

**Department of State  
Division of Publications**

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## Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.*

**Agency/Board/Commission:** Department of State  
**Division:** Division of Charitable Solicitations and Gaming  
**Contact Person:** Todd R. Kelley, Director  
**Address:** 312 Rosa L. Parks Avenue, William R. Snodgrass Tennessee Tower, 8<sup>th</sup> Floor  
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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. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
1360-3-3	Procedures for Operating Charitable Gaming Events
Rule Number	Rule Title
1360-3-3-.03	Applications for Authorization Hold an Annual Gaming Event – Time to Submit Applications
1360-3-3-.04	Proof of Active and Continuous Existence
1360-3-3-.05	Proof of 501(c)(3) Tax Exempt Status and Purpose(s)
1360-3-3-.06	Action by Board of Directors
1360-3-3-.07	Amendment Process – Conflicting Locations, Other Amendments
1360-3-3-.08	Conduct of the Games
1360-3-3-.09	Criminal Background Checks
1360-3-3-.10	Accounting Procedures
1360-3-3-.11	Proof That Net Event Proceeds Were Used for a Charitable Purpose
1360-3-3-.12	Disqualifications / Civil Penalties
1360-3-3-.13	Cooperation With Other State Agencies

Chapter 1360-3-3  
Procedures for Operating Charitable Gaming Events

Rule 1360-3-3-.03 Applications for Authorization to Hold an Annual Gaming Event – Time to Submit Applications is amended by deleting the words “October 31st of each year” at the end of the sentence and adding the words “December 31 of each year”, so that, as amended, the rule shall read:

1360-3-3-.03

- (1) Application Period. An application for authorization to hold an annual gaming event shall be submitted beginning July 1 and ending December 31 of each year.

Authority: T.C.A. §§ 3-17-103(a)(1)(c), 3-17-105(d)(2)(B), 3-17-115(a). Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

Rule 1360-3-3-.05 Proof of § 501(c)(3) Status and Purpose(s) is amended by deleting paragraphs (3) and (4) in their entirety, so that, as amended, the rule shall read:

Rule 1360-3-3-.05 Proof of 501(c)(3) Tax Exempt Status and Purpose(s)

- (1) Chapters or Affiliates. An organization which is a chapter or affiliate operating under a Section 501(c)(3) group exemption must have its own federal employer identification number and shall submit the following documents in support of its tax exempt status:
  - (a) The Letter of Determination of the parent organization assigned by the Internal Revenue Service which includes the group's 4-digit tax exemption number;
  - (b) A list of all chapters and affiliates under the group exemption as submitted by the parent organization to the Internal Revenue Service, including the federal tax identification number and physical address of each chapter or affiliate;
  - (c) A written statement from the parent organization that the applicant is in good standing with the parent organization;
  - (d) A properly executed Affidavit of the organization's 501(c)(3) status [Secretary of State Form SS-6060]; and,
  - (e) A copy of the organizational document.
- (2) Recognition Prior to 1969. An organization recognized as exempt from federal income taxation by the Internal Revenue Service prior to October 9, 1969, that would otherwise qualify as a 501(c)(3) organization shall, in addition to the requirements of T.C.A. § 3-17-103, submit the following documents in lieu of IRS form 1023 in support of its tax exempt status/purpose(s):
  - (a) A detailed narrative of all of the activities of the organization. List each activity in order of importance based on the relative time and resources devoted to the activity. Indicate the percentage of time for each activity; and



(b) A Statement of Revenue and Expenses for the five (5) years immediately preceding the period under consideration.

Authority: §§ 3-17-102(1), 3-17-104(a)(6), and 3-17-115(a). Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

Rule 1360-3-3-.06 Description of the Games is amended by deleting the entire paragraph with the remaining sections renumbered accordingly.

Rule 1360-3-3-.07 Prohibited / Allowed Types of Games is amended by deleting paragraphs (1), (2), and (3) in their entirety with the remaining sections renumbered accordingly.

Rule 1360-3-3-.08 Action by Board of Directors is amended by deleting paragraphs (1), (2), and (3) and adding the following language as new paragraph (1) and renumbering paragraph (4) to (2), so that, as amended, the rule shall read:

1360-3-3-.08

- (1) Executive Committee Vote. If the organization's by-laws do not authorize an executive committee to act, the minutes shall reflect approval in accordance with the charter or by-laws.
- (2) Affidavit in Lieu of Minutes. In lieu of regular or special minutes of the board of directors, an organization shall submit an affidavit (Secretary of State Form SS-6062) indicating the date of the meeting, the total number of directors or trustees present, and the number casting an affirmative vote to operate a gaming event. The affidavit must bear the notarized signatures of all members of the governing body, whether or not a member attended the meeting or voted in the affirmative to operate an event.

