

Department of State
Division of Publications
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For Department of State Use Only

Sequence Number: 09-09-11
 Rule ID(s): 5017
 File Date (effective date): 09/20/2011
 End Effective Date: 03/18/2012

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Department of State
Division:	Business Services
Contact Person:	Nathan Burton
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to T.C.A. §4-5-208(a)(5), the Secretary of State is authorized to promulgate emergency rules when the agency is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures described in Title 4, Chapter 5 for the promulgation of permanent rules. On May 21, 2011 the General Assembly passed SB 1550, which became Tenn. Pub. Acts, ch. 422 (2011) and was signed into law on June 6, 2011. The Act requires changes to the Workers' Compensation Exemption Registration rules effective on October 1, 2011. Further, the Act specifically authorizes the Secretary of State to "make any necessary provisions for the implementation of the act."

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/RuleTitle per row)

Chapter Number	Chapter Title
1360-09-01	Workers' Compensation Exemption Registration
Rule Number	Rule Title
1360-09-01-.01	Definitions
1360-09-01-.05	Fees

(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 1360-09-01
Workers' Compensation Exemption Registration

Rule 1360-09-01-.01 Definitions is amended by deleting the text of subdivision (h) in its entirety and substituting instead the following language so that, as amended, subdivision (h) shall read as follows:

Rule 1360-09-01-.01 Definitions.

- (1) (h) "Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320; provided, where more than one (1) classification applies, the governing classification, as that term is defined by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, shall be used to determine whether the person or entity is engaged in the construction industry.

Authority: T.C.A. §§4-5-208, 50-6-901(8) and Tenn. Pub. Acts, ch. 422 (2011).

Rule 1360-09-01-.05 Fees is amended by adding subdivisions (i) and (j) so that, as amended, the additional subdivisions shall read as follows:

Rule 1360-09-01-.05 Fees.

- (1) (i) The fee for the issuance of a second or subsequent construction services provider workers' compensation exemption registration is twenty dollars (\$20) per registration.
- (j) The fee for the filing of a second or subsequent construction services provider workers' compensation exemption renewal is twenty dollars (\$20) per renewal.

Authority: T.C.A. §§4-5-208, 50-6-912 and Tenn. Pub. Acts, ch. 422 (2011).

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: 9/8/11

Signature: Tre Hargett

Name of Officer: TRE HARGETT

Title of Officer: SECRETARY OF STATE

Subscribed and sworn to before me on: September 8, 2011

Notary Public Signature: Mona Lee Hart

My commission expires on: Nov. 7 2012

All emergency 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

9-16-11

Date

Department of State Use Only

Filed with the Department of State on: 9/20/11

Effective for: 180 *days

Effective through: 3/18/12

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett
Secretary of State

SECRETARY OF STATE
PUBLICATIONS

2011 SEP 20 AM 11:15

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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)

If adopted, these rules will not have any impact on the expenditures or revenues of local government.

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;

The rule is being promulgated because effective October 1, 2011, additional construction services provider workers' compensation exemption registrations are authorized by Tenn. Pub. Act, ch. 422 (2011).

- (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;

Tenn. Pub. Acts, ch. 422 (2011) codified in T.C.A. §50-6-901 et seq. authorizes the Secretary of State to "make necessary provisions for the implementation" of Tenn. Pub. Acts, ch. 422 (2011).

- (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;

The persons, organizations, corporations or governmental entities listed below should urge adoption of this rule: Department of Commerce & Insurance, Board for Licensing Contractors, Department of Finance & Administration, Department of Labor and Workforce Development, Department of Revenue, Department of State, Associated Builders and Contractors of Middle Tennessee, Home Builders Association of Tennessee, Insurors of Tennessee, Miller & Martin PLLC, National Federation of Independent Business in Tennessee, Tennessee Attorney General's Office and the Tennessee General Assembly.

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Representative Charles Curtiss - rep.charles.curtiss@capitol.tn.gov

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

There are no attorney general and reporter opinions that directly relate to the rule.

