

Public Necessity Rules
of
Department of State
Division of Charitable Solicitations and Gaming

Statement of Necessity Requiring Public Necessity Rules

Pursuant to Public Chapter No. 523, Tennessee Code Annotated Section 48-101-501 et. seq. was amended by changing several provisions of the act regarding the solicitation of charitable funds from the public. The changes require the Division of Charitable Solicitations and Gaming to adopt new rules to implement the changes on July 1, 2007. Therefore, the rules shall be implemented by public necessity rules to be effective July 1, 2007.

Due to the length of time necessary to complete the rulemaking process, these public necessity rules are required in order for the Division to administer the amended statute. Without these rules, the Division will be unable to effectively regulate solicitation activity in Tennessee. Therefore, the rules shall be implemented by public necessity rules to be effective July 1, 2007.

For complete copies of the text of the notice, please contact Todd R. Kelley, Director, Division of Charitable Solicitations and Gaming, 312 Eighth Avenue North, William R. Snodgrass Tennessee Tower, 8th Floor, Nashville, TN 37243, telephone 615-741-2555.

Todd R. Kelley
Director
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Chapter 1360-03-01
Regulation of Charitable Organizations and Professional Solicitation

Repeals

Chapter 1360-03-01 Regulation of Charitable Organizations and Professional Solicitation is repealed in its entirety.

Authority: T.C.A. § 48-101-503(b)

New Rules

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1360-03-01-.01 Definitions

- (1) Terms defined in the Charitable Solicitations Act, T.C.A. § 48-101-501 et seq. shall have the same meaning for the purposes of these rules and regulations.
- (2) “The Act” shall mean the Charitable Solicitations Act.
- (3) “Branch” or “Affiliate” shall mean a subordinate organization, which is a chapter, local, post, or unit of a central organization. A central organization may be a subordinate itself, such as a state organization that has subordinate units and is itself affiliated with a national organization. A subordinate organization may or may not be incorporated, but it must have an organizing document. A subordinate that is organized and operated in a foreign country may not be included in a group exemption letter. A subordinate organization classified by the Internal Revenue Service as 501(c)(3) may not be included in a group exemption letter if it is a private foundations described as 509(a).
- (4) “Fund Raising Costs” shall mean the total expenses incurred in soliciting contributions including, but not limited to, costs incurred: publicizing and conducting fundraising campaigns; soliciting bequests and grants from foundations or other organizations, or government grants; participating in federated fundraising campaigns; preparing and distributing fundraising manuals, instructions, and other materials; and conducting special events that generate contributions.
- (5) “Gross contributions” shall mean all contributions received by an organization including, but not limited to: all donated items; all funds or the entire value of noncash items raised by an outside fundraiser in a charity’s name and not just the amount actually received by the charity; amounts received from individuals, trusts, corporations, estates, and foundations, or raised by an outside professional fundraiser; and contributions and grants from public charities and other exempt organizations that are neither fundraising organizations nor affiliates of the filing organization.
- (6) “Membership” shall mean a status applied upon condition of the payment of fees, dues, assessments, etc., in an organization which provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit, in addition to the right to vote, elect officers, or hold offices. The term “membership” shall not include those persons who are granted a membership upon making a contribution.
- (7) “Parent” shall mean a central organization, which is an organization that has one or more subordinates under its general supervision or control.
- (8) “The public” shall mean individuals, trusts, corporations, estates, foundations, public charities, other exempt organizations that are neither fundraising organizations nor affiliates of the filing organization, and outside professional fundraisers.

Authority: T.C.A. § 48-101-501 et seq.

1360-03-01-.02 Filing Of Registration Statement

- (1) In lieu of the registration application prescribed by the Secretary of State, an organization may submit a Unified Registration Statement, along with all accompanying documents required by the Secretary for registration.
- (2) Every charitable organization which has completed a fiscal year of operation, shall file with its application for registration an annual report filed by the charitable organization with the Internal Revenue Service, unless the organization is not required to file such

report. Additionally, the organization shall file an audited financial statement if the organization's gross revenue exceeds five hundred thousand dollars (\$500,000), excluding grants from government agencies and private foundations.

Authority: T.C.A. § 48-101-504(a-e); T.C.A. § 48-101-506; Chapter 523 §14 of the Public Acts of 2007.

1360-03-01-.03 Filing Of Registration Renewal Application And Extension Requests

- (1) The renewal application shall be accompanied by an annual report filed by the charitable organization with the Internal Revenue Service, unless the organization is not required to file such report. Additionally, the organization shall file an audited financial statement if the organization's gross revenue exceeds five hundred thousand dollars (\$500,000), excluding grants from government agencies and private foundations.
- (2) All organizations requesting an extension of time for filing a renewal of registration shall file the request on the form prescribed by the Secretary and shall provide any supporting documentation with the form (e.g. an application for extension to file an exempt organization return that was filed with the Internal Revenue Service).

Authority: T.C.A. § 48-101-506; Chapter 523 §§ 14, 16 of the Public Acts of 2007.

1360-03-01-.04 Professional Solicitors And Fund Raising Counsel

- (1) Commercial co-venturers and political consultants for political parties, candidates and political action committees shall not be considered to be "professional fund raising counsel" or "professional solicitors."

Authority: T.C.A. § 48-101-503(b).

1360-03-01-.05 Denial of Registration and Appeal

- (1) Any applicant who appeals the denial of registration shall have a hearing held before an administrative law judge from the Administrative Procedures Division of the Tennessee Department of State. The hearing shall be conducted pursuant to Rule 1360-4-1-.14, Uniform Rules of Procedure for Hearing Contested Cases of State Agencies.
- (2) The hearing may be conducted telephonically by agreement of the parties.
- (3) The order of the administrative law judge shall be the final order in the case, and shall include findings of fact and conclusions of law.

Authority: T.C.A. § 4-5-314(b), (c); T.C.A. § 48-101-508(a), (b);

The public necessity rules set out herein were properly filed in the Department of State on the 22nd day of August, 2007, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 3rd day of February, 2008. (FS 08-16-07; DBID 2656)