STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE	POLICY NUMBER: 2018-0061-POL-4350-40544
APPROVED BY COMMISSIONER:	EFFECTIVE DATE: 8/11/18
	SUPERSEDES: Any conflicting policies regarding fingerprint-based criminal history record check
SUBJECT: Fingerprint-Based Criminal History Record Check Policy	

I. RESPONSIBLE OFFICE:

Tennessee Department of Commerce and Insurance

II. AUTHORITY:

Pursuant to the Titles 5, 28, and 34 of the United States Code Annotated and Title 28 of the Code of Federal Regulations[1], if any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected and will remain in effect.

III. PURPOSE:

Authorized governmental agencies/officials that require a national fingerprint-based criminal history record check of an applicant for a non-criminal justice purpose, such as employment or licensure, are obligated to ensure the applicant is provided certain notice and other information and that the results of the check are handled in a manner that protects the applicant's privacy.[2]

IV. APPLICATION:

[1] See 5 U.S.C. § 552a(b); 28 U.S.C. § 534(b); 34 U.S.C. § 40316, Article IV(c); 28 CFR §§ 20.21(c), 20.33(d), 50.12(b), and 906.2(d).
[2] *Id.*

This policy applies to the Department of Commerce and Insurance when requiring a national fingerprint-based criminal history record check of an applicant for a non-criminal justice purpose, such as employment or licensure.

V. POLICY

The Tennessee Department of Commerce and Insurance ("Department") shall provide any applicant for licensure, certification, or employment who is subject to a fingerprint-based criminal history record check with a copy, or the opportunity to review and print an electronic copy, of this policy along with the Department's Privacy Rights Statement. The policy includes written notification regarding use of the applicant's fingerprints, acknowledgment and receipt of the privacy act, and procedures for challenging the criminal history record's accuracy where the results bear on the applicant's eligibility for licensure, registration, and/or certification. A copy of the policy may be presented electronically to applicants for licensure, employment, or certification.

Where the Department does not communicate directly with applicants, but requires local agencies (local police departments, for example) to conduct fingerprinting, the Department is unable to directly provide this information. In those instances, the Department will provide the agencies that communicate with each applicant the policy regarding use of the applicant's fingerprints, the privacy act, and procedures for challenging the criminal history record's accuracy where the results bear on the applicant's eligibility for licensure, registration, and/or certification. This information will also be available on the Department's website.

Upon application, each individual who is subject to a fingerprint-based criminal history check will acknowledge receipt of the Department's Privacy Rights Statement (**Exhibit A** to this document). Where the results of an applicant's criminal history check will result in denial of an application, he and/or she will be notified ten (10) days prior to the application being closed. Within the ten (10) day period, the applicant must indicate to the program/board/commission the intent to challenge and/or correct the accuracy of the criminal history record that resulted in denial. Each applicant, in compliance with the appeal procedures (**Exhibit B** to this document), must notify the denying program of the corrected results within thirty (30) days. If corrected criminal history results are not received within thirty (30) days, the application may be denied. Any further consideration of an application must be addressed by the office of the denying program.

This policy is approved on 11 **day of** August, **2018.**

Julie Mix McPeak

Julie Mix McPeak
Commissioner

Exhibit A

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243

NON-CRIMINAL JUSTICE APPLICANT'S PRIVACY RIGHTS STATEMENT

As an applicant who is the subject of a Tennessee Bureau of Investigation (TBI) and Federal Bureau of Investigation (FBI) national fingerprint-based criminal history record check for a non-criminal justice purpose (such as an application for employment or a license), you have certain rights, which are discussed below.

It is our duty to provide you with this written notification that your fingerprints will be used to check the criminal history records maintained by the TBI and FBI. It is also our duty to provide you with the attached Privacy Act Statement which would have appeared on the FBI fingerprint card had it been used.

You have the right to expect the official(s) receiving the results of the criminal history record check will use it only for authorized purposes and will not retain or disseminate it in violation of state and/or federal statute, regulation or executive order, or rule, procedure, or standard established by the National Crime Prevention and Privacy Compact Council.

If you have a criminal history record, the official(s) making a determination of your suitability for employment, licensure, or certification will provide you the opportunity to complete or challenge the accuracy of the information in the record. The procedures for changing, correcting, or updating your criminal history record are set forth in Title 28, Code of Federal Regulations (CFR), Section 16.34.

If you have a TBI or FBI criminal history record, you will be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the official(s) denies you employment, licensure, or certification based on information in the criminal history record.

In the event an adverse employment or licensing decision is made, you must be informed of all information pertinent to that decision, including the contents of the record and the effect the record had upon the decision. Upon request, the Tennessee Department of Commerce and Insurance will provide you with a copy of your TBI or FBI criminal history record for review and possible challenge.

If you decide to challenge the accuracy or completeness of your TBI or FBI criminal history record, you should send your challenge to the official(s) that contributed the questioned information. Instructions on how to file an appeal with the TBI or the FBI are provided.

