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Sequence Number: 08-11-16

Rule ID(s): 6275

File Date: 8/12/16

Effective Date: 11/10/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Beauty Pageants
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Benjamin P. Glover
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0780-05-15	Beauty Pageants
Rule Number	Rule Title
0780-05-15-.01	Purpose
0780-05-15-.02	Definitions
0780-05-15-.03	Registration and Application
0780-05-15-.04	Expiration
0780-05-15-.05	Change of Ownership
0780-05-15-.06	Change of Information
0780-05-15-.07	Violations
0780-05-15-.08	Civil Penalties

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Beauty Pageants

New Rules

0780-05-15

Rules

Of

Department Of Commerce And Insurance Division Of Regulatory Boards Tennessee Beauty Pageant Registration Program

Chapter 0780-05-015

Beauty Pageants

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0780-05-15-.01 Purpose

The purpose of this chapter is to provide for administration and implementation of the beauty pageant registration program, Tenn. Code. Ann., Title 47, Chapter 18, Part 2 (as amended by Public Acts of 2015, Chapter 339), herein referred to as the "Act".

Authority: T.C.A. §§ 47-18-204 AND 47-18-208.

0780-05-15-.02 Definitions

- (1) As used in these rules, unless the context otherwise requires, words shall have the same meaning as provided in Tenn. Code Ann. § 47-18-201. In addition:
- (a) "Controlling Member" means:
 - 1. Any sole proprietor owning a beauty pageant operator;
 - 2. Any general partner owning any part of a beauty pageant operator; or
 - 3. Any person having a share of ten percent (10%) or more of any corporation, Limited Liability Company or other entity applying for registration.
 - (b) "Department" means the department of commerce and insurance.
 - (c) "Responsible Individual" means the individual or officer of the organization having full responsibility for the conducting of any pageant.

Authority: T.C.A. §§ 47-18-204.

0780-05-15-.03 Registration And Application

- (1) All companies or persons who seek to be registered as a beauty pageant operator must complete an application on forms prescribed by the Commissioner containing:
- (a) Name, address, and telephone number of the operator;
 - (b) Name, address, and telephone number of the Responsible Individual;
 - (c) Names of pageants customarily promoted by the operator;
 - (d) Name, address, and telephone number of the financial institution in which the entrants' fee is held;
 - (e) The operator's exemption certificate number from the tax imposed by title 67, chapter 6, or the operator's sales tax registration number;
 - (f) If the company applying is a corporation, Limited Liability Company or other entity, proof that the company is duly registered with the Tennessee Secretary of State;
 - (g) A list of each Controlling Member of the company seeking registration and the Controlling Member's percentage of ownership of the beauty pageant operator;
 - (h) A bond, payable to the state of Tennessee, purchased from a surety company authorized to do business in this state for the use of the Department and any person who may have a cause of action against the obligor of the bond for any losses caused by a failure to conduct a beauty pageant in an amount not less than ten thousand dollars (\$10,000.00);
 - (i) A nonrefundable fifty dollar (\$50.00) fee for each application.
- (2) All applicants claiming an exemption from the application fee and bond requirement shall submit proof along with the application to the satisfaction of the Commissioner.

Authority: T.C.A. §§ 47-18-202 and 47-18-204.

0780-05-15-.04 Expiration

Each registration shall expire on December 31 of each year.

Authority: T.C.A. § 47-18-202.

0780-05-15-.05 Change of Ownership

A registration is nontransferable. The change of an ownership interest of any sole proprietor, general partner, corporation, Limited Liability Company or other entity as originally registered shall constitute a change of ownership and a new application for initial registration shall be filed.

Authority: T.C.A. § 47-18-204.

0780-05-15-.06 Change of Information

An operator shall notify the Commissioner with ten (10) business days of the change in pageant location or registration information.

Authority: T.C.A. § 47-18-204.

0780-05-15-.07 Violations

- (1) The Commissioner may deny, suspend, revoke or refuse to issue a registration for:
 - (a) A violation of Tenn. Code Ann. Title 47, chapter 18, part 2 or any rules promulgated thereunder;
 - (b) Failure to refund all entrants' fees pursuant to Tenn. Code Ann. § 47-18-203 within thirty (30) calendar days;
 - (c) Failure to maintain a bond as required by Tenn. Code Ann. § 47-18-202 at all times while registered as a beauty pageant operator;
 - (d) Conducting any beauty pageant without being properly bonded or registered; or
 - (e) The making of a false statement on the registration application form.
- (2) A violation of Tenn. Code Ann. Title 47, Chapter 18, Part 2, or any rules promulgated thereunder, constitutes a violation of the Tennessee Consumer Protection Act of 1977 and shall constitute an unfair or deceptive act or practice affecting the conduct of any trade or commerce and subject to the penalties and remedies as provided by that act.
- (3) Whenever it appears to the Commissioner that an operator is acting in violation of Tenn. Code Ann. Title 47, Chapter 18, Part 2, and the Commissioner determines that the health, safety, or welfare is endangered, the Commissioner may issue an order to that operator to cease and desist in the violations without prior notice.

