

Department of State**Division of Publications**

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Phone: 615-741-2650

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Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).**Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

Agency/Board/Commission:	Department of State
Division:	Charitable Solicitations and Gaming
Contact Person:	Brent Culberson
Address:	312 Rosa L. Parks Ave., 8 th Floor, Nashville, TN
Zip:	37243
Phone:	615-741-2555
Email:	Brent.Culberson@tn.gov

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
1360-03-03	Procedures for Operating Charitable Gaming Events
Rule Number	Rule Title
1360-03-03-.03	Applications for Authorization to Hold an Annual Gaming Event – Time to Submit Applications
1360-03-03-.06	Action by Board of Directors
1360-03-03-.07	Application Correction and Amendment Process
1360-03-03-.08	Sale of Tickets, Shares, Chances or Other Similar Records
1360-03-03-.09	Conduct of the Games
1360-03-03-.10	Criminal Background Checks
1360-03-03-.11	Accounting Procedures
1360-03-03-.12	Proof that Event Proceeds Were Used for a Charitable Purpose
1360-03-03-.13	Disqualifications/Civil Penalties
1360-03-03-.14	Co-Operation with Other State Agencies

(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>)

Rule 1360-03-03-.03 Applications for Authorization to Hold an Annual Gaming Event – Time to Submit Applications is amended by adding the words “each year” following the words “July 1” and by deleting the words “December 31” at the end of the sentence and adding the words “January 31 preceding the annual event period.” Additionally, in paragraph (4), “February 1” is replaced by “February 15”. The rule, as amended, shall read:

1360-03-03-.03 APPLICATIONS FOR AUTHORIZATION TO HOLD AN ANNUAL GAMING EVENT - TIME TO SUBMIT APPLICATIONS.

- (1) Application Period. An application for authorization to hold an annual gaming event shall be submitted beginning July 1 each year and ending January 31 preceding the annual event period.
- (2) Last Date to File. When the first or last day to file an application is a non-business day (e.g., weekend, holiday), the first or last day to file is the first business day immediately following the date established by statute. (Example: July 1, the first day to file an application, is a Sunday. The first filing day is the first business day following Sunday.)
- (3) Timely Filing. The postmark date on the annual event application shall determine whether an amendment is timely filed. An application submitted beyond the time set forth in the Act shall be automatically rejected.
- (4) Incomplete application. An application that does not comply with the provisions of the Act shall be rejected. The Secretary shall notify the applicant of the reasons for rejection of the application. Corrections to a deficient application shall be submitted no later than 12:00 noon, February 15 in the year subsequent to the filing of the application. If this date falls on a non-business day, the last day to file an amendment shall be 12:00 noon the last business day preceding the deadline date.

Authority: T.C.A. §§ 3-17-103 (a)(1), 3-17-104(a), 3-17-105(a)(1), 3-17-105(d)(2)(B), and 3-17-115(a).

Rule 1360-03-03-.06 Action by Board of Directors is amended by deleting the rule in its entirety and adding the following language, so that, as amended, the rule shall read:

1360-03-03-.06 APPROVAL BY BOARD OF DIRECTORS.

The board of directors of an organization must authorize an annual event application to be filed. If the organization’s bylaws authorize an executive committee to act on behalf of the full board, approval by the executive committee shall suffice.

Authority: T.C.A. §§ 3-17-105(e) and 3-17-115(a).

Rule 1360-03-03-.07 Application Correction and Amendment Process is amended by changing every occurrence of the words “February 1” to “February 15”. Additionally, a new subsection is added to clarify the procedure for amendments to ticket prices. As amended, the rule shall read:

1360-03-03-.07 APPLICATION CORRECTION AND AMENDMENT PROCESS.