PRIVACY ACT STATEMENT

Authority: The FBI's acquisition, preservation, and exchange of fingerprints and associated information is generally authorized under 28 U.S.C. 534. Depending on the nature of your application, supplemental authorities include federal statutes, state statutes pursuant to Pub. L. 92-544, and Presidential Executive Orders. Providing your fingerprints and associated information is voluntary; however, failure to do so may affect completion or approval of your application.

Social Security Account Number (SSAN): Your SSAN is needed to keep records accurately because other people may have the same name and birth date. Pursuant to the Federal Privacy Act of 1974 (5 USC 552a), the requesting agency is responsible for informing you whether disclosure is mandatory or voluntary, by what statutory or other authority your SSAN is solicited, and what uses will be made of it. Executive Order 9397 also asks federal agencies to use this number to help identify individuals in agency records.

Principal Purpose: Certain determinations, such as employment, licensing, and security clearances, may be predicated on fingerprint-based background checks. Your fingerprints and associated information/biometrics may be provided to the employing, investigating, or otherwise responsible agency, and/or the FBI for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories) or other available records of the employing, investigating, or otherwise responsible agency. The FBI may retain your fingerprints and associated information/biometrics in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI.

Routine Uses: During the processing of this application and for as long thereafter as your fingerprints and associated information/biometrics are retained in NGI, your information may be disclosed pursuant to your consent, and may be disclosed without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses. Routine Uses include, but are not limited to, disclosures to: employing governmental or authorized non-governmental agencies responsible for employment, contracting, licensing, security clearances, and other suitability determinations; local, state, tribal, or federal law enforcement agencies; criminal justice agencies; and agencies responsible for national security or public safety.

Additional Information: The requesting agency and/or the agency conducting the application-investigation will provide you additional information pertinent to the specific circumstances of this application, which may include identification of other authorities, purposes, uses, and consequences of not providing requested information. In addition, any such agency in the Federal Executive Branch has also published notice in the Federal Register describing any systems(s) of records in which that agency may also maintain your records, including the authorities, purposes, and routine uses for the system(s).

Exhibit B

Tennessee Bureau of Investigation – TORIS Unit
901 R.S. Gass Blvd., Nashville, TN 37216
Telephone: 615-744-4057

Memorandum

The Tennessee Bureau of Investigation ("TBI") is the central repository for criminal history information for the state of Tennessee. In addition to maintaining criminal history information, it is our responsibility to provide public access to this information when requested.

Criminal history information, in the state of Tennessee, is comprised of misdemeanor and felony arrests based solely on fingerprint submission by the arresting agencies. When you request criminal history information on an individual, your results will state whether the subject has or does not have a Tennessee criminal history record. If there is a record that **may be** applicable to the individual searched (aliases will not be included) a copy of the criminal history record will be forwarded to you. The Open Records check is a TN "name-based" check only. Please do not submit fingerprint cards or other additional documentation. Only the information contained on the request will be used to process the TN criminal history check. The accuracy of the information provided is critical, as all searches are conducted based on the information given.

The cost for criminal history information is $29 per request and is non-refundable.

Appealing the Results of a Criminal History Check

If you requested a Tennessee criminal history information check on yourself or a check was requested for you and you wish to dispute the accuracy of the results, a fingerprint comparison can be performed. You must provide a copy of your fingerprints for the TBI to compare against those corresponding with the criminal record found. Submit your fingerprints along with a letter stating that you wish to dispute the findings of the record check conducted in your name. You must include a cashier's check or money order for $24.00.

Once the comparison of fingerprints has been made, the results will be forwarded to you stating that the criminal history is either found to be accurate or inaccurate. The Biometrics Services Unit will assist in correcting any inaccuracies identified as the result of the fingerprint comparison.

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243

FINGERPRINTING POLICY AND ACKNOWLEDGEMENT

Because you, as an applicant, (for licensure, employment, or certification) are subject to a fingerprint-based criminal history record check as a condition for licensure, employment, or certification, the Department is required to provide you with a copy of our Fingerprint Policy and Privacy Rights Statement. These attached documents outline the Department's use of your fingerprints and procedures for challenging the accuracy of the results of the criminal history record as they relate to your eligibility for licensure, registration, and/or certification. Please initial the following statements and sign your name below. Please email or fax this document to (insert addresses).

☐ I understand that the results of a fingerprint-based criminal history record check shall be used solely for the purpose of determining licensure, registration, and/or certification and will not be disseminated outside the Department of Commerce and Insurance other than to the applicant upon request.

☐ I understand that I may request a copy of the criminal history record for the purpose of being considered for licensure, registration, and/or certification. I understand that I may appeal the accuracy of these results and have received a copy of the Fingerprint-Based Criminal History Record Check Policy which advises me of the appeal process.

☐ I hereby acknowledge that I have read and understand the Fingerprint-Based Criminal History Record Check Policy and Privacy Rights Statement.

Applicant's name (printed) _____

Applicant's Signature _____

Date _____