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# 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.

<b>Agency/Board/Commission:</b>	Department of State
<b>Division:</b>	Charitable Solicitations, Fantasy Sports, and Gaming
<b>Contact Person:</b>	Mary Beth Thomas
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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:

<b>ADA Contact:</b>	Mary Beth Thomas
<b>Address:</b>	State Capitol, 1 <sup>st</sup> Floor, Nashville, Tennessee 37215
<b>Phone:</b>	615-741-2819
<b>Email:</b>	mary.beth.thomas@tn.gov

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

Address 1:	Multi-Media Room, 3 <sup>rd</sup> Floor		
Address 2:	312 Rosa L. Parks Ave., Tennessee Tower		
City:	Nashville		
Zip:	37243		
Hearing Date :	08/29/16		
Hearing Time:	1:00 P.M.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1360-03-05	Rules Related to the Fantasy Sports Act
Rule Number	Rule Title

1360-03-05-.01	Purpose and Scope
1360-03-05-.02	Definitions
1360-03-05-.03	Initial Application for Licensure
1360-03-05-.04	Renewal Application for Licensure
1360-03-05-.05	Approval of Licensure
1360-03-05-.06	Registration of Players/Know Your Customer Requirements
1360-03-05-.07	Player Account Activity
1360-03-05-.08	Player Funds and Required Reserve
1360-03-05-.09	Account Monitoring to Prevent Misuse
1360-03-05-.10	Certain State Employees Prohibited From Playing
1360-03-05-.11	Annual Reporting and Audits
1360-03-05-.12	Schedule of Range of Civil Penalties for Violations of the Fantasy Sports Act
1360-03-05-.13	Additional Authorized Fees

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to [http://sos.tn.gov/sites/default/files/forms/Rulemaking\\_Guidelines\\_August2014.pdf](http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf))

CHAPTER 1360-03-05  
RULES RELATED TO THE FANTASY SPORTS ACT

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1360-03-05-.01 PURPOSE AND SCOPE.

These rules are promulgated for the purpose of implementing the Fantasy Sports Act and for providing additional guidance to the fantasy sports industry and Tennessee consumers with regard to the operation of fantasy sports contests within the State of Tennessee and/or for the use of Tennessee citizens. These rules are also promulgated for the purpose of establishing appropriate fees for the application, licensure, and civil penalty components of the Fantasy Sports Act. These rules shall only apply to fantasy sports contests when an entry fee is paid by a fantasy sports player for participation in a fantasy sports contest.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.02 DEFINITIONS. As used in these rules, the following terms are defined as follows:

- (1) "Adjusted Revenue" means the amount equal to the total entry fees collected from all players (regardless of the players' location) entering the fantasy sports contest less winnings paid to players in the contest, for the fantasy sports operator's most recent fiscal year.
- (2) "Attorney General and Reporter" or "Attorney General" means the Attorney General and Reporter of the State of Tennessee or his or her authorized designee.
- (3) "Auto draft" means athlete selection offered by a fantasy sports operator that does not involve any input or control by a player.
- (4) "Beginning player" means any player who has entered fewer than fifty-one (51) contests offered by a single fantasy sports operator, and who has not qualified as a Highly Experienced Player.
- (5) "Clearly and conspicuously" means:
  - (a) To disclose in such a way that the disclosure is made through the same means through which the communication is presented.
  - (b) Requires that if the communication is visual, the disclosure is placed in close proximity to relevant claims, expressed in clear and plain language and syntax, and the size, contrast,

location, and other characteristics stand out from other visual elements so that the disclosure is prominently displayed and unavoidable.

- (c) Requires that the disclosure is repeated if necessary, visible for a sufficient duration, and does not necessitate scrolling.
  - (d) Requires that if the communication is audio, the disclosure is presented at adequate volume and cadence, and
  - (e) Requires that the disclosure is made before the consumer makes a decision to accept an offer.
- (6) "Daily fantasy sports contest" is any fantasy sports contest other than a season-long fantasy sports contest, as defined herein.
- (7) "Entry fee" means any valuable consideration including, but not limited to, cash or a cash equivalent, that a fantasy sports operator requires in order to participate in a fantasy sports contest.
- (8) "Fantasy sports contest"
- (a) Means:
    - 1. An online simulated game in which players are subject to an entry fee to assemble imaginary teams of athletes;
    - 2. Players are offered an award or prize made known to the players in advance of the online simulated game; and
    - 3. The winning outcome of which reflects in part the relative knowledge and skill of the participants and is determined predominantly by the accumulated statistical results of the performance or finishing position of athletes in underlying amateur or professional competitions; and
  - (b) Does not include:
    - 1. A contest in which the operator allows the players to auto draft athletes or to choose between pre-selected teams of athletes;
    - 2. A contest that offers or awards a prize to the winner of, or athletes in, the underlying competition itself; and
    - 3. A contest where the winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of teams or solely on any single performance of an athlete or participant in any single actual event.
- (9) "Fantasy sports contest platform" means any online method by which access to a fantasy sports contest is provided, including, but not limited to a website, smart phone, or other application providing access to a fantasy sports contest.
- (10) "Fantasy sports operator" means a person that offers fantasy sports contests through an online digital platform.
- (11) "Fantasy sports operator contractor" means any person or entity who works pursuant to an independent contract with a fantasy sports operator and who has access to nonpublic portions of the fantasy sports operator's office, the fantasy sports operator's nonpublic computer network, or the fantasy sports operator's proprietary information that may affect how the fantasy sports contest is played.
- (12) "Highly experienced player" means a person who has either:
- (a) Entered more than five hundred (500) contests offered by a single fantasy sports operator; or

