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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission: Licensing Contractors
Division: Regulatory Board Division
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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.)

Chapter Number	Chapter Title
Chapter 0680-01	Licensing
Rule Number	Rule Title
0680-01-.25	Contracting in Correct Name

Chapter Number	Chapter Title
Chapter 0680-07	General Regulations for Home Improvement Contractors
Rule Number	Rule Title
0680-07-.01	Fees
0680-07-.02	Definitions
0680-07-.03	License for Home Improvement Contractors
0680-07-.04	Advertising
0680-07-.05	Notice of Change of Licensing Information
0680-07-.06	Time Limitations for Filing Complaints
0680-07-.07	Application for Licensure as Home Improvement Contractor
0680-07-.08	Temporary Licenses
0680-07-.09	License Renewals
0680-07-.10	Credit Reports
0680-07-.11	Financial Statement
0680-07-.12	Filing of Security Prior to Issuance of License
0680-07-.13	Bonds
0680-07-.14	County Adoption of Home Improvement Laws

(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>)

Chapter 0680-01
Licensing

New Rules

Table of Contents

0680-01-.25 Contracting in Correct Name.

Upon receiving certificate of licensure from this Board, the licensee has an affirmative responsibility to enter into contracts and operate its related contracting business under the name in which it is licensed in order to notify and prevent confusion on the part of the public at large of an entity's licensure status. Contracting in a name different than that in which an entity is licensed by this Board is considered a violation of this chapter, and will be subject to discipline accordingly.

Authority: T.C.A. §§62-6-108(a) and 62-6-115.

Chapter 0680-7
General Regulations for Home Improvement Contractors

New Rules

Table of Contents

0680-07-.01	Fees.
0680-07-.02	Definitions.
0680-07-.03	License for Home Improvement Contractors.
0680-07-.04	Advertising.
0680-07-.05	Notice of Change of Licensing Information.
0680-07-.06	Time Limitations for Filing Complaints.
0680-07-.07	Application for Licensure as Home Improvement Contractor.
0680-07-.08	Temporary Licenses.
0680-07-.09	License Renewals.
0680-07-.10	Credit Reports.
0680-07-.11	Financial Statement.
0680-07-.12	Filing of Security Prior to Issuance of License.
0680-07-.13	Bonds.
0680-07-.14	County Adoption of Home Improvement Law.

0680-07-.01 Fees.

- (1) Initial application and license fee (biennial)\$250.00 per business location
- (2) Renewal fee (biennial).....\$200.00 per business location
- (3) Late renewal fee \$10.00 each month; not to exceed three (3) months
- (4) Duplicate license fee for one lost, destroyed or mutilated.....\$10.00

Authority: T.C.A. §§ 62-6-504 and 62-6-513(3).

0680-07-.02 Definitions.

The definitions contained in *T.C.A. § 62-6-501*, are incorporated into these regulations by references as 0680-07-.02.

Authority: *T.C.A. § 62-6-513(3)*.

0680-07-.03 License for Home Improvement Contractors.

All home improvement contractors required to be licensed shall have licenses on and after January 1, 1989.

Authority: *T.C.A. §§ 62-6-502 and 62-6-513(3)*.

0680-07-.04 Advertising.

- (1) A licensed home improvement contractor may not solicit home improvement business by way of advertisement in a newspaper, magazine, circular, or printed document, or by way of television or radio announcement, unless the name and license number of the contractor is stated in the advertisement.
- (2) A licensee may not directly or indirectly publish any advertisement relating to home improvements, including finance or credit terms, that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.
- (3) General statements, such as "Factory to You," "Direct to You," "Buy from the Manufacturer," "Save the Middleman's Profit," or phrases of similar meaning may not be used unless the advertiser is actually the maker or producer of the merchandise advertised or offered for sale.

Authority: *T.C.A. §§ 62-6-510(9) and 62-6-513(3)*.

0680-07-.05 Notice of Change of Licensing Information.

A licensee shall notify the Board in writing within thirty (30) days of any change of control in ownership, management, address or trade name. Upon notification of a substantial change in control of ownership, the Board reserves the right to require a new application for licensure.

Authority: *T.C.A. §§ 62-6-506(h) and 62-6-513(3)*.

0680-07-.06 Time Limitations for Filing Complaints.

The Board may summarily dismiss any complaint brought against a licensee after one (1) year from the date of the home improvement contract for the work from which the complaint arises, unless the Board finds that the delay was justified and does not result in an undue burden for the licensee.

