment requirements for the following separations from military service:
 - (i) Entry Level Separation;
 - (ii) Uncharacterized Discharge; or,
 - (iii) General Discharge under Honorable Conditions.
 2. Waivers shall not be granted from pre-employment requirements for the following separation from military service:
 - (i) Dishonorable Discharge or Dismissal;
 - (ii) Bad Conduct Discharge; or,
 - (iii) General Discharge under Other Than Honorable Conditions.
 - (b) Criminal Activity - The Board of Control may consider a waiver from pre-employment requirements relating to criminal activity on an individual basis and depending on the circumstances.
 1. Waivers may be granted if the officer has been convicted of or pleaded guilty to or entered a plea of nolo contendere to any misdemeanor charge or misdemeanor violation of any federal or state law or city ordinance (excluding domestic violence) relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled substances analogues (as defined in the Tennessee Drug Control Act compiled in Title 39, Chapter 17, Part 4).
 2. Waivers shall not be granted if a person has been convicted of, pleaded guilty to or entered a plea of nolo contendere to domestic assault or to a felony.

3. The employing agency requesting waiver must present a copy of the final court disposition of the case.
 4. Some of the factors to be considered when determining whether to grant a waiver shall be:
 - (i) Amount of time since the offense;
 - (ii) Amount of time since completion of the sentence;
 - (iii) Type, circumstances and severity of the offense;
 - (iv) Applicant's activities since the offense; and
 - (v) Applicant's ability to carry a firearm pursuant to federal and state law.
- (c) Mental Impairment – A waiver shall not be granted from pre-employment requirements for a mental impairment that would affect the person's ability to perform an essential function of the job, with or without a reasonable accommodation.

Authority: T.C.A. §§ 41-4-144 and 41-7-106.

* 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	Signature (if required)
Bill Oldham	X				
Deborah Newman				X	
Armando Fontes				X	
Derrick Schofield	X				
Brian McCormack	X				
Dan Hughes				X	
Jeff Brown	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Corrections Institute Board of Control on 06/04/2014 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: 04/15/2014

Rulemaking Hearing(s) Conducted on: (add more dates). 06/04/2014

Date: 6/13/2014

Signature: Joseph Underwood

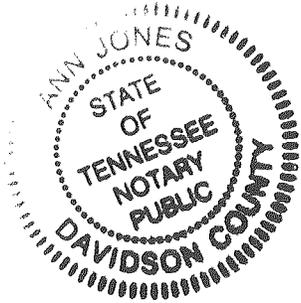
Name of Officer: Joseph Underwood

Title of Officer: Chief Counsel for Fire Prevention & Law Enforcement

Subscribed and sworn to before me on: June 13, 2014

Notary Public Signature: Ann Jones

My commission expires on: June 21, 2016



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
9-5-14
 Date

Department of State Use Only

Filed with the Department of State on: 9/17/2014

Effective on: 12/16/2014

Tre Hargett
 Tre Hargett
 Secretary of State

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 SECRETARY OF STATE

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 written or oral public comments were made during or submitted for the hearing.

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.

The rules are not anticipated to affect small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The rules will not impact any small businesses.

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There will be no additional reporting, recordkeeping or other administrative costs resulting from these rules than is currently required by the existing rules.

(3) A statement of the probable effect on impacted small businesses and consumers.

The rules will have no effect on small businesses and consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Since the rules will not impact small businesses, a less burdensome, intrusive or costly alternative method has not been identified or recommended for use.

(5) A comparison of the rules with any federal or state counterparts.

The rules are based on Public Chapter 173 of the 2013 Acts which was based, in part, on 42 U.S. Code 12101, et seq. (Americans with Disabilities Act- ADA).

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Since the rules will not impact small businesses, there are no exemptions for small businesses to the requirements contained in the rules.

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)

The rules may impact 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;

Public Chapter 173 of the 2013 Acts (codified in T.C.A. §§ 41-4-144(9) and 41-7-106(g)) adopted applicable provisions of the Americans with Disabilities Act (ADA). The amendments to the rule adopt the language from the ADA and the statutes into the rule. The amendments to the rule also include provisions allowing waivers for the minimum qualifications for jail administrators, workhouse administrators, jailers, corrections officers or guard in a county jail or workhouse, which was authorized in Public Chapter 173 (2013).

- (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;

Public Chapter 173 (2013), codified in T.C.A. §§ 41-4-144(9) and 41-7-106(g), and the Americans With Disabilities Act (ADA), 42 United States Code 12101, et. seq.

- (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;

Local governments operating jails or workhouses will be most directly affected by these rules. No public comments on the rules were made in the hearing.

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

Not applicable

- (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;

None.

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

Joseph Underwood, Chief Counsel for Fire Prevention & Law Enforcement, and Beth Ashe, Executive Director of the Tennessee Corrections Institute.

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

Joseph Underwood, Chief Counsel for Fire Prevention & Law Enforcement, and Beth Ashe, Executive Director of the Tennessee Corrections Institute.

- (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

Joseph Underwood (joseph.underwood@tn.gov, 615-741-3899) Department of Commerce and Insurance, 500 James Robertson Parkway, Davy Crockett Tower, Nashville, TN 37243; Beth Ashe, (beth.ashe@tn.gov, 615-741-3816), Davy Crockett Tower, Nashville, TN 37243.

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

Not applicable

Chapter 1400-04
Criteria for Waivers

Table of Contents

1400-04-.01 Submission of Waiver Request

1400-04-.02 Waivers of Pre-employment Requirements

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Authority: T.C.A. §§ 41-4-144 and 41-7-106.

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