Authority: T.C.A. §§ 3-17-104(a)(12)(A) and (B) and 3-17-115(a). Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

Rule 1360-3-3-.09 Amendment Process – Conflicting Locations, other Amendments is amended by deleting the subsection title and adding the following language, so that, as amended, the title shall read:

Rule 1360-3-3-.09 Application Correction and Amendment Process

Rule 1360-3-3-.09 Amendment Process – Conflicting Locations, other Amendments is amended by deleting paragraphs (1), (2), (3), (4), and (5) in their entirety and adding the following language as new paragraphs (1) and (2), so that, as amended, the rule shall read:

Rule 1360-3-3-.09

- (1) Application Correction. The division will notify each organization of any deficiencies in the application. The organization must correct any deficiencies in or make any changes to the application by February 1. Pursuant to T.C.A. § 3-17-105(b)(2), the Secretary does not have authority to accept an annual event application change after February 1 of the annual event period.
- (2) Amendment Process. After February 1 of each year, the organization may amend its application in the following manner and circumstances.
  - (a) Date Changes. To change an annual event date, the organization must file an Amendment Form, SS-6065, with the Division requesting the new date of the annual event. Pursuant to T.C.A. § 3-17-103(d)(1)(A), the new date must be within twenty-eight (28) days of the original date listed on the application. The twenty-eight (28) day period may be counted prior to or after the event date listed in the approved application.
  - (b) Location Changes. If an organization's approved location listed in the event application becomes unavailable on the event date, the organization may change the location of the event by filing an Amendment Form, SS-6065, with the Division stating the reason for unavailability and the address of the new location.
  - (c) Notifying Law Enforcement. The organization must notify the Tennessee Bureau of Investigation, and the district attorney general for the judicial district in which the event is conducted. The organization must also provide sufficient public notice in accordance with T.C.A. § 3-17-103(B)(ii).

Authority: T.C.A. §§ 3-17-103(a)(3)(C)(i)-(iii), 3-17-103(d)(A) and (B)(i)-(ix), 3-17-105(b)(1) and (2).  
Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

Rule 1360-3-3-.10 Conduct of the Games is amended by deleting paragraph (5) in its entirety, so that, as amended, the rule shall read:

1360-3-3-.10 Conduct of the Games.

- (1) Advertising. Nothing in the act shall be construed as prohibiting an organization from accepting donations of advertising services. For purposes of the Act and these rules, however, granting permission to post flyers for an event on the premises of a vendor shall not be construed as donating advertising services.
- (2) Ticket Sales and Sale of Similar Records. Persons under the age of eighteen (18) are prohibited from selling or purchasing tickets and similar records for charitable gaming activities.
- (3) Officer(s) Responsible for Gross Receipts. The authorized organization shall duly designate an officer/officers of said organization to be in full charge and primarily responsible for the proper accounting, use and disposition of all gaming event receipts.



The name of each officer shall appear on the list required under T.C.A. § 3-17-104 (a) (20) and (21).

- (3) Payment of Workers Prohibited. No commission, salary, compensation, reward, recompense, reimbursement of expenses, or gift or other consideration shall be paid directly or indirectly, to any person for conducting or assisting in the conduct of any annual gaming event except as hereinafter provided for bookkeepers or accountants who assist by rendering their professional services. No tip, gratuity or gift or other consideration shall be given or accepted by any person conducting or assisting in the conduct of an annual gaming event either directly or indirectly.

Authority: T.C.A. §§ 3-17-103(a)(5)(A)(i)(a),(b), 3-17-103(a)(5)(B)(i), 3-17-104(a)(20)-(21), 3-17-115(a), and 39-17-602, 603. Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

Rule 1360-3-3-.12 Accounting Procedures is amended by deleting paragraph (1)(d) in its entirety, renumbering the paragraphs accordingly, and adding a new rule as paragraph (2), so that, as amended, the rule shall read:

Rule 1360-3-3-.12 Accounting Procedures

(1) Records:

(a) Record Keeping. Accurate records shall be kept by each authorized organization in a manner which shows in detail the amount and source of gross receipts, the expenses incurred and the name and address of each person receiving a prize over fifty (\$50.00) dollars and the value of the prize. Prize information shall be reported on the Acknowledgement of Prize Winner form (SOS Form SS 3037).

(b) Access to Records. The Secretary of State, the Attorney General and Reporter and the Tennessee Bureau of Investigation or their authorized agents or representatives shall at all times have access to all books and records of any authorized organization for the purpose of examining and checking them.

(c) Period of Retention of Records. All records, books of account, bank statements and all other papers related to the operation of an annual gaming event shall be retained and available for inspection by the Secretary of State and the Tennessee Bureau of Investigation or their authorized agents or representatives for a period of at least five (5) years after the date of the annual gaming event to which they relate.

(d) Payment of Allowable Expenses. Money for reasonable and necessary expenses may be paid from gross receipts only by checks having preprinted consecutive numbers drawn on the organization's account. Said checks must be made payable to the specific person providing the goods or rendering the service which gives rise to the expense item and at no time may checks be payable to "cash" or "bearer".

(e) Prizes, Donated Prizes, Goods, or Services. The organization shall disclose the

fair market value of all prizes, goods and services as revenue (cash or in-kind) on the Financial Accounting form (SOS Form SS-6066).

- (2) Reporting. All organizations must file a financial report with the Division on forms approved by the Division. If the organization grosses more than fifty thousand dollars (\$50,000) in revenue, the organization must also complete an audit of the annual event in accordance with T.C.A. § 3-17-106(c).