- (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 15. 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 15 of the annual event period.
- (2) Amendment Process. After February 15 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) **Price Changes.** To modify the actual dollar amount at which a ticket, share, chance or other similar record shall be sold, the organization must file an Amendment Form, SS-6065, with the Division stating the new dollar amount. If an organization was approved to sell tickets, shares, chances or other similar records at different value levels or tiers, the organization may amend the dollar amount at which each value level or tier is to be sold. Pursuant to T.C.A. § 3-17-103(d)(3), only one such modification shall be made prior to the sale of any ticket, share, chance, or other similar record and only in an amount within fifty dollars (\$50.00) of the actual dollar amount or amounts listed in the approved application.
- (d) **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)(1) and (3), 3-17-105(b), and 3-17-115(a).

Rule 1360-03-03-.08 Sale of Tickets, Shares, Chances or Other Similar Records is a new rule that addresses how sales of different value levels or tiers will be conducted. The rule also sets out guidelines on how refunds should be issued. The new rule shall read:

1360-03-03.08 SALE OF TICKETS, SHARES, CHANCES OR OTHER SIMILAR RECORDS

- (1) Tickets, shares, chances or other similar records may be sold at a single price or at different value levels or tiers. All tickets, shares, chances or other similar records must contain the name of the organization on whose behalf the event is being conducted.
- (2) If tickets, shares, chances or other similar records are sold at different value levels or tiers, the organization must keep a record of each sale, which must include the name, the amount paid, the mailing address, and the contact information of the purchaser for the purpose of issuing refunds if a cancellation of the annual event occurs.
- (3) If a different value level or tiered pricing annual event is cancelled, any refund shall be for either the actual amount received by the organization from any individual, or if there is no record of each sale, the refund shall be equal to the highest value level or tiered price charged on a per ticket, share, chance or other similar record basis.

Authority: T.C.A. §§ 3-17-103(d)(3), 3-17-106(f)(1)(B), 3-17-110(a) and 3-17-115(a).

Rules 1330-03-03-.09 - .14 are amended by renumbering the rule numbers. The rules shall read as follows:

1360-03-03-.09 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).
- (4) 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 through 39-17-603.

1360-03-03-.10 CRIMINAL BACKGROUND CHECKS.

- (1) Effective Date. Beginning July 1, 2005, criminal background checks conducted by the TBI may be required by the Secretary.
- (2) Persons Subject to Criminal Background Checks. Fingerprint-based criminal background checks may be required of officers, directors, trustees, staff and any person operating an annual event on behalf of a 501(c)(3) organization. Persons who do not receive any compensation for their duties associated with the 501(c)(3) organization shall not be subject to criminal background checks.
- (3) Criteria for requiring Criminal Background Checks. Upon a determination by the Secretary that a criminal background check is required of a person in connection with an annual gaming event held by a 501 (c) (3) organization, the application of such organization shall not be considered until such background check has been completed and the results of the background check are received in the office of the Secretary of state. In the event that information is revealed in the background check which would be a violation of a provision of the Act, the Secretary shall give notice to the affected organization and allow them an opportunity to cure the disqualifying situation by disassociating such person or persons from taking any action on behalf of such organization. The organization shall submit to the Secretary, an affidavit, signed by the chief operating officer and the treasurer of the organization, setting forth what action has been undertaken by the organization to disassociate the individual/ individuals.
- (4) Procedure for Obtaining Criminal Background Checks. Upon notification by the Secretary that a criminal background check is required, the person notified shall take immediate steps to secure the background check. Persons who receive a request from the Secretary to submit to a criminal background check shall contact the then current state of Tennessee fingerprinting service to obtain information on the proper location and procedure for having the background check run. The current vendor for the state of Tennessee is Sylvan Identix Fingerprinting Centers. The toll free number is 1-866-226-2937. Persons must provide identifying information, the reason for being printed and name of the "Division of Charitable Solicitations, Charitable Gaming Section" as the entity for whom the prints are requested.

Background checks will include data from a dual TBI & FBI search. At the time of the printing, the person must provide identification to verify his/her identity. A driver's license, passport, military ID or similar identification should be provided. The applicant shall be responsible for paying all costs associated with obtaining a criminal history background check.