- (b) Won more than five (5) fantasy sports prizes, which the total value of the prizes is two thousand five hundred dollars (\$2,500) or more.
- (13) "Knowingly" means to have known or should have known.
- (14) "Minor" means any person under eighteen (18) years of age.
- (15) "Person" has the same meaning as defined in T.C.A. § 47-18-103.
- (16) "Player" means a person who participates in a fantasy sports contest offered by a fantasy sports operator.
- (17) "Private contest" means a fantasy sports contest established among players known to each other and the terms and any prize of which are not established by a fantasy sports operator.
- (18) "Prize" means a prize, award, incentive, promotion, or anything of value, including, but not limited to, money, contest credits, merchandise, or admission to another fantasy sports contest.
- (19) "Resident percentage" means, for each fantasy sports contest, the percentage, rounded to the nearest tenth of a percent (0.1%) of the total entry fees collected from Tennessee consumers divided by the total entry fees collected from all players, regardless of the players' location, of the fantasy sports contest.
- (20) "Script" means a list of commands that a fantasy-sports-related computer program can execute and that are created by players, or by third parties for the use of players, to automate processes on a fantasy sports contest platform.
- (21) "Season-long fantasy sports contest" means a fantasy sports contest offered by a fantasy sports operator that is conducted over an entire sports season.
- (22) "Secretary of State" or "Secretary" means the Secretary of State for the State of Tennessee, or his or her authorized designee.
- (23) "Tennessee consumer" means a consumer located in this state at the time the person enters a fantasy sports contest.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.03 INITIAL APPLICATION FOR LICENSURE.

- (1) Application information. Any person seeking to be a licensed fantasy sports operator shall submit an application to the Secretary of State, using a form available from the Secretary of State, with the following information:
  - (a) Name. The name of the applicant.
  - (b) Primary contact. The designated contact person for the applicant, a telephone number, address, and email address for that contact.
  - (c) Location. The physical address of the applicant's principal place of business.
  - (d) Disclosure of ownership. A complete disclosure of the true ownership of the fantasy sports operator as follows:
    - 1. For limited liability companies (hereinafter, "LLC"), including professional LLCs, provide the full name, address, and telephone number of each member of the LLC. If the member is not a natural person, disclose the true ownership of the member (and successive levels of ownership, if necessary) until a natural person or another corporate entity is disclosed. If another corporate entity is disclosed, provide a complete disclosure of that corporate entity's ownership in accordance with the specific rules for that entity contained herein (and successive levels of ownership, if necessary).

2. For general, limited, or limited liability partnerships, provide the full name, address, and telephone number of each partner. If the partner is not a natural person, disclose the true ownership of the partner (and successive levels of ownership if necessary) until a natural person, or another corporate entity, is disclosed. If another corporate entity is disclosed, provide a complete disclosure of that corporate entity's ownership in accordance with the specific rules for that entity contained herein (and successive levels of ownership, if necessary).
  3. For a corporation, provide the full name, address, and telephone number of any natural person or entity having an ownership interest of five percent (5%) or more of the outstanding shares of the corporation. If a corporate entity is disclosed, provide a complete disclosure of that corporate entity's ownership in accordance with the specific rules for that entity contained herein (and successive levels of ownership, if necessary).
  4. The intent of this rule is to require, to the fullest extent that the individual or corporate structure of an applicant allows, disclosure of names of individual natural persons who have a significant ownership interest in a fantasy sports operator.
- (e) Criminal Record. The applicant's criminal record, if any, as specified below:
1. Information regarding the criminal record, if any, of the following:
    - (i) Each partner of a partnership;
    - (ii) Each member of a limited liability company;
    - (iii) Each director and officer of a non-publicly held corporation;
    - (iv) Each director and officer of a publicly held corporation, if that director or officer is involved in the day to day management of fantasy sports contests and operations; and
    - (v) Each stockholder of five percent (5%) or more of a corporation.
  2. An applicant, and the individuals identified in subpart (e)(1) above, shall have a duty to disclose on the application whether they have been convicted of a crime (other than traffic violations and convictions that have been expunged), and if so, the nature of the crime, the date, place of the conviction, and the legal disposition of the case.
  3. An applicant, and the individuals identified in subpart (e)(1) above, shall obtain a criminal background check (an "Identity History Summary") from the Federal Bureau of Investigation. The applicant must submit, with its application, either the completed Identity History Summary, or documentation showing that the Identity History Summary was requested prior to submitting the application.
  4. The applicant's application may be conditionally granted upon receipt of the self-disclosure of the criminal record information on the application and prior to receipt of the report(s) from the Federal Bureau of Investigation. However, the Secretary of State may immediately revoke the conditional approval of the fantasy sports operator's application if information is received on the Identity History Summary that contradicts the self-disclosure made on the application.
  5. Evidence of an applicant's (including any of the individuals identified in subpart (e)(1) above) conviction or plea of guilty or nolo contendere for a felony, or a misdemeanor involving fraud, dishonesty, breach of trust, gambling, or moral turpitude, within the ten (10) years prior to the date of application shall be grounds for denial of an application.
- (f) Interest in other fantasy sports operators. Disclosure of any ownership interest held by (as applicable in accordance with the corporate structure of the entity) a policy making manager, a partner of a partnership, a member of a limited liability company, a director or officer of a

corporation, a stockholder of five percent (5%) or more of a corporation, in any fantasy sports operator, or any entity previously or currently licensed by another entity that licenses fantasy sports operators or similar entities.