Authority: *T.C.A. §§ 62-6-513(3) and 62-6-513(4)*.

0680-07-.07 Application for Licensure as Home Improvement Contractor.

- (1) An application for licensure as a home improvement contractor, whether it is in the name of an individual, partnership, proprietorship, or corporation, may not be accepted, if the name under which the licensee will be trading is the name being used by an existing licensee, or is so similar to the name being used by an existing licensee that it will cause confusion on the part of the public at large, unless the applicant has obtained exclusive use of this name under the federal trademark laws.

- (2) If the applicant's mailing address is a post office box, the applicant must also include a physical address for the business location.

Authority: T.C.A. §§ 62-6-506(c) and 62-6-513(3).

0680-07-.08 Temporary Licenses.

- (1) Pursuant to T.C.A. § 62-6-506(d), the Executive Director may grant an application for a home improvement license a temporary license pending a final decision of the Board on the Application for a permanent license if:
 - (a) applicant has properly filed for a permanent license and has paid the requisite license fee;
 - (b) applicant has filed a bond or evidence of financial responsibility in accordance with T.C.A. §62-6-506(h);
 - (c) applicant submits a written request for a temporary license to the Executive Director; and
 - (d) Executive Director determines that granting the applicant a temporary license is in the public interest and that granting the applicant a temporary license does not pose a substantial risk of harm to owners for whom the applicant would do home improvement work.
- (2) As soon as reasonably possible after receiving a written request for a temporary license, but not more than forty-five (45) days after receiving the request, the Executive Director shall inform the applicant in writing whether the Executive Director has denied or granted the applicant a temporary license. If the Executive Director grants an applicant a temporary license, the writing to the applicant shall state that the temporary license terminates automatically when the Board decides to issue or deny the applicant a permanent license and that the Executive Director can terminate the temporary license at any time before final action on the application for a permanent license. Notwithstanding the above, a temporary license shall automatically expire after sixty (60) days from the effective date, and may not be renewed. If an additional application for a temporary license is filed within thirty (30) days after expiration of a previously issued temporary license, then the fee shall be twenty-five dollars (\$25.00).
- (3) When the Executive Director issues a temporary license to an applicant, the Executive Director shall issue the applicant a license which is specially marked as temporary. This temporary license may be in the form of a letter from the Executive Director. The Executive Director shall state in this letter the effective date of the temporary license.
- (4) A temporary license shall automatically expire if the Board issues a Final Order denying the applicant's request for a permanent license.
- (5) The Executive Director or the Board may terminate a temporary license at any time for any reason which is not arbitrary or capricious. When the Executive Director or the Board terminates a temporary license, it shall take effect upon receipt by the applicant of the notice of termination, or ten (10) days after the mailing of the notice of termination, or whichever comes first.

Authority: T.C.A. §§ 62-6-506(c), 62-6-506(d) and 62-6-513(3).

0680-07-.09 License Renewals.

- (1) An application for a license previously issued which is received within one (1) year from the date of issue shall be presumed to be an application for a renewal of that license; no renewal application will be accepted more than ninety (90) days after the expiration of the license.
- (2) An application for a license previously issued which is received more than ninety (90) days from the date of the previously issued license's expiration shall be presumed to be an application for a new license.

- (3) Effective Date of Renewals. A license renewed pursuant to this regulation may not be retroactive to the date that the previously issued license expired, but shall take effect on the date that the applicant fulfills the Board's requirements for renewal. The license shall expire two (2) years from the date on which the previously issued license expired.

Authority: T.C.A. §§ 62-6-506(g), 62-6-513(3) and 62-6-507(d).

0680-07-.10 Credit Reports.

- (1) The Board in its discretion may require an applicant for an original contractor's license to submit to the Board a credit report from an approved credit reporting agency and a statement of all outstanding judgements against the applicant.
- (2) The Board shall consider this credit report and statement in determining whether the applicant has demonstrated financial solvency.

Authority: T.C.A. §§ 62-6-506(a) and 62-6-513(3).

0680-07-.11 Financial Statement.

The Board may require any applicant to submit a reviewed financial statement attested to by either a certified public accountant or licensed public accountant; or on a form prescribed by the Board with a notarized affidavit, in order to determine the applicant's financial stability.

Authority: T.C.A. §§ 62-6-506(a) and 62-6-513(3).

0680-07-.12 Filing of Security Prior to Issuance of License.

