

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

Chapter 1360-03-04  
Catastrophic Illness Trusts

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) and Chapter 430 of the Public Acts of 2007 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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1360-03-04-.01 Definitions.

- (1) "Catastrophic illness" means a severe illness requiring prolonged hospitalization or recovery and involving high costs for medical care.
- (2) "Secretary of State" means the Secretary of State or the Secretary's authorized representative.
- (3) "Trusts" means a custodial account established pursuant to Tennessee Code Annotated Section 35-11-101 *et seq.*

Authority: T.C.A. §§ 48-101-501(8) and 503(b); Chapter 430 § 10 of the Public Acts of 2007. Administrative History: Public necessity rule filed August 1, 2007; effective through January 13, 2008. New rule filed \_\_\_\_\_; effective \_\_\_\_\_.

1360-03-04-.02 Notice Requirements For Establishing Catastrophic Illness Trust.

- (1) The trustee or bank or trust company acting as trustee shall file with the Secretary of State written notice of the establishment of the trust.

- (2) The notice shall include the name, address and contact information of the trustee and beneficiary as well as identification of the financial institution where the trust was established.

Authority: T.C.A. § 35-11-102(d); Chapter 430 § 6 of the Public Acts of 2007. Administrative History: Public necessity rule filed August 1, 2007; effective through January 13, 2008. New rule filed \_\_\_\_\_; effective \_\_\_\_\_.

#### 1360-03-04-.03 Accounting of the Trust.

- (1) A trustee, other than a bank or trust company acting as trustee, shall file with the Division of Charitable Solicitations and Gaming an accounting of the trust on the yearly anniversary of the establishment of the trust.
- (2) The financial accounting of the trust filed shall include all revenue and expenditures of the trust.

Authority: T.C.A. § 35-11-102(e); Chapter 430 § 6 of the Public Acts of 2007. Administrative History: Public necessity rule filed August 1, 2007; effective through January 13, 2008. New rule filed \_\_\_\_\_; effective \_\_\_\_\_.

#### 1360-03-04-.04 Financial Records.

- (1) All trustees shall be responsible for maintaining true and accurate financial records of the trust, including, but not limited to, records of all revenue and expenses of the trust. All records should be kept for no less than three (3) years.
- (2) Such records shall be made available to the Secretary of State for inspection subject to the provisions of Title 45, Chapter 10 and the Federal Right to Financial Privacy Act, Pub. L. 95-630, as amended, 12 U.S.C. Section 3401 *et seq.*
- (3) In addition to the authority to inspect financial records, the Secretary of State may compel additional production of documents, exhibits, or things, or subpoena duces tecum presentation and delivery of all records or other tangible items, by  
  
any person which the Secretary believes to be pertinent in conducting any investigation.

Authority: T.C.A. § 35-11-101 *et seq.*; Chapter 430 §§ 8, 9 of the Public Acts of 2007; T.C.A. § 48-101-514(b)(1). Administrative History: Public necessity rule filed August 1, 2007; effective through January 13, 2008. New rule filed \_\_\_\_\_; effective \_\_\_\_\_.

#### 1360-03-04-.05 Assessment of Civil Penalties.

- (1) The Secretary of State may impose a civil penalty of not more than five thousand dollars (\$5,000) for each and any violation of Tennessee Code Annotated Section 35-11-101 *et seq.* or any rule thereunder.
- (2) Upon notice to affected parties of the imposition of civil penalties by the Secretary of State, the affected party may seek review by requesting a hearing, which shall be conducted pursuant to the Uniform Administrative Procedures Act, Title 4, Chapter 5.

- (3) Any civil penalty shall be enforced in the following manner:
- (A) If a petition for review of the assessment of a penalty through a “contested case” hearing is not filed within thirty (30) days after the date the assessment is served, the affected party shall be deemed to have consented to the assessment and it shall become final;
  - (B) Whenever any assessment has become final, because of a person’s failure to appeal the Secretary of State’s assessment or otherwise, the Secretary of State, in the name of the state, may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment; and
  - (C) The Secretary of State may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation or failure to comply occurred, or in the county in which such person resides, has such person’s principal place of conducting solicitations, or has conducted or transacted business or solicitation campaigns.

Authority: T.C.A. § 35-11-101 *et seq.*; Chapter 430 § 7 of the Public Acts of 2007; T.C.A. § 48-101-514(a)(1), 2(A-C). Administrative History: Public necessity rule filed August 1, 2007; effective through January 13, 2008. New 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. (11-04-07; DBID 2746)