The results of the background search will be provided directly to the Secretary of State's Division of Charitable Solicitations, Charitable Gaming Section. Results of background checks may be challenged by contacting the TBI. A form is available for download from the TBI web site at www.tbi.state.tn.us or by contacting the TBI directly.

- (5) Information from Law Enforcement Agency. The Secretary may require a criminal background check on any person based upon information received from a local, state or federal law enforcement agency indicating a violation of the law involving theft, misappropriation of funds, or any matter which would impact the legitimate operation of an annual gaming event. For purposes of this provision, law enforcement agency shall include the Internal Revenue Service.
- (6) Denial of Application to Conduct Annual Gaming Event. The Secretary may deny an application to operate an annual gaming event based upon the results of a criminal background check. In addition, the Secretary may impose a civil penalty if the background check shows a violation of the Charitable Gaming Implementation Law. Penalties shall be determined based upon the rules for disqualification located below at section 1360-03-03-.14.

Authority: T.C.A. § 3-17-114(a)-(c), 3-17-114(e)(1)-(2), and 3-17-115(a).

1360-03-03-.11 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).

1360-03-03-.12 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).

1360-03-03-.13 DISQUALIFICATIONS/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 1360-04-01-.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(a)-(b), 3-17-111, 3-17-113(a), and 3-17-115(a).

1360-03-03-.14 CO-OPERATION WITH OTHER STATE AGENCIES.

- (1) All information submitted to the Division of Charitable Solicitations, Charitable Gaming Section shall be available to federal, state or local agencies for the purpose of assisting in carrying out the provisions of T.C.A. 3-17-102 et. seq. and T.C.A. 39-16-702 and T.C.A. 39-16-703 and T.C.A. title 39, chapter 17 Parts 5 and 6, T.C.A. § 39-17-502(b), T.C.A. § 39-17-505, T.C.A. § 39-17-506(a), T.C.A. § 39-17-601, T.C.A. § 39-17-651 et. seq. and Title 3, Chapter 15, or any provision of federal law.
- (2) The Secretary shall assist and co-operate with the Tennessee Bureau of Investigation and/or the Internal Revenue Service in the conduct of any investigation.

Authority: T.C.A. § 3-17-113(a)-(b), 3-17-111) and 3-17-115(a).

* 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)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of State on 03/20/2015, 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: (mm/dd/yy) 01/29/2015

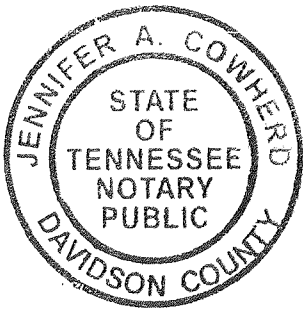
Rulemaking Hearing(s) Conducted on: (add more dates). (mm/dd/yy) 03/20/2015

Date: 5/26/15

Signature: [Signature]

Name of Officer: Brent Culberson

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



Subscribed and sworn to before me on: 5/26/15

Notary Public Signature: Jennifer A. Cowherd

My commission expires on: 11/3/15

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.

 Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
 June 5, 2015
Date

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Filed with the Department of State on: 6/9/15

Effective on: 9/7/15

 Tre Hargett
Tre Hargett
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.

See enclosed memorandum.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

These rules do not have a projected impact on small businesses.

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 do not have a projected 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;

The General Assembly adopted Chapter 699 of the Public Acts of 2014 in order to streamline the application process for annual gaming events. The proposed rules amend the application period and clarify necessary approval for filing an application, as enacted by Chapter 699.

- (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;

Tenn. Code Ann. § 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 that hold 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 and local government revenues and expenditures.

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

Brent Culberson, Director and Tabatha Blackwell, Assistant Director and Legal Counsel

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

Brent Culberson, Director

- (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

312 Rosa L. Parks Ave., 8th Floor, Nashville, TN 37243 615-741-2555

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

None.