Authority: T.C.A. §§ 3-17-103(a)(5)(B)(i), 3-17-106(a), 3-17-106(b)(1)-(4), 3-17-106(c)(1)-(4), 3-17-108(a)(1)-(2), and 3-17-115(a). Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

Rule 1360-3-3-.13 Proof That Event Proceeds Were Used for Charitable Purposes is amended by deleting paragraphs (1) and (2) in their entirety, deleting the number (3) and renumbering (a), (b), and (c) as (1), (2), and (3), and deleting the words "Proof." "Documentation may include" and adding the words "Documentation to prove that event proceeds were used for a charitable purpose may include", so that, as amended, the rule shall read:

Rule 1360-3-3-.13 Proof That Event Proceeds Were Used for a Charitable Purpose

Documentation to prove that event proceeds were used for a charitable purpose may include:

- (1) Cancelled checks which state the purpose of the payment and which are endorsed by and identify the payee shall be one form of acceptable documentation;
- (2) Signed and attested board minutes;
- (3) A copy of the organization's balance sheets and monthly statements should be provided to substantiate that funds have been earmarked.

Authority: T.C.A. §§ 3-17-104(a)(19), 3-17-106(c)(2), and 3-17-115(a). Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

Rule 1360-3-3-.14 Disqualification / Civil Penalties is amended by deleting paragraph (3) in its entirety, adding new paragraphs (2) and (3), and renumbering the paragraphs accordingly so that, as amended, the rule shall read:

Rule 1360-3-3-.14 Disqualification / Civil Penalties

- (1) Any violation of the Tennessee Charitable Gaming Implementation Law shall be a basis for disqualification or the imposition of civil penalties. Civil penalties may be assessed for the violation of either civil or criminal provisions of the Act.
- (2) Upon concluding that an organization violated any provision of T.C.A. § 3-17-101 et seq., pursuant to T. C. A. § 3-17-113(a), the Secretary of State shall notify the registrant of his intent to disqualify the organization or assess a civil penalty. The notification shall contain the reasons for the action and shall inform the organization of its right to request



an administrative hearing within thirty (30) days of receipt of the notification. The disqualification or penalty shall become effective thirty (30) days after receipt of the notification unless a request for an administrative hearing is received by the Secretary of State before the expiration of the thirty (30) days. If a hearing is requested and the disqualification or penalty is upheld, the action shall become effective upon the service of the final administrative decision on the organization.

- (3) The hearing shall be held before an administrative law judge from the Administrative Procedures Division of the Tennessee Department of State and conducted pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. and Rule 1360-4-1-.14, Uniform Rules of Procedure for Contested Cases of State Agencies.
- (4) An organization that loses its tax exempt status shall be ineligible to hold an annual gaming event. The years for which the tax exempt status was not in effect shall not be countable as part of the period of active and continuous operation. If the Internal Revenue Service revokes an organization's tax exempt status and the revocation is made retroactive, the period of retroactivity will not be countable as part of the period of active and continuous operation.
- (5) A period of disqualification shall run from the date of application, the date of discovery of the violation or the date of imposition of the disqualification, whichever is later.

Authority: T.C.A. §§ 3-17-111, 3-17-113(a), and 3-17-115(a). Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed \_\_\_\_\_, 2009; effective \_\_\_\_\_, 2009.

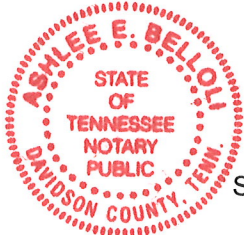
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Department of State, Division of Charitable Solicitations and Gaming on January 2, 2009, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: 1-2-2009

Signature: \_\_\_\_\_

Name of Officer: Todd R. Kelley

Title of Officer: Director, Division of Charitable Solicitations and Gaming



Subscribed and sworn to before me on: 1/2/09

Notary Public Signature: Ashlee E. Belloli

My commission expires on: March 10, 2012

All proposed 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

1-13-09

Date

**Department of State Use Only**

Filed with the Department of State on: 1/14/09

Effective on: 5/29/09

Riley C. Darnell

Riley C. Darnell  
Secretary of State



**Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not Applicable

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

The General Assembly enacted the Charitable Solicitations Act, Tennessee Code Annotated §§ 48-101-501, et. seq., for the regulation of charitable organizations and professional fundraisers. Tennessee Code Annotated § 48-101-503(b) gives the Secretary of State authority to promulgate rules with respect to charitable gaming as more fully set out below. These are new rules.

- (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;

Tennessee Code Annotated § 3-17-115(a) - Authority to promulgate rules to regulate activities of charitable organizations conducting an annual charitable gaming event.

- (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;

The persons, organizations or corporations directly affected by these rules are IRS tax exempt 501(c)(3) organizations in this state that solicit funds from the public by holding an annual charitable gaming event.

- (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;

These rules should have no impact on existing state government revenue.

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

Todd R. Kelley, Director and Tameka M. Corlew, Assistant Director & Legal Counsel

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

Todd R. Kelley, Director

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

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



None