- (g) Description of operations. A description and address of any physical facility operated by the fantasy sports operator, if any, in this state, the number of employees, and the nature of the facility's business.
- (h) Information regarding player deposits.
  - 1. The applicant's policies and procedures for limiting each player to one continuous and active account.
  - 2. The applicant's policies and procedures for limiting individual player deposits to no more than two thousand five hundred dollars (\$2,500) per month.
  - 3. The applicant's policies and procedures for temporarily or permanently increasing a player's deposit limit, at the request of the player, to an amount above two thousand five hundred dollars (\$2,500) per month.
- (i) Information and documentation regarding the reserve, segregated account, or Escrow Fund Account established pursuant to Rules 1360-03-05-.08(2).
- (j) Information regarding verification of identity: A copy of the policies and procedures adopted to verify the identity of players seeking to establish accounts.
- (k) Confirmation of tax clearance: A certificate of tax clearance issued by the Commissioner of the Tennessee Department of Revenue which states that the applicant is current on all taxes, fees, and penalties to the satisfaction of the Commissioner; or a statement that the applicant has no current obligation to the Commissioner because it is a newly registered entity in Tennessee.
- (l) Confirmation of registration with the Division of Business Services. A statement that the applicant is registered with the Secretary of State's Division of Business Services, and the applicant's control number issued by the Division of Business Services.
- (m) Financial information. The fantasy sports operator shall provide the following initial financial information:
  - 1. The total amount of adjusted revenue earned by the fantasy sports operator for the prior fiscal year.
  - 2. A calculation of the resident percentage for the prior fiscal year.
  - 3. The total amount of all winnings earned by fantasy sports players (including non-Tennessee consumers) for the prior fiscal year.
  - 4. Audited financial statements prepared in accordance with the attestation standards established by the American Institute of Certified Public Accountants for the most recent completed fiscal year and audited or unaudited financial statements for the most recent completed fiscal quarter.
  - 5. The Secretary of State may inquire regarding additional financial information, or seek additional financial documentation, within his or her discretion.
- (n) Information and documents concerning operational compliance.
  - 1. The applicant's policies and procedures related to the prevention of minor participation in fantasy sports contests.

2. The applicant's policies and procedures related to advertisements, including the applicant's policies and procedures related to accurate representations concerning chances of winning and the number of persons winning.
3. The applicant's policies and procedures related to the applicant's compliance with the Federal Trade Commission, Guides Concerning Use of Endorsements and Testimonials in Advertising, compiled in 16 CFR § 225.
4. The applicant's policies and procedures relating to assistance available to problem gamblers.
5. The applicant's policies and procedures relating to implementation and enforcement of self-limitations and self-exclusions requested by players.
6. The applicant's policies and procedures related to protection of player deposits, including policies and procedures related to the following:
  - (i) Prevention of unauthorized withdrawals from player accounts by fantasy sports operators or others;
  - (ii) Reporting and responding to complaints by a player regarding the handling of the player's account; and
  - (iii) Closure of player accounts.
7. The applicant's policies and procedures related to account monitoring to prevent misuse of accounts, including policies and procedures related to the following:
  - (i) Detection and prevention of misuse of proxy servers;
  - (ii) Location verification;
  - (iii) Prevention of the use of unauthorized scripts; and
  - (iv) Prevention of the use of pre-selected teams.
8. The applicant's policies and procedures related to the prevention of unauthorized play by the following individuals:
  - (i) Fantasy sports operator employees, fantasy sports operator contractors, and any spouse, children, or parents of any sports operator employee or contractor;
  - (ii) Professional or amateur athletes whose individual statistics or performance may be used to determine any part of the outcome of a fantasy sports contest; and
  - (iii) Any sports agent, team employee, referee, or league official associated with any athletic competition that is the subject of fantasy sports contests.
9. The applicant's policies and procedures relating to fantasy sports contests for beginning players, including policies and procedures related to the following:
  - (i) Explanation of contest play;
  - (ii) Identification of highly experienced players, including symbols or other identification used;
  - (iii) Recommending beginning player only contests and low cost private contests;
  - (iv) Percentage of contests open only to beginning players and that exclude highly experienced players;

- (v) Prevention of access by highly experienced players to beginner player contests directly or through a proxy; and
  - (vi) Suspension of accounts of highly experienced players who participate in contests for beginning players only.
10. The applicant's policies and procedures relating to the locking of fantasy sports contests.
  11. The applicant's policies and procedures relating to the restriction of the number of entries per fantasy sports contest per player.
- (2) The application shall be signed by an officer or director, member, or partner, as applicable in accordance with the fantasy sports operator's corporate structure and must include a notarized affirmation as follows:
 

My name is \_\_\_\_\_ and I serve as the (title) of (fantasy sports operator). I swear or affirm to the best of my knowledge, information, and belief, that the information submitted on this application is true and correct, and that I have made a good faith effort to verify the information submitted herein.
  - (3) The applicant shall submit a non-refundable application fee in the form of a check made payable to the Department of State in the amount of three hundred dollars (\$300). Review of the applicant's application will not begin until receipt of the application fee.
  - (4) The application, supporting documentation, and fee may be hand delivered or mailed to the Office of the Secretary of State, Division of Charitable Solicitations, Fantasy Sports, and Gaming, attn: Director; at 312 Rosa L. Parks Blvd., 8th Floor, Nashville, Tennessee 37243.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.04 RENEWAL APPLICATION FOR LICENSURE.

- (1) Any person seeking to renew its application to be a licensed fantasy sports operator shall submit a renewal application, in a form available from the Secretary of State, no later than forty-five (45) days prior to the expiration of the prior year's license, containing the following information:
  - (a) All information required in an initial application, as set forth in Rule 1360-03-05-.04 except for the following:
    1. Identity History Summary from the Federal Bureau of Investigation for individuals who have previously submitted criminal background reports as part of the application process and who have not self-disclosed any new criminal history.
    2. Financial statements required by Rule 1360-03-05-.03(1)(m)(4).
- (2) The application shall be signed by an officer or director, member, partner, or individual otherwise authorized by the organization, as applicable in accordance with the fantasy sports operator's corporate structure and must include a notarized affirmation as follows:
 

My name is \_\_\_\_\_ and I serve as the (title) of (fantasy sports operator). I swear or affirm to the best of my knowledge, information, and belief, that the information submitted on this application is true and correct, and that I have made a good faith effort to verify the information submitted herein.
- (3) The applicant shall submit a nonrefundable renewal application fee in the form of a check in the amount of three hundred dollars (\$300) made payable to the Department of State. Review of the applicant's renewal application will not begin until receipt of the application fee.
- (4) The renewal application, supporting documentation and fee may be hand delivered or mailed to the Office of the Secretary of State, Division of Charitable Solicitations, Fantasy Sports, and Gaming; attn: Director, at 312 Rosa L. Parks Blvd., 8th Floor, Nashville, Tennessee 37243.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.05 APPROVAL OF LICENSURE.

