

Department of State
Division of Publications
 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615.741.2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 01-22-15
 Notice ID(s): 2295
 File Date: 01/29/2015

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

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
Phone:	615-741-2555
Email:	Brent.Culberson@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Maggie Bahou
Address:	312 Rosa L. Parks Ave., 7 th Floor, Nashville, TN
Phone:	615-741-7411
Email:	Maggie.Bahou@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	312 Rosa L. Parks Ave., 8 th Floor Conference Room		
Address 2:			
City:	Nashville		
Zip:	37243		
Hearing Date :	March 20, 2015		
Hearing Time:	9:00 a.m.	<input type="checkbox"/> X <input type="checkbox"/> CST/CDT	<input type="checkbox"/> <input type="checkbox"/> EST/EDT

Additional Hearing Information:

--

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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 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.

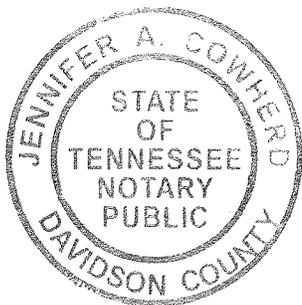
Authority: T.C.A. § 3-17-111(a)-(b), 3-17-111, 3-17-113(a), and 3-17-115(a).

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).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: 1/29/15

Signature: [Handwritten Signature]

Name of Officer: Brent Culberson

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

Subscribed and sworn to before me on: 1/29/15

Notary Public Signature: Jennifer A Cowherd

My commission expires on: 11-3-2015

Department of State Use Only

Filed with the Department of State on: 01/29/2015

[Handwritten Signature]

Tre Hargett
Secretary of State

2015 JAN 29 PM 3:05
SECRETARY OF STATE