Authority: T.C.A. §§ 47-18-204, 47-18-209, and 47-18-210.

0780-05-15-.08 Civil Penalties

- (1) The Commissioner may, in addition to or in lieu of any other disciplinary action, assess civil penalties for each separate violation of statutes, rules or orders enforceable by the Commissioner in accordance with the following schedule:

Violation	Penalty
Tenn. Code Ann. § 47-18-202	\$500 - \$5,000
Tenn. Code Ann. § 47-18-203	\$500 - \$5,000
Tenn. Code Ann. § 47-18-204	\$500 - \$5,000
Tenn. Code Ann. § 47-18-209	\$500 - \$5,000
Tenn. Comp. R. & Regs. 0780-05-15	\$500 - \$5,000

- (2) Each day of a continuing violation may constitute a separate violation.
- (3) In assessing civil penalties, the following factors may be considered:
 - (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;

(d) The economic benefits gained by the violator as a result of noncompliance; and

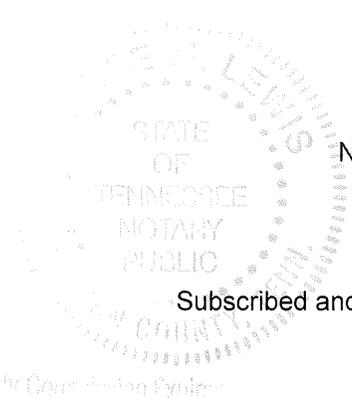
(e) The interest of the public.

Authority: T.C.A. §§ 56-1-308, 47-18-204, and 47-18-206.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on _____ (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 6/21/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 6/21/16

Notary Public Signature: Denise M Lewis

My commission expires on: 11/15/20

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

8/4/2016

Date

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Filed with the Department of State on: 8/12/16

Effective on: 11/10/16

Tre Hargett

Tre Hargett
Secretary of State

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Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

This rule would affect any small business providing beauty pageant services. There are currently 108 registered beauty pageant operators in Tennessee.

2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

These new rules do not create any reporting, recordkeeping and other administrative costs required for compliance in excess of what is already in place by statute.

3. A statement of the probable effect on impacted small businesses and consumers:

These rules will have no effect on small businesses or consumers.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

The proposed new rules are minimally burdensome/intrusive to small businesses.

5. A comparison of the proposed rule with any federal or state counterparts:

There are no federal counterparts to the issues addressed by these rules. Arkansas has a similar counterpart to the issues addressed by these rules:
<http://www.dfa.arkansas.gov/offices/exciseTax/MiscTax/Pages/beautyPageants.aspx>.

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications. An exemption is already in place for entities holding beauty pageants that are affiliated with local government, civic clubs, fairs, religious organizations, etc.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here)

There is no expected impact on local government by the promulgation of these rules.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These new rules set out the requirements for the registration and potential discipline for failure to appropriately register beauty pageants and beauty pageant operators.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There is no known federal law, regulation or state law mandating promulgation of these rules. T.C.A. § 47-18-204(b) states that the Commissioner may adopt rules to administer the registration of Beauty Pageants.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All current and future beauty pageants operators will be affected by these rules. Their position is unknown. The Commissioner urges adoption of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is no probable state increase or decrease in local government revenues and expenditures resulting from the promulgation of these amendments.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Benjamin P. Glover
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

Nikole Avers
Executive Director – Beauty Pageants
Division of Regulatory Boards
Department of Commerce and Insurance

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Benjamin P. Glover
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

Nikole Avers

Executive Director – Beauty Pageants
Division of Regulatory Boards
Department of Commerce and Insurance

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

These new rules are being promulgated due to a legislative change from T.C.A. § 47-18-208 which moved this program and several others from the Division of Consumer Affairs and underneath the Division of Regulatory Boards. The purpose of these rules is to allow the Division of Regulatory Boards to be able to enforce the laws governing the programs and also pursue violators of the law and rules in order to protect Tennessee consumers.