- (1) The Secretary of State shall review each license application and renewal application received and either approve or deny the application within thirty (30) days of receipt of a fully completed application, as determined by the Secretary of State. The Secretary of State has the discretion to approve or deny the application based on the adequacy of the information submitted and will notify the designated contact person of his or her decision by certified mail.
- (2) Each license issued shall be valid for a period of one (1) year following the date of notification of approval by the Secretary of State.
- (3) If the license, or renewal license, is granted, the licensee must remit payment in accordance with the following schedule, within ten (10) days of receipt of the notification letter approving (or conditionally approving) the application or renewal application.
  - (a) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$2,000,000.....\$75,000.
  - (b) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$1,000,000 but less than \$2,000,000..... \$50,000.
  - (c) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$500,000 but less than \$1,000,000.....\$22,500.
  - (d) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$100,000 but less than \$500,000.....\$10,000.
  - (e) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$50,000 but less than \$100,000.....\$5,000.
  - (f) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, equal to or greater than \$10,000 but less than \$50,000.....\$2,500.
  - (g) For fantasy sports operators with annual adjusted revenue, multiplied by the resident percentage, less than \$10,000.....\$1,000.
- (4) Payments will be accepted in the form of a check made payable to the Department of State.
- (5) License fees are nonrefundable; however, if the applicant's license or renewal license has been granted conditionally in accordance with Rule 1360-03-05-.03 and is subsequently revoked due to the receipt of inconsistent information on a criminal background check report from any individual other than the individual signing the attestation, the Secretary of State shall refund the license fee to the applicant within thirty (30) days.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.06 REGISTRATION OF PLAYERS/KNOW YOUR CUSTOMER REQUIREMENTS

- (1) Registration. Before allowing a player to create an account, including for free play, a fantasy sports operator must first collect:
  - (a) The name of the individual; and
  - (b) The individual's date of birth showing the individual is 18 years of age or older;
- (2) Deposits and withdrawals. No player shall be permitted to deposit or withdraw any funds until the individual has conducted the Identity Verification required by Rule 1360-03-05.06(4) and provided the following information:
  - (a) The physical address where the individual resides; and

- (b) Any other information required by the fantasy sports operator to independently verify the identity of the player making a deposit or withdrawal.
- (3) Single account. A fantasy sports operator shall limit each player to one active and continuously used account. Fantasy sports operators shall implement rules and clearly and conspicuously publish procedures to terminate all accounts of any player that establishes or seeks to establish more than one username or more than one account, whether directly or by use of another person as a proxy. Such procedures may allow a fantasy sports player that establishes or seeks to establish more than one username or more than one account, for one time only, to retain one account provided that the fantasy sports operator investigates and makes a good faith determination that the fantasy sports player's conduct was not intended to obtain a competitive advantage. A player who has established more than one username or account will not be entitled to retain any winnings earned from any account during the time period that more than one username or account is active. A fantasy sports operator must require that any subsequent action by a player of establishing or seeking to establish more than one username or more than one account will result in the fantasy sports operator prohibiting that player from establishing another future account with that fantasy sports operator within a period of two years.
- (4) Identify verification. A fantasy sports operator shall use commercially and technologically reasonable means to independently verify the identity of the individual making a deposit or a withdrawal. Third party entities may be used to verify the identity of a player.
  - (a) If a fantasy sports operator determines that the information provided by a player to make a deposit or process a withdrawal is inaccurate or incapable of verification, or violates its policies and procedures, the fantasy sports operator shall, within ten days, require the submission of additional information that can be used to verify the identity of the player. If such information is not provided or does not result in verification of the player's identity, the fantasy sports player shall:
    - 1. Immediately suspend the player's account and not allow the player to participate in any further fantasy sports contests;
    - 2. Retain any winnings attributable to the player;
    - 3. Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and
    - 4. Deactivate the account.
  - (b) Prior to verification of the player's identity in accordance with this rule, the player shall not be permitted to make deposits or withdraw funds from his or her account.
- (5) Username and password. A player must be provided with (or create) an electronic identifier such as a digital certificate or an account description and a password to log into an account on a fantasy sports contest platform.
  - (a) The fantasy sports operators must allow players to change their passwords and should remind them to do so on a regular basis.
  - (b) Where a player has forgotten his or her password, the fantasy sports operator must provide a secure process for the re-authentication of the player and the retrieval and/or resetting of the password. Any and all processes for dealing with lost player user IDs or passwords must be clearly described to the player and sufficiently secure.
  - (c) When a player logs into the fantasy sports platform, either the most recent time and date of login must be displayed, or the player must be able to access information listing the time and date of any contest entries and any withdrawals or deposits that have taken place in his or her account the last 30 days.

- (d) Each fantasy sports contest must have a unique identifier assigned by the fantasy sports operator which distinguishes entries into that contest from entries into other contests.
- (6) Minors prohibited: Only players age 18 and over may participate in fantasy sports contests.
- (a) A fantasy sports operator must deny account registration to any person who enters a birthdate which indicates that they are a minor;
  - (b) A fantasy sports operator shall implement commercially and technologically reasonable procedures to prevent access to fantasy sports contests by minors on its fantasy sports platform, including but not limited to independent verification of age using information obtained from independent sources outside of the player seeking to open an account. Third party services may be used to verify the age of a player; and
  - (c) A fantasy sports operator shall clearly and conspicuously display, on web pages that are accessed prior to registering for a fantasy sports contest, a statement that it is illegal for persons under the age of 18 to engage in fantasy sports contests in Tennessee. This statement must be clearly and conspicuously displayed by the fantasy sports operator.
- (7) Player affirmations. Fantasy sports operators, must include the following provisions in any Terms of Service or Terms of Use.
- (a) That the information provided to the operator by the individual to register is accurate;
  - (b) That the individual has been informed, and acknowledges, that as an authorized player he or she is prohibited from allowing any other person access to or use of their fantasy sports player account; and
  - (c) That the individual acknowledges that his or her account activity and winnings may be disclosed to the Secretary of State, the Department of Revenue and any other applicable state or federal entities.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.07 PLAYER ACCOUNT ACTIVITY.