- (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;

Increase State Revenue – \$2,000/Recurring/Employee Misclassification Education and Enforcement Fund

Increase State Expenditures - \$44,700 One-Time/ Employee Misclassification Education and Enforcement Fund

Assumptions:

- Based on information provided by the Secretary of State, 100 individuals who are currently listed on the exemption registry will apply. The exemption registry fee is \$20. Such fee will be due every two years. Therefore, an increase in state revenue of \$2,000 (100 X \$20 fee) every two years to the Employee Misclassification Education and Enforcement Fund (EMEEF) beginning in FY11-12.
- Program coding for the exemption registry will be required. An increase in one-time state expenditures of \$44,700 for 360 contractor programming hours and 108 contractor analyst coding hours. •

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

Nathan Burton, Director of Business Services, Department of State, nathan.burton@tn.gov, 615-741-2819

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

Nathan Burton, Director of Business Services, Department of State, nathan.burton@tn.gov, 615-741-2819

- (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

Nathan Burton, Director of Business Services, Department of State, 312 Rosa L. Parks, Ave., Snodgrass Tower, 6th Floor, Nashville, TN, 37243. 615-741-2819, nathan.burton@tn.gov

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

Not applicable

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Chapter 1360-09-01
Workers' Compensation Exemption Registration

Rule 1360-09-01-.01 Definitions is amended by deleting the text of subdivision (h) in its entirety and substituting instead the following language so that, as amended, subdivision (h) shall read as follows:

1360-09-01-.01 DEFINITIONS.

- (1) The following terms shall have the respective meanings provided in this rule.
- (a) "Active and in good standing as reflected in the records of the secretary of state" means a corporation, limited liability company, or partnership that is in existence, registered or authorized to transact business in this state as reflected in the records of the secretary of state; and in the case of a corporation, limited liability company, limited liability partnership, or limited partnership, such entity is in good standing with the Tennessee department of revenue.
 - (b) "Board" means the state board for licensing contractors.
 - (c) "Commercial construction project" means any construction project that is not:
 - 1. The construction, erection, remodeling, repair, improvement, alteration or demolition of one, two, three or four family unit residences not exceeding three stories in height or accessory use structures in connection with the residences.
 - 2. The construction, erection, remodeling, repair, improvement, alteration or demolition of any building or structure for use and occupancy by the general public which, pursuant to T.C.A. §62-6-112(f)(2), a small commercial building contractor is authorized to bid on and contract for.
 - 3. Performed by any person, municipality, county, metropolitan government, cooperative, board, commission, district, or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste water services, telephone service, telecommunications service, cable service, or internet service or any combination thereof, for sale to consumers in any particular service area.
 - (d) "Construction project" means the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking; provided that if a general contractor contracts to erect, remodel, repair, improve, alter or demolish multiple buildings, structures or undertakings in one contract, all such buildings, structures or undertakings described in such contract shall constitute one construction project.
 - (e) "Construction services provider" or "provider" means any person or entity engaged in the construction industry.
 - (f) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation of a corporation that in the case of a domestic corporation is formed under the laws of this state pursuant to T.C.A. Title 48, Chapters 11 – 68 or in the case of a foreign corporation is authorized to transact business in this state pursuant to T.C.A. Title 48, Chapters 11 – 68; provided that a domestic or foreign corporation is active and in good standing as reflected in the records of the secretary of state.
 - (g) "Direct labor" means the performance of any activity that would be assigned to the Contracting Group as those classifications are designated by the rate service organization designated by the commissioner of commerce and insurance as provided in T.C.A. §56-5-320, but does not include:
 - 1. Classification code 5604, or any subsequent classification code, for construction executives, supervisors, or foremen that are responsible only for the oversight of laborers.

2. Classification code 5606, or any subsequent classification code, for project managers, construction executives, construction managers and construction superintendents having only administrative or managerial responsibilities for construction projects by exercising operational control indirectly through job supervisors or foremen.