Tre Hargett, Secretary of State

State of Tennessee



Division of Charitable Solicitations and Gaming
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243-1102

Brent Culberson
Director

615-741-2555
Brent.Culberson@tn.gov

MEMORANDUM

From: Tabatha Blackwell 
Assistant Director & Legal Counsel

Date: May 26, 2015

Subject: Public Hearing Comments

The Division of Charitable Solicitations and Gaming filed its Notice of Rulemaking Hearing with the Secretary of State on January 29, 2015, and held a rulemaking hearing on the proposed rules on March 20, 2015. No person requested to be heard or presented comments during the rulemaking hearing. The official record was held open for an additional week after the hearing for the submission of written comments. No written comments were received.

**RULES
OF
TENNESSEE DEPARTMENT OF STATE
DIVISION OF CHARITABLE SOLICITATIONS
CHARITABLE GAMING SECTION**

**CHAPTER 1360-03-03
PROCEDURES FOR OPERATING CHARITABLE GAMING EVENTS**

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1360-03-03-.01 DEFINITIONS.

- (1) "Amended annual event application" means those items of information submitted to the Secretary for the purpose of revising, correcting, adding to, or otherwise supplementing an annual event application in order to meet the requirements of the Tennessee Charitable Gaming Implementation Law.
- (2) "Conformed copy" A conformed copy is a copy that agrees with the original and all amendments to it. If the original document required a signature, the copy shall contain the signatures and dates as shown on the originals. A certificate of incorporation shall be date stamped and show approval by an appropriate state official.
- (3) "Compensation" for purposes of T.C.A. § 3-17-103(a)5(A)(i)(b) means anything of value received as a result of work performed on behalf of a §501(c)(3) organization, including, but not limited to, tips, reductions, and waivers of fees.
- (4) "Directors or officers of the organization" for purposes of T.C.A. §3-17-104 (a)(12) means the entire slate of members of the governing body of an organization. An executive committee or subcommittee of a governing board shall not qualify as the directors or officers of the organization, unless the organization's by-laws authorize an executive committee to act on behalf of the full board.
- (5) "Fair Market Value" means a price at which an unrelated buyer and seller would agree to a transaction; a valuation that is reasonable to all parties involved in a transaction, none of which are under a compulsion to buy or sell while having a reasonable knowledge of the relevant facts.
- (6) "Games of chance associated with casinos" includes casino night parties (also known as "Vegas Nights", "Las Vegas Nights", "Monte Carlo Nights")
- (7) "Notice", unless otherwise indicated, shall mean a written communication forwarded by U.S. mail, certified return receipt requested.

(Rule 1360-03-03-.01, continued)

- (8) "Operate" means
 - (a) To run or control, directly or indirectly, the functioning of an annual gaming event;
 - (b) To bring about a desired or proper effect including, but not limited to, planning, promoting, advertising, marketing, authorizing or entering into agreements, purchasing supplies, telephone services, gaming records or devices, buying or leasing services, facilities or locations, printing of materials and tickets, shares, chances or similar records and the transporting of such records and other devices;
 - (c) To conduct the affairs of an event including, but not limited to, on-site or off-site management;
- (9) "Organizational document" shall mean the record that establishes the organization as a legal entity and shall include, but not be limited to, a certified copy of the Articles of Incorporation (or charter), constitution, or trust agreement.
- (10) "Physical Presence" means an organization has a tangible office established and located within the state of Tennessee where regular business within the organization's stated mission is transacted. The existence of a post office mailing address or drop box location is not sufficient to create a physical presence.
- (11) "Pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols which must be exposed by the player to determine wins or losses. Pull tabs may also be known as break-opens, hard cards, banded tickets, jar tickets, pickle cards, Lucky Seven Cards, Nevada Club tickets, instant bingo cards.
- (12) "Secretary" means the Secretary of State or the Secretary's authorized representative.

Authority: T.C.A. §§3-17-102(A), 3-17-102(8)(A), 3-17-103(a)(3)(B)(i), 3-17-103(a)(5)(A)(i)(a), 3-17-103(a)(5)(B)(i), 3-17-103(d)(1)(B), 3-17-104 (a)(12), 3-17-105(d)(2)(B), and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-.02 APPLICATION SLIDING FEE SCALE.