- (1) Amount of Monthly Deposits: No player shall be permitted to deposit more than two thousand five hundred dollars (\$2,500), of cash or a cash equivalent, per month with a fantasy sports operator unless the player demonstrates that he or she should be entitled to increase its monthly deposit limits in accordance with these rules and the published rules of the fantasy sports operator.
- (a) No player shall be granted an increase in their deposit limit prior to verification of their identity in accordance with these rules.
  - (b) No player who is classified as a beginning player shall be allowed to request an increase in their deposit limit.
  - (c) In order to be eligible for a deposit limit increase, a player must demonstrate, to the fantasy sports operator's reasonable satisfaction, that they qualify for an increase under policies and procedures established by the fantasy sports operator, based on the player's annual income or net worth.
  - (d) Fantasy sports operators shall establish and publish reasonable procedures for increasing a player's deposit limit, but in no circumstances shall such deposit limits be increased unless the player has an annual income of more than \$150,000 (or \$300,000 jointly with a spouse) or financial net worth greater than \$500,000, calculated as follows:
    - 1. Any individual whose net worth, or joint net worth with that individual's spouse, exceeds five hundred thousand dollars (\$500,000).

- (i) For purposes of calculating net worth under this subsection, the individual's primary residence shall not be included as an asset;
  - (ii) Indebtedness that is secured by the individual's primary residence, up to the estimated fair market value of the primary residence at the time of the request for account increase, shall not be included as a liability (except that the amount of such indebtedness outstanding at the time of the request for account increase exceeds the amount outstanding sixty (60) days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability; and
  - (iii) Indebtedness that is secured by the individual's primary residence in excess of the estimated fair market value of the primary residence at the time of the request for account increase shall be included as a liability;
2. Any individual who had an individual gross income in excess of one hundred fifty thousand dollars (\$150,000) in each of the two (2) most recent years, or joint income with that individual's spouse in excess of three hundred thousand dollars (\$300,000) in each of those years and has a reasonable expectation of reaching the same income level in the current year.
- (2) Enforcement of self-exclusion. A fantasy sports operator must take all reasonable steps to immediately refuse service to or otherwise enact appropriate restrictions that prevent an individual who has set limitations in accordance with T.C.A. § 47-18-5605(a)(12) from entering fantasy sports contests. These policies and procedures include, without limitation, the following:
- (a) The maintenance of a registry of those individuals who have self-imposed limitations on their account, including the name, address, and account details of individuals who have self-imposed restrictions on their account.
  - (b) The closing of the player's account held by the individual who has self-excluded.
  - (c) Employee training to ensure enforcement of these policies and procedures; and
  - (d) Provisions precluding an individual who has self-excluded from being allowed to again engage in fantasy sports contests until a reasonable amount of time of not less than thirty (30) days has passed since the individual self-excluded.
  - (e) Fantasy sports operators shall take all reasonable steps to prevent any marketing material from being sent to an individual who has self-excluded.
- (3) Recordkeeping requirements. The fantasy sports operator shall maintain the following records, for a period of five (5) years, beginning with the date each player account was created, and make these records available for inspection at the request of the Secretary of State or the Attorney General and Reporter:
- (a) The date of each fantasy sports contest played;
  - (b) The classification of the player, i.e., Beginning or Highly Experienced;
  - (c) The entry fee paid for each fantasy sports contest played;
  - (d) The prize, if any, awarded for each fantasy sports contest played;
  - (e) All deposits and withdrawals made from each account; and
  - (f) The date and description of any self-imposed limitation taken by any player.

Statutory authority: T.C.A. § 47-18-5601.

- (1) Player funds.
  - (a) A fantasy sports operator shall not allow a player to transfer funds to any other player.
  - (b) After a player's identity has been verified, a player must be allowed to withdraw funds maintained in his or her account, whether such account is opened or closed. Such requests must be honored within five (5) business days of the request, unless the fantasy sports operator believes in good faith that the player engaged in either fraudulent conduct or other conduct that would put the fantasy sports operator in violation of the law, in which case the fantasy sports operator may decline to honor the request for withdrawal for a reasonable investigatory period until its investigation is resolved, provided that it gives notice to the player of the nature of the investigation of the account. For purposes of this provision, a request for withdrawal will be considered honored if it is processed by the fantasy sports operator notwithstanding a delay by a payment processor, credit card issuer, or the custodian of a financial account.
  - (c) A fantasy sports operator shall not allow a player's account to be overdrawn unless caused by payment processing issues outside of the control of the fantasy sports operator.
  - (d) A fantasy sports operator shall neither extend credit to a player nor allow the deposit of funds into an account that is derived from the extension of credit by affiliates or agents of the operator. For purposes of this subsection, credit shall not be deemed to have been extended where, although funds have been deposited into an account, the operator is awaiting actual receipt of such funds in the ordinary course of business.
- (2) Protection of player funds and required reserve. Funds held in player accounts and all funds constituting prize funds owed, or that may be owed based on contest participation, to player accounts of Tennessee consumers shall be protected in one of the following ways: (a) the creation and maintenance of a reserve as set forth in Rule 1360-03-05-.08(2)(a); (b) by deposit in a special purpose segregated account that is maintained and controlled by a properly constituted corporate entity as set forth in Rule 1360-03-05-.08(2)(b); or (c) by deposit in a qualified escrow account as set forth in Rule 1360-03-05-.08(2)(c).
  - (a) Reserve. A fantasy sports operator may maintain a reserve in the form of cash, cash equivalents, an irrevocable letter of credit, a bond, or a combination thereof to protect player funds.
    1. The amount of the reserve shall be equal to, at a minimum, the sum of all authorized players' funds held in player accounts of Tennessee consumers for use in fantasy sports contests plus all prize funds that are owed, or that may be owed based on contest participation by Tennessee consumers, until payment is made on the prize.
    2. The reserve agreements must reasonably protect the reserve against claims of the operator's creditors other than the authorized players for whose benefit and protection the reserve is established, and must provide that:
      - (i) The reserve is established and held in trust for the benefit and protection of authorized players to the extent the fantasy sports operator holds money in player accounts for players.
      - (ii) The reserve must not be released, in whole or in part, except upon written instruction or approval of the Secretary of State. The reserve must be available within sixty (60) days of the written demand or written instruction. If the reserve is released to the Secretary of State, he or she may interplead the funds in the Davidson County Chancery Court for distribution to the authorized players for whose protection and benefit the account was established and to other such persons as the court determines are entitled thereto, or shall take such other steps as necessary to effect the proper distribution of the funds, or may do both.