~~(h) "Engaged in the construction industry" means any person or entity assigned to the Contracting Group as those classifications are designated by the rate service organization designated by the commissioner of commerce and insurance as provided in T.C.A. §56-5-320.~~

(h) "Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320; provided, where more than one (1) classification applies, the governing classification, as that term is defined by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, shall be used to determine whether the person or entity is engaged in the construction industry.

- (i) "Family owned business" means a business entity in which members of the same family of the applicant have an aggregate of at least ninety-five percent ownership of such business.
- (j) "General contractor" means the person or entity responsible to the owner or developer for the supervision or performance of substantially all of the work, labor, and the furnishing of materials in furtherance of the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking and who contracts directly with the owner or developer of the building, structure or other undertaking; "general contractor" includes a prime contractor.
- (k) "Good standing with the Tennessee department of revenue" means the secretary of state has received and verified through electronic confirmation or a certificate of tax clearance issued by the commissioner of revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner.
- (l) "Member of a limited liability company" means any member of a limited liability company formed pursuant to T.C.A. Title 48, Chapters 201 – 249 that is active and in good standing as reflected in the records of the secretary of state.
- (m) "Members of the same family of the applicant" means parents, children, siblings, grandparents, grandchildren, stepparents, stepchildren, stepsiblings, or spouses of such, and includes adoptive relationships.
- (n) "Partner" means any person who is a member of an association that is formed by two (2) or more persons to carry on as co-owners of a business or other undertaking for profit and such association is active and in good standing as reflected in the records of the secretary of state.
- (o) "Person" means only a natural person and does not include a business entity.
- (p) "Registry" means the construction services provider workers' compensation exemption registry established pursuant to this part and maintained by the secretary of state.
- (q) "Sole proprietor" means one (1) person who owns a form of business in which that person owns all the assets of such business.

Authority: T.C.A. §§4-5-208, 50-6-901(8) and Tenn. Pub. Acts, ch. 422 (2011).

Rule 1360-09-01-.05 Fees is amended by adding subdivisions (i) and (j) so that, as amended, the additional subdivisions shall read as follows:

1360-09-01-.05 FEES.

- (1) The following fees apply to documents issued or filed in writing or online:
 - (a) The fee for the issuance of a construction services provider registration to providers who have not been issued a license by the board is one hundred dollars (\$100).
 - (b) The fee for the issuance of a construction services provider workers' compensation exemption is one hundred dollars (\$100).
 - (c) The fee for the filing of correction information pursuant to T.C.A. §50-6-905(c) is twenty dollars (\$20).
 - (d) The fee for the filing of change of address information pursuant to T.C.A. §50-6-905(d) is twenty dollars (\$20).
 - (e) The fee for the filing of a construction services provider workers' compensation exemption renewal is one hundred dollars (\$100).
 - (f) The fee for the filing of a construction services provider registration renewal to providers who have not been issued a license by the board is one hundred dollars (\$100).
 - (g) The fee for the filing of a revocation pursuant to T.C.A. §50-6-908(a) is twenty dollars (\$20).
 - (h) The fee for the issuance of a copy of the notice issued pursuant to T.C.A. §50-6-905(a)(1) is twenty dollars (\$20).
 - (i) The fee for the issuance of a second or subsequent construction services provider workers' compensation exemption registration is twenty dollars (\$20) per registration.
 - (j) The fee for the filing of a second or subsequent construction services provider workers' compensation exemption renewal is twenty dollars (\$20) per renewal.
- (2) In addition to the fees authorized in subsection (1), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.
- (3) To facilitate credit card payment and fee collection the Secretary of State may establish a merchant ID or may cause one to be established in the Department of Labor and Workforce Development specifically for the Employee Misclassification Education and Enforcement Fund. If the merchant ID is established in the Department of Labor and Workforce Development all transaction and other fees associated with credit card payments will be paid directly from the Employee Misclassification Education and Enforcement Fund.

Authority: T.C.A. §§4-5-208, 50-6-912 and Tenn. Pub. Acts, ch. 422 (2011).