An application to hold an annual gaming event shall be submitted with the appropriate filing fee according to the organization's gross revenue for the annual event based on the following scale:

Event Gross Revenue	Filing Fee
\$0.00 to \$5,000.00	\$150.00
\$5001.00 to \$10,000.00	\$300.00
\$10,001.00 to \$20,000.00	\$450.00
over \$20,001.00	\$600.00

Authority: T.C.A. §3-17-115(a) and Chapter 207 § 14 of the Public Acts of 2005. **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-.03 APPLICATIONS FOR AUTHORIZATION TO HOLD AN ANNUAL GAMING EVENT - TIME TO SUBMIT APPLICATIONS.

(Rule 1360-03-03-.03, continued)

- (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~~ January 31 preceding the annual event period.
- (2) **Last Date to File.** When the first or last day to file an application is a non-business day (e.g., weekend, holiday), the first or last day to file is the first business day immediately following the date established by statute. (Example: July 1, the first day to file an application, is a Sunday. The first filing day is the first business day following Sunday.)
- (3) **Timely Filing.** The postmark date on the annual event application shall determine whether an amendment is timely filed. An application submitted beyond the time set forth in the Act shall be automatically rejected.
- (4) **Incomplete application.** An application that does not comply with the provisions of the Act shall be rejected. The Secretary shall notify the applicant of the reasons for rejection of the application. Corrections to a deficient application shall be submitted no later than 12:00 noon, February 15 ~~in the year~~ subsequent to the filing of the application. If this date falls on a non-business day, the last day to file an amendment shall be 12:00 noon the last business day preceding the deadline date.

Authority: T.C.A. §§ 3-17-103 (a)(1)~~(c)~~, 3-17-104(a), 3-17-105(a)(1), 3-17-105(d)(2)(B), 3-17-115(a), and ~~Chapter 207 §§ 3 and 9 of the Public Acts of 2005~~ Chapter 699 §§1 and 16 of the Public Acts of 2014.

Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment to rule filed January 14, 2009; effective May 29, 2009. Amendment to rule filed _____, 2014; effective 2014.

1360-03-03-.04 PROOF OF ACTIVE AND CONTINUOUS EXISTENCE.

- (1) **Acceptable Proof.** In addition to the requirements set out in Public Chapter 476, as amended, §3-17-101 et. seq., an organization may submit as proof of its continuous and active existence, including, but not limited to, the following types of information:
 - (a) A copy of the last five (5) annual Forms 990, 990-EZ, or 990-PF filed with the Internal Revenue Service for the five (5) year period immediately preceding the date of application;
 - (b) If the organization is a corporation, a copy of the last five (5) annual reports filed with the Secretary's Business Services Division for the five (5) year period immediately preceding the date of application;
 - (c) Copies of the organization's written authorization to conduct charitable solicitation for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application.
 - (d) Copies of published annual reports of the organization for the five (5) year period under consideration and which covers the five (5) year period immediately preceding the date of application;
 - (e) Copies of audited financial statements prepared by an independent certified public accountant and which covers the five (5) year period immediately preceding the date of application;
 - (f) Copies of minutes of annual meetings duly recorded and attested to by the secretary of the organization and which covers the five (5) year period immediately preceding the date of application;

(Rule 1360-03-03-.04, continued)

- (g) Copies of grant approval and continuation notices received by the organization and which covers the five (5) year period immediately preceding the date of application; and/or
 - (h) Copies of printed advertisements for the organization showing the date of publication of the advertisement and which covers the five (5) year period immediately preceding the date of application.
- (2) Multiple Forms of Proof. An organization may submit copies of documents from two or more types as indicated above, so long as documents cover the five (5) year period immediately preceding the date of application. (Example: Organized in 1995, organization was not required to file IRS Form 990 until Year 2001. An annual event application is filed July 1, 2004. It may submit Forms 990 for years 2001, 2002, 2003 and annual reports filed with Business Services Division for years 1999 and 2000.
- (3) Authentic Documents. Acceptable documents must be authentic, genuine or bona fide documents. Copies of documents must be conformed copies.