- (iii) The fantasy sports operator may receive income accruing on the reserve, without obtaining permission from the Secretary of State.
  - (iv) The fantasy sports operator has no interest in or title to the reserve.
  - (v) Tennessee law and this section govern the agreements and the operator's interest in the reserve and income accruing on the reserve.
3. If the reserve is maintained in the form of cash, cash equivalent, or an irrevocable letter of credit, it must be held or issued by a federally insured financial institution. If the reserve is maintained in the form of a bond, it must be written by a bona fide insurance carrier. Reserves in the form of cash, cash equivalent, and irrevocable letter of credit must be established pursuant to a written agreement between the fantasy sports operator and the financial institution or insurance carrier, but the fantasy sports operator may engage an intermediary company or agent to deal with the financial institution or insurance carrier, in which event the reserve may be established pursuant to written agreements between the fantasy sports operator and the intermediary, and the intermediary and the financial institution or insurance carrier.
  4. The proposed reserve arrangement is not effective for purposes of complying with Rule 1360-03-05-.08(2) until the Secretary of State's approval has been obtained.
  5. The reserve arrangement agreements may be amended only with the prior written approval of the Secretary of State.
- (b) Special purpose segregated account with a separate corporate entity. A fantasy sports operator may establish a special purpose segregated account that is maintained and controlled by a properly constituted corporate entity that is not the fantasy sports operator and whose governing board includes one or more corporate directors who are independent of the fantasy sports operator and of any corporation related to or controlled by the fantasy sports operator.
1. The special purpose segregated account with a separate corporate entity must hold, at a minimum, the sum of all authorized player funds held in player accounts of Tennessee consumers for use in fantasy sports contests, plus all prize funds that are owed or that may be owed, based on contest participation by Tennessee consumers, until payment is made on the prize.
  2. The special purpose segregated account must reasonably protect the funds against claims of the operator's creditors other than the authorized players for whose benefit and protection the special purpose segregated fund is established, and must provide that:
    - (i) The segregated account is established and held in trust for the benefit and protection of authorized players.
    - (ii) The fantasy sports operator may receive income accruing on the segregated account. However, the fantasy sports operator has no interest in or title to the segregated account.
    - (iii) The funds in the segregated account held for the benefit of Tennessee consumers may only be distributed for the following:
      - (I) To the fantasy sports operator for payment to players upon completion of fantasy sports contests or otherwise for the reconciliation of player accounts;
      - (II) For income earned on the account, to the fantasy sports operator;
      - (III) To the Secretary of State in the event that the fantasy sports operator's license expires, is surrendered, or is otherwise revoked, The Secretary of State may interplead the funds in the Davidson County Chancery Court for distribution to the authorized players for whose protection and benefit the account was established and to other such persons as the court determines

are entitled thereto, or shall take such other steps as necessary to effect the proper distribution of the funds, or may do both;

- (IV) As authorized in writing in advance by any agreement approved by the Secretary of State.
3. The corporate entity must require a unanimous vote of all corporate directors to file bankruptcy.
  4. The corporate entity must obtain permission from the Secretary of State prior to filing bankruptcy or entering into receivership.
  5. The corporate entity must have articles of incorporation that prohibit commingling of funds with that of the fantasy sports operator except as necessary to reconcile the accounts of players with sums owed by those players to the fantasy sports operator.
  6. The corporate entity must be restricted from incurring debt other than to fantasy sports players pursuant to the rules that govern their accounts for contests.
  7. The corporate entity must be restricted from taking on obligations of the fantasy sports operator other than obligations to players pursuant to the rules that govern their accounts for contests.
  8. The corporate entity must be prohibited from dissolving, merging or consolidating with another company (other than a special purpose corporate entity established by another fantasy sports operator that meets the requirements of this section) while there are unsatisfied obligations to fantasy sports players.
- (c) A fantasy sports operator who solely operates season-long fantasy sports contests may establish a qualified escrow fund account for the benefit and protection of players' funds. This account will be maintained by a financial institution approved by the Secretary of State.
1. The fantasy sports operator must enter into and execute an escrow fund agreement, the form for which is available from the Secretary of State.
  2. The fantasy sports operator shall deposit in the escrow fund account the sum of all players' funds held in players' accounts belonging to Tennessee consumers for use in fantasy sports contests plus all prize funds that are owed, or may be owed, based on contest participation by Tennessee consumers, until payment is made on the prize.
  3. All funds held in the escrow fund account shall be held, invested, and disbursed in accordance with the terms and conditions of the escrow fund agreement upon approval of the Secretary of State.
  4. The escrow fund agreement allows distribution of funds, and any income thereon, under very limited circumstances, and only upon express approval of the Secretary of State for the following:
    - (i) Distribution to the fantasy sports operator for payment to players upon completion of fantasy sports contests up to a maximum of four (4) times per year.
    - (ii) To the Secretary of State in the event that the fantasy sports operator's license expires, is surrendered, or is otherwise revoked. The Secretary of State may interplead the funds in the Davidson County Chancery Court for distribution to the authorized players for whose protection and benefit the reserve was established and to other such persons as the court determines are entitled thereto, or shall take such other steps as are necessary to effect the proper distribution of the funds, or may do both.
    - (iii) To allow for the distribution of income to the fantasy sports operator.