- (1) The requirements of T.C.A. § 62-6-506(h) must be effective and evidence thereof filed with the Board prior to issuance of the contractor's license.
- (2) Upon cancellation of an instrument described in T.C.A. § 62-6-506(h) the licensee must notify the Board in writing within ten (10) days of such cancellation.

Authority: T.C.A. §§ 62-6-506(h) and 62-6-513(3).

0680-07-.13 Bonds.

- (1) Bonds shall be written on a form approved by the Insurance Commissioner, available through the Board, which shows the name of the principal as it appears on the license application.
- (2) Description of Bonds.
 - (a) Cash Bonds.
Cash bonds may not include personal checks.
Cash bonds may include:
 1. Currency, which shall be deposited with the State Treasurer, subject to the order of the Board, and which may not earn interest;
 2. Cashier's check, certificate of deposit for a term of at least two (2) years or certified check:
 - (i) Issued by a financial institution;

- (ii) Showing the name of the purchaser; and
 - (iii) Assigned and payable to the Board;
3. Savings and loan association certificates, passbook or share accounts, credit union or share accounts, passbook savings or other similar accounts assigned and payable to the Board, which shall be issued for periods of not less than one (1) year and accompanied by delivery of the certificate passbook, share account, certificate, passbook or other similar account to the Board.

(b) Property Bond

- 1. A property bond shall be the assignment to the Board by an owner applicant of an interest of ten thousand dollars (\$10,000.00) in real property located in Tennessee; and submission of a title search showing any encumbrances on the property.
- 2. The Board may require the applicant to submit an appraisal of the property to ascertain that the unencumbered value of the property is at least ten thousand dollars (\$10,000.00).

(c) Surety Bond.

- 1. A surety bond shall be in the amount of ten thousand dollars (\$10,000.00), issued to a home improvement contractor by an approved insurance company authorized to do business in Tennessee, for the benefit of a claimant, who has been damaged by the contractor's breach of a home improvement contract. If the bond ceases to be in effect, the home improvement contractor's license shall become invalid.
- 2. The Board may refuse to accept a bond written for a home improvement contractor by a surety which has failed to meet its obligations under this subtitle.

(d) Letter of Credit.

- 1. A bond in the form of an irrevocable letter of credit shall be an agreement, between a financial institution and a home improvement contractor on record at the Board wherein the FDIC insured financial institution agrees to extend an irrevocable line of credit amounting to ten thousand dollars (\$10,000.00), for the purpose of honoring claims filed with the Board.
- 2. The irrevocable letter of credit shall show the name of the financial institution extending the credit and the name of the applicant or home improvement contractor to whom the letter of credit was issued as it appears on the applicant's or home improvement contractor's license application.

(3) Release of Bond.

A bond may not be released until whichever occurs last:

- (a) One (1) year after the inactivation, expiration or revocation of home improvement contractor's license;
- (b) After the pending claims against the licensee filed during the period described in 3(a) have been heard and satisfied, or dismissed.

Authority: T.C.A. §§ 62-6-506(h) and 62-6-513(3).

0680-07-.14 County Adoption of Home Improvement Law.

The legislative body of the county may, by two-thirds (2/3) majority vote, adopt the home improvement license law. Such county must notify the Board in writing of the effective date to implement the requirements to home improvement contractors.

Authority: T.C.A. §62-6-516(b).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Cindi G. DeBusk	X				
Cliff Hunt	X				
Frank Neal	X				
Ernest M. Owens				X	
Larry Parks				X	
Marvin Sandrell				X	
Reese Smith				X	
Jack Ronnie Tickle	X				
Keith Whittington	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board for Licensing Contractors on September 24, 2008, (09/24/2008), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/31/08
 Notice published in the Tennessee Administrative Register on: 08/01/08
 Rulemaking Hearing(s) Conducted on: (add more dates). 09/24/08



Date: 2/9/09
 Signature: [Handwritten Signature]
 My Commission Expires September 25, 2010
 Name of Officer: Michael D. Driver
 Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 2/9/09
 Notary Public Signature: [Handwritten Signature]
 My commission expires on: 9/25/10

All rulemaking hearing 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.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
3-3-09
 Date

Department of State Use Only

Filed with the Department of State on: 3/19/09

Effective on: 6/2/09

Tre Hargett

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

No comments were received at the public hearing.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Economic Impact Statement:

1. Types of small businesses directly affected:

All businesses that provide home improvement construction services greater than three thousand dollars (\$3,000.00) in value will have to obtain a license.