Authority: T.C.A. § 3-17-104(a)(6) and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-.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: T.C.A. § 3-17-102(1), 3-17-104(a)(6), and 3-17-115(a); and Internal Revenue Code § 501.
Administrative History: Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03-.06 ACTION APPROVAL BY BOARD OF DIRECTORS.

- (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. The board of directors of an organization must authorize an annual event application to be filed. If the organization's bylaws authorize an executive committee to act on behalf of the full board, approval by the executive committee shall suffice.~~

Authority: ~~T.C.A. §§ 3-17-104(a)(10), 3-17-104(a)(12), 3-17-104(a)(12)(A) and (B), § 3-17-115(a) and Chapter 207 § 10 of the Public Acts of 2005 and Chapter 699 § 13 of the Public Acts of 2014.~~

Administrative History: ~~Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009. Amendment to rule filed _____, 2014; effective _____, 2014.~~

1360-03-03-.07 APPLICATION CORRECTION AND AMENDMENT PROCESS.

- (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 15. 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.
- (b)(c) Price Changes. To modify the actual dollar amount at which a ticket, share, chance or other similar record shall be sold, the organization must file an Amendment Form, SS-6065, with the Division stating the new dollar amount. If an organization was approved to sell tickets, shares, chances or other similar records at different value levels or tiers, the organization may amend the dollar amount at which each value level or tier is to be sold. Pursuant to T.C.A. § 3-17-103(d)(3), only one such modification shall be made prior to the sale of any ticket, share, chance or other similar record and only in an amount within fifty dollars (\$50.00) of the actual dollar amount or amounts listed in the approved application.
- (e)(d) Notifying Law Enforcement. The organization must notify the Tennessee Bureau of Investigation, and the district attorney general for the judicial district in which

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(Rule 1360-03-03-.079, continued)

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)(B)(i) and (iii), 3-17-103(d)(1)(B), 3-17-105(b)(1) and (2), 3-17-105(d)(2)(B), 3-17-103(a)(3)(C)(i)-(iii), 3-17-103(d)(A) and (B)(i)-(ix), and 3-17-115(a); and Chapter 207 § 15 of the Public Acts of 2005. **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03.08 SALE OF TICKETS, SHARES, CHANCES OR OTHER SIMILAR RECORDS

- (1) Tickets, shares, chances or other similar records may be sold at a single price or at different value levels or tiers. All tickets, shares, chances or other similar records must contain the name of the organization on whose behalf the event is being conducted.
- (2) If tickets, shares, chances or other similar records are sold at different value levels or tiers, the organization must keep a record of each sale, which must include the name, the amount paid, the mailing address, and the contact information of the purchaser for the purpose of issuing refunds if a cancellation of the annual event occurs.
- (3) If a different value level or tiered pricing annual event is cancelled, any refund shall be for either the actual amount received by the organization from any individual, or if there is no record of each sale, the refund shall be equal to the highest value level or tiered price charged on a per ticket, share, chance or other similar record basis.

Authority: T.C.A. §§ 3-17-110(a) and 3-17-115(a); and Chapter 699 §§ 9 and 26 of the Public Acts of 2014. **Administrative History:** Original rule filed , 2014; effective , 2014.

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1360-03-03-.098 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).
- (4) 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 through 39-17-603. **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006. Amendment filed January 14, 2009; effective May 29, 2009.