5. The escrow fund account shall be available only to those fantasy sports operators who operate season-long fantasy sports contests that would require access to their escrow fund account for payment of claims no more than four (4) times per year.
- (d) Each fantasy sports operator shall submit to the Secretary of State all information and copies of documents verifying its proposed arrangements pursuant to Rule 1360-03-05-.08(2), including copies of the agreements described herein. The Secretary of State shall determine whether the agreements and arrangements satisfy the purposes and requirements of this section, may require appropriate changes, or withhold approval if they do not, and shall notify the fantasy sports operator of the determination.
- (e) In the event that a fantasy sports operator's reserve, segregated account or escrow fund is not sufficient to cover, at a minimum, the sum of player funds held in player accounts belonging to Tennessee consumers for use in fantasy sports contests plus all prize funds that are owed or may be owed, based on contest participation by Tennessee consumers, until payment is made on the prize, the operator must, within twenty-four (24) hours, notify the Secretary of State of this fact in writing and must indicate the steps the fantasy sports operator has taken to remedy the deficiency.
- (f) The Secretary of State may require that the reserve, segregated account, or qualified escrow fund, be increased to correct any deficiency or for good cause to protect authorized players.

Statutory authority: T.C.A. § 47-18-5601.

#### 1360-03-05-.09 ACCOUNT MONITORING TO PREVENT MISUSE.

- (1) Proxy servers. Fantasy sports operators shall not allow fantasy sports players to use proxy servers for the purpose of misrepresenting their identity or location in order to engage in fantasy sports contests.
- (2) Location verification. In order to prevent the unauthorized use of a player's account, a fantasy sports operator offering daily fantasy sports contests must use technologically and commercially reasonable measures to reasonably detect the physical location of a player attempting to access his or her account and to monitor for simultaneous logins to a single account from geographically inconsistent locations. A fantasy sports operator may use a third party to provide these location services.
  - (a) The geolocation service or application must be able to perform as follows:
    1. Detect location notwithstanding the use of a proxy server;
    2. Detect location when routing through a Virtual Private Network (VPN);
    3. Use GPS data when the player seeks access from a mobile device or network and prohibit users from entering contests or depositing funds if GPS is not turned on;
    4. Check location each time the player attempts to enter a contest or make a deposit;
    5. Utilize a mechanism to alert the fantasy sports operator if an account is being accessed from geographically inconsistent locations. For example, technology that alerts the fantasy sports operator that login locations were identified that would be impossible to travel between in the time reported.
  - (b) The fantasy sports operator should implement procedures to disable account access if the fantasy sports operator receives information that an account is being accessed from a location that indicates that there is a likelihood of unauthorized or improper access.
- (3) Scripts. A fantasy sports operator shall not permit the use of unauthorized scripts that give players an unfair advantage over other players in fantasy sports contests and shall use commercially reasonable efforts to monitor for and prevent the use of such scripts.

- (a) Authorized scripts shall be programs or scripts that are incorporated as a game feature and shall be clearly and conspicuously published and thereby made available to all players.
- (b) A script that is not authorized under section (a) will be deemed to offer an unfair advantage over other players, for reasons including, but not limited to, its potential use to:
  - 1. Facilitate entry of multiple contests with a single line-up;
  - 2. Facilitate changes in many line-ups at one time;
  - 3. Facilitate use of commercial products designed and distributed by third parties to identify advantageous game strategies; or
  - 4. Gather information about the performance of others for the purpose of identifying or entering contests against daily fantasy sports players who are less likely to be successful.
- (c) A fantasy sports operator may prohibit the use of any and all scripts.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.10 CERTAIN STATE EMPLOYEES PROHIBITED FROM PLAYING.

- (1) In addition to the individuals excluded from participation in fantasy sports contests pursuant to T.C.A. § 47-18-5605(a)(14), employees of the Secretary of State's office are excluded from participating in any fantasy sports contest involving a prize over five dollars (\$5.00) offered by any fantasy sports operator.
- (2) This subsection does not prohibit the Secretary of State from utilizing test accounts solely in order to measure or assess the functionality of the fantasy sports platform or the compliance with applicable laws and regulations; provided that these accounts must be closely monitored by the Secretary of State for any unauthorized use.
- (3) This section does not make a fantasy sports operator responsible for identifying Secretary of State employees participating in its contests.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.11 ANNUAL REPORTING AND AUDITS.

- (1) Annual Reports. No later than the first day of the fifth month following the close of the fantasy sports operator's fiscal year in which the fantasy sports operator was licensed, the fantasy sports operator shall submit a report to the Secretary of State containing the following information and documents pertaining to the prior fiscal year, or the portion of the prior fiscal year in which the fantasy sports operator was licensed:
  - (a) Tennessee consumer account information. The following information shall be submitted electronically (in either a Microsoft excel spreadsheet or a Microsoft access database) contained on a removable media device, e.g., a flash drive.
    - 1. The total number of Tennessee consumer accounts, broken down by beginning fantasy sports players and highly experienced fantasy sports players;
    - 2. The number of new accounts established by Tennessee consumers;
    - 3. The number of accounts closed by Tennessee consumers;
    - 4. The total amount of entry fees received from Tennessee consumers;
    - 5. The total amount of prizes awarded to Tennessee consumers;

6. The number of Tennessee consumers who requested a deposit limit increase;
  7. The number of deposit limit increases granted to Tennessee consumers;
  8. The number of accounts in which a Tennessee consumer was identified as a minor and the action taken as a result;
  9. The number and amount of refunds given to Tennessee consumers;
  10. The number of Tennessee consumers who requested additional limitations on their accounts pursuant to T.C.A. § 47-18-5605(a)(11), and the action taken as a result; and
  11. The number of Tennessee consumers who requested that their accounts be permanently closed.
- (b) The total amount of all winnings earned by fantasy sports players on online platforms supported by the fantasy sports operators.
- (2) Audit Reports. No later than the first day of the fourth month following the close of the fantasy sports operator's fiscal year in which the fantasy sports operator was licensed, the fantasy sports operator shall submit a full and complete copy of the audit prepared pursuant to T.C.A. § 47-18-5604. This audit shall include two components, a financial audit and a compliance audit as described below.
- (a) Financial audit. The fantasy sports operator shall submit a financial audit, prepared by a certified public accountant consistent with the attestation standards established by the American Institute of Certified Public Accountants, of the fantasy sports operator's financial operations and handling of player accounts and funds pursuant to the Fantasy Sports Act.
  - (b) Compliance audit. The fantasy sports operator shall submit a performance audit, prepared by a testing laboratory recognized by the Secretary of State to verify compliance with the operational aspects of the Fantasy Sports Act, including those set forth in T.C.A. § 47-18-5605, and to verify the integrity of the computer operating systems used to operate the fantasy sports contests.
    1. The Secretary of State will post the names of entities approved to conduct compliance audits on its website.
    2. A fantasy sports operator or testing laboratory can seek recognition of an alternative gaming laboratory for use in completing the compliance audit by submitting a written request to the Secretary of State. The Secretary of State will review the qualifications and experience of the gaming laboratory and determine whether to recognize that entity as an approved provider.

Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.12 SCHEDULE OF RANGE OF CIVIL PENALTIES FOR VIOLATIONS OF THE FANTASY SPORTS ACT.

- (1) The following violations may result in civil penalties from a minimum of five thousand dollars (\$5,000) to the maximum allowed by law:
  - (a) Failure to use technologically reasonable means to prevent the use of proxy servers.
  - (b) Failure to use commercially reasonable means to verify a player's true identity and/or location.
  - (c) Failure to retain any record required to be retained in accordance with T.C.A. § 47-18-5603(c) or these rules.
  - (d) Failure to report any information required to be reported to the Secretary of State pursuant to the Fantasy Sports Act or these rules.

- (e) Failure to clearly and conspicuously disclose rules regarding fantasy sports contests.
  - (f) Failure to provide information concerning assistance available to problem gamblers, in accordance with T.C.A. § 47-18-5605(a)(10).
  - (g) Failure to implement and/or enforce policies related to a player's self-imposed limitations as required by T.C.A. § 47-18-5605(a)(11) and (12).
  - (h) Failure to timely submit the annual audit required by T.C.A. § 47-18-5604(a)(2).
  - (i) Any other violation not specifically listed herein.
- (2) The following violations may result in civil penalties from a minimum of ten thousand dollars (\$10,000) to the maximum allowed by law:
- (a) Failure to restrict the number of allowable entries for fantasy sports contests in accordance with T.C.A. § 47-18-5605(a)(25).
  - (b) Knowingly allowing the use of unauthorized scripts, failing to monitor fantasy sports contests to detect the use of unauthorized scripts, and/or failing to follow the provisions of T.C.A. § 47-18-5605(a)(21)-(23).
  - (c) Violations of any of the requirements set forth in T.C.A. § 47-18-5605(a)(18)-(20) relating required disclosures, player activity, and fantasy sports contests involving beginning and experienced players.
  - (d) Misrepresenting the chances of winning and/or the number of persons willing fantasy sports contests, or failing to comply with the advertising requirements set forth in T.C.A. § 47-18-5605(a)(8) and (9).
- (3) The following violations may result in civil penalties from a minimum of fifteen thousand dollars (\$15,000) to the maximum allowed by law:
- (a) Knowingly allowing the use of auto-draft by players or offering pre-selected teams to players.
  - (b) Failure to limit each player to one (1) account and/or limit player deposits in accordance with T.C.A. § 47-18-5602(b)(7) and these rules.
  - (c) Failure to segregate player funds and/or maintain a player reserve in accordance with T.C.A. § 47-18-5602(b)(8) and (26) and these rules.
  - (d) Failure to implement and enforce the player fund protections set forth in T.C.A. § 47-18-5605(a)(13).
  - (e) Failure to implement and enforce the minor prevention protections set forth in T.C.A. § 47-18-5605 (a)(4)-(6).
- (4) The following violations may result in civil penalties from a minimum of twenty thousand dollars (\$20,000) to the maximum allowed by law:
- (a) Knowingly disclosing proprietary and nonpublic information or failing to monitor access to proprietary and nonpublic information in violation of T.C.A. § 47-18-5605(15) and/or (17)(B).
  - (b) Knowingly allowing a prohibited player to participate in a fantasy sports contest in violation of T.C.A. § 47-18-5605(14), (16), and/or (17).
- (5) The following violations may result in civil penalties of twenty-five thousand dollars (\$25,000):
- (a) Knowingly submitting false or misleading information, whether oral or written, to the Secretary of State.

- (b) Directly or indirectly operating or promoting to Tennessee consumers a fantasy sports contest, or promoting a fantasy sports contest from this state to consumers outside of the state, without a license.
  - (c) Knowingly allowing any minor to participate in any fantasy sports contest.
- (6) These civil penalties may be assessed in addition to suspension, refusal to renew, or revocation of a license issued by the Secretary of State. These civil penalties are cumulative and supplementary to any remedies or actions available to the Office of the Attorney General and Reporter under the Fantasy Sports Act or otherwise provided by law. These civil penalties are cumulative and supplementary to any criminal prosecution pursuant to T.C.A. § 39-17-503.
- (7) These civil penalties may be assessed by the Secretary of State for each and every violation of the Fantasy Sports Act. Repeat occurrences of the same violation may result in separate civil penalties for each violation.

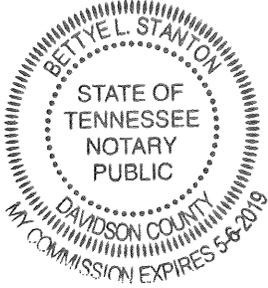
Statutory authority: T.C.A. § 47-18-5601.

1360-03-05-.13 ADDITIONAL AUTHORIZED FEES.

- (1) The Secretary of State is authorized to charge the following additional fees:
- (a) Late fee for any required filing.....\$25 per day.
  - (b) Correction of information fee.....\$25.
  - (c) Change of information fee.....\$25.

Statutory authority: T.C.A. § 47-18-5601.

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: 7/13/2016

Signature: Mary Beth Thomas

Name of Officer: Mary Beth Thomas

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 13, 2016

Notary Public Signature: Betty L. Stanton

My commission expires on: May 6, 2019

**Department of State Use Only**

Filed with the Department of State on: 7/13/16

Tre Hargett  
Tre Hargett  
Secretary of State

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