2. Projected reporting, recordkeeping, and other administrative costs:

All small businesses that provide home improvement construction services greater than three thousand dollars (\$3,000.00) in value will have to obtain a license with the Department. The license fees required to be paid will be the same new fee that was paid before the Home Improvement Contractor Commission became a part of the Board for Licensing Contractors.

3. Probable effect on small businesses:

This new rule will not have any new additional effect on small business.

4. Less burdensome, intrusive, or costly alternative methods:

There are no alternative means available to accomplish the objectives.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee and to accomplish the objectives dictated by the General Assembly in creating this registration program, it is imperative that small businesses are held to the same standards as larger businesses regarding home improvement construction projects.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

The rules of the Tennessee Board for Licensing Contractors are amended to reflect the following:

Rule 0680-01-.25 Contracting in Correct Name is created and states that contractors have an affirmative duty to contract only in the name that they are licensed under.

Rule 0680-07-.01 Fees is created and sets out the fee schedule, renewal fee schedule, late renewal fee, and duplicate license fee for home improvement contractors.

Rule 0680-07-.02 Definitions is created and incorporates the definitions used in Tenn. Code Ann. § 62-6-501.

Rule 0680-07-.03 License for Home Improvement Contractors is created and requires that home improvement contractors be licensed.

Rule 0680-07-.04 Advertising is created and requires that home improvement contractors state their name and license number in advertisements, requires that home improvement contractors not create misleading advertising, and places limitations on the use of statements that the contractor is the manufacturer of the product when that is not the case.

Rule 0680-07-.05 Notice of Change of Licensing Information is created and states that certain licensing changes must be brought to the Board's attention with thirty days.

Rule 0680-07-.06 Time Limitations for Filing Complaints is created and states that complaints must be brought within one year of the work from which the complaint arises unless the Board finds the delay is justified.

Rule 0680-07-.07 Application for Licensure as Home Improvement Contractor is created and states that a home improvement contractor may not be licensed under a name that is used by another licensee or may create confusion with another licensee. This rule further requires that a physical address be provided to the Board.

Rule 0680-07-.08 Temporary Licenses is created and allows the Executive Director of the Board to issue a temporary license to an applicant.

Rule 0680-07-.09 License Renewals is created and states that a license may not be renewed more than ninety (90) days after it expires.

Rule 0680-07-.10 Credit Reports is created and allows the Board to require a credit report from those applying for an original license for purposes of determining financial solvency.

Rule 0680-07-.11 Financial Statement is created and allows the Board to require that any applicant submit an attested financial statement.

Rule 0680-07-.12 Filing of Security Prior to Issuance of License is created and requires that the licensee post the required bond prior to the issuance of a license.

Rule 0680-07-.13 Bonds is created and states that requirements for a bond that is sufficient to meet the statutory requirement and states the requirements for a bond to be released.

Rule 0680-07-.14 County Adoption of Home Improvement Law allows counties to adopt the home improvement contractor law by two-thirds vote of the legislative body of that county.

- (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;

The proposed amendments to the rules of the Department of Commerce and Insurance, Tennessee Board for

Licensing Contractors are made pursuant to Tenn. Code Ann. §§ 62-6-108(a), 62-6-115, 62-6-502, 62-6-504, 62-6-506(a), 62-6-506(c), 62-6-506(d), 62-6-506(g), 62-6-506(h), 62-6-507(d), 62-6-510(9), 62-6-513(3), 62-6-513(4), and 62-6-516(b).

- (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;

These amendments to the rules of the Tennessee Board for Licensing Contractors will affect license holders in good standing and also license applicants. No comments were received regarding the adoption or rejection 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 attorney general and reporter opinions or judicial rulings that directly relate 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;

The fiscal impact of Rule 0680-01-.25 Contracting in Correct Name is expected to be minimal. The fiscal impact of the Home Improvement Contractor rules is expected to be minimal because fees for home improvement contractors were previously collected by the Home Improvement Contractor Commission, which became a part of the Board for Licensing Contractors.

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

Carolyn Lazenby, Executive Director of the Tennessee Board for Licensing Contractors, and Michael Driver, Assistant General Counsel for the Tennessee Department of Commerce and Insurance Regulatory Boards Division, have substantial knowledge and understanding of these rules.

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

Michael Driver will explain the rules at any scheduled meeting of the Government Operations Committee.

- (H) Office address and telephone number 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.

None.