1360-03-03-.1009 CRIMINAL BACKGROUND CHECKS.

| (Rule 1360-03-03-~~1009~~, continued)

- (1) Effective Date. Beginning July 1, 2005, criminal background checks conducted by the TBI may be required by the Secretary.
- (2) Persons Subject to Criminal Background Checks. Fingerprint-based criminal background checks may be required of officers, directors, trustees, staff and any person operating an annual event on behalf of a 501(c)(3) organization. Persons who do not receive any compensation for their duties associated with the 501(c)(3) organization shall not be subject to criminal background checks.
- (3) Criteria for requiring Criminal Background Checks. Upon a determination by the Secretary that a criminal background check is required of a person in connection with an annual gaming event held by a 501 (c) (3) organization, the application of such organization shall not be considered until such background check has been completed and the results of the background check are received in the office of the Secretary of state. In the event that information is revealed in the background check which would be a violation of a provision of the Act, the Secretary shall give notice to the affected organization and allow them an opportunity to cure the disqualifying situation by disassociating such person or persons from taking any action on behalf of such organization. The organization shall submit to the Secretary, an affidavit, signed by the chief operating officer and the treasurer of the organization, setting forth what action has been undertaken by the organization to disassociate the individual/ individuals.
- (4) Procedure for Obtaining Criminal Background Checks. Upon notification by the Secretary that a criminal background check is required, the person notified shall take immediate steps to secure the background check. Persons who receive a request from the Secretary to submit to a criminal background check shall contact the then current state of Tennessee fingerprinting service to obtain information on the proper location and procedure for having the background check run. The current vendor for the state of Tennessee is Sylvan Identix Fingerprinting Centers. The toll free number is 1-866-226-2937. Persons must provide identifying information, the reason for being printed and name of the "Division of Charitable Solicitations, Charitable Gaming Section" as the entity for whom the prints are requested. Background checks will include data from a dual TBI & FBI search. At the time of the printing, the person must provide identification to verify his/her identity. A driver's license, passport, military ID or similar identification should be provided. The applicant shall be responsible for paying all costs associated with obtaining a criminal history background check.

The results of the background search will be provided directly to the Secretary of State's Division of Charitable Solicitations, Charitable Gaming Section. Results of background checks may be challenged by contacting the TBI. A form is available for download from the TBI web site at www.tbi.state.tn.us or by contacting the TBI directly.

- (5) Information from Law Enforcement Agency. The Secretary may require a criminal background check on any person based upon information received from a local, state or federal law enforcement agency indicating a violation of the law involving theft, misappropriation of funds, or any matter which would impact the legitimate operation of an annual gaming event. For purposes of this provision, law enforcement agency shall include the Internal Revenue Service.
- (6) Denial of Application to Conduct Annual Gaming Event. The Secretary may deny an application to operate an annual gaming event based upon the results of a criminal background check. In addition, the Secretary may impose a civil penalty if the background check shows a violation of the Charitable Gaming Implementation Law.

Penalties shall be determined based upon the rules for disqualification located below at section 1360-03-03-.14.

(Rule 1360-03-03-~~1009~~, continued)

Authority: T.C.A. § 3-17-114(a)-(c), 3-17-114(e)(1)-(2), and 3-17-115(a). **Administrative History:** Original rule filed October 7, 2005; effective February 28, 2006.

1360-03-03-~~110~~ 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 January 14, 2009; effective May 29, 2009.

1360-03-03-~~124~~ 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.

(Rule 1360-03-03-.12, continued)

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 January 14, 2009; effective May 29, 2009.

1360-03-03-.13² DISQUALIFICATIONS/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 1360-04-01-.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(a)-(b), 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 January 14, 2009; effective May 29, 2009.

1360-03-03-.13 CO-OPERATION WITH OTHER STATE AGENCIES.

- (1) All information submitted to the Division of Charitable Solicitations, Charitable Gaming Section shall be available to federal, state or local agencies for the purpose of assisting in carrying out the provisions of T.C.A. 3-17-102 et. seq. and T.C.A. 39-16-702 and T.C.A. 39-16-703 and T.C.A. title 39, chapter 17 Parts 5 and 6, T.C.A. § 39-17-502(b), T.C.A. § 39-17-505, T.C.A. § 39-17-506(a), T.C.A. § 39-17-601, T.C.A. § 39-17-651 et. seq. and Title 3, Chapter 15, or any provision of federal law.
- (2) The Secretary shall assist and co-operate with the Tennessee Bureau of Investigation and/or the Internal Revenue Service in the conduct of any investigation.

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