

Proposed Rules
of
Department of State
Division of Charitable Solicitations and Gaming

Chapter 1360-03-01
Regulation of the Solicitation of Funds for Charitable Purposes

Presented herein are proposed rules of the Charitable Solicitations and Gaming Division submitted pursuant to Tennessee Code Annotated Sections 4-5-202 and 48-101-503(b) in lieu of 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, such petition must be filed in the Division of Charitable Solicitations and Gaming, William R. Snodgrass Tennessee Tower, Eighth Floor, 312 Eighth Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a complete copy of the proposed rules, please contact Todd R. Kelley, Director, Division of Charitable Solicitations and Gaming, 312 Eighth Avenue North, William R. Snodgrass Tennessee Tower, Eighth Floor, Nashville, Tennessee 37243, telephone 615-741-2555.

The text of the proposed rules is as follows.

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.
- (9) "Interactive Web site" is a Web site that permits a contributor to make a contribution, or purchase a product in connection with a charitable solicitation, by electronically completing the transaction, such as by submitting credit card information or authorizing an electronic funds transfer. Interactive sites include sites through which a donor may complete a transaction online through any online mechanism processing a financial transaction even if completion requires the use of linked or redirected sites.
- (10) "Specifically target persons physically located in the state for solicitation" means to either (i) include on its Web site an express or implied reference to soliciting contributions from that state; or (ii) to otherwise affirmatively appeal to residents of the state, such as by advertising or sending messages to persons located in the state (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in the state. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their Web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.
- (11) "Receive contributions from the state on a repeated and ongoing basis or a substantial basis" means receiving contributions within the entity's fiscal year, or relevant portion of a fiscal year, that are of sufficient volume to establish the regular or significant (as opposed to rare, isolated, or insubstantial) nature of those contributions. An entity receives contributions on a repeated and ongoing basis if it receives at least one hundred online contributions at any time in a year. It receives substantial contributions if it receives \$25,000 in online contributions in a year.

Authority: T.C.A. § 48-101-503(b); Administrative History: Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; effective through February 3, 2008. New rule filed _____; effective _____.

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. Administrative History: Original rule filed June 17, 1977; effective July 18, 1977. Amendment filed October 4, 1982; effective November 3, 1982. Public necessity rule filed August 22, 2007; effective through February 3, 2008. New rule filed _____; effective _____.

1360-03-01-.03 Filing of Registration Renewal Application

- (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. Administrative History: Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; effective through February 3, 2008. New rule filed _____; effective _____.

1360-03-01-.04 Professional Solicitors and Fundraising 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). Administrative History: Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; effective through February 3, 2008. New rule filed _____; effective _____.

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); Chapter 523 § 24 of the Public Acts of 2007. Administrative History: Original rule filed June 17, 1977; effective July 18, 1977. Public necessity rule filed August 22, 2007; effective through February 3, 2008. New rule filed _____; effective _____.

1360-03-01-.06 Application of Registration Requirements to Internet Solicitation

(1) Entities That Are Domiciled Within Tennessee

- (a) An entity that is domiciled within Tennessee and uses the Internet to conduct charitable solicitations in Tennessee must register with the division, unless exempt from the registration requirements pursuant to Tennessee Code Annotated Section 48-101-502. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.
- (b) An entity is domiciled within Tennessee if its principal place of business is in Tennessee.

(2) Entities That Are Domiciled Outside Tennessee

An entity that is not domiciled within Tennessee must register in accordance with the law of Tennessee, unless exempt from the registration requirements, if:

- (a) Its non-Internet activities alone would be sufficient to require registration;
- (b) The entity solicits contributions through an interactive Web site; and
- (c) Either the entity:
- (i) Specifically targets persons physically located in Tennessee for solicitation, or
 - (ii) Receives contributions from Tennessee on a repeated and ongoing basis or a substantial basis through its Web site; or
- (d) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with Tennessee state, such as sending e-mail messages or other communications that promote the Web site; and
- (e) The entity satisfies (2)(c).

Authority: T.C.A. § 48-101-503(b). Administrative History: Original rule filed _____; effective _____.

The proposed rules set out herein were properly filed in the Department of State on the 6th day of November, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of March, 2007. (FS 11-03-07; DBID 2745)