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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
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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.

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-.02	Office Hours
1360-09-01-.03	Exemption Application Delivery
1360-09-01-.04	Document Form Requirements
1360-09-01-.05	Fees
1360-09-01-.06	Methods of Payment
1360-09-01-.07	Overpayment and Underpayment Policies
1360-09-01-.08	Records Services
1360-09-01-.09	New Practices and Technologies

(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>)

**RULES
OF
THE TENNESSEE DEPARTMENT OF STATE
DIVISION OF BUSINESS SERVICES**

**CHAPTER 1360-09-01
WORKERS' COMPENSATION EXEMPTION REGISTRATION
GENERAL PROVISIONS**

TABLE OF CONTENTS

1360-09-01-.01 Definitions	1360-09-01-.06 Methods of payment
1360-09-01-.02 Office hours	1360-09-01-.07 Overpayment and underpayment policies
1360-09-01-.03 Exemption application delivery	1360-09-01-.08 Records services
1360-09-01-.04 Document form requirements	1360-09-01-.09 New practices and technologies
1360-09-01-.05 Fees	1360-09-01-.10 Effective date

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.
- (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. §50-6-901 and Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.02 OFFICE HOURS.

- (1) Although the filing office maintains regular office hours of 8:00 a.m. to 4:30 p.m. Central time, Monday through Friday and is closed on legal holidays as pursuant to T.C.A. §15-1-101, it may receive transmissions electronically 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruptions of service. Electronic communications may be retrieved and processed periodically (but no less often than once each day the filing office is open for business) on a batch basis.

Authority: Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.03 EXEMPTION APPLICATION DELIVERY.

- (1) Exemption applications may be tendered for filing as follows.
 - (a) Personal delivery, at the filing office's street address. The file time for an application delivered by this method is when delivery of the application is accepted and received by the filing office (even though the application may not yet have been accepted for filing and subsequently may be rejected).
 - (b) Courier delivery, at the filing office's street address. The file time for an application delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the application is receipted by the filing office (even though the application may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. An application delivered after regular business hours or on a day the filing office is not open for business will have a filing time at the earlier of the time the application is receipted by the filing office on the next day the office is open for business, or the close of business on the next day the filing office is open for business.
 - (c) Postal service delivery, to the filing office's mailing address. The file time for an application delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the application is receipted by the filing office (even though the application may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. An application

delivered after regular business hours or on a day the filing office is not open for business will have a filing at the earlier of the time the application is received by the filing office on the next day the office is open for business, or the close of business on the next day the filing office is open for business.

- (d) Electronic mail (if and when operational), to the filing office's website address. The file time for an application delivered by this method is, notwithstanding the time of delivery, at the earlier of the time the application is received (even though the application may not yet have been accepted for filing and may be subsequently rejected), or the next close of business following the time of delivery. An application delivered after regular business hours or on a day the filing office is not open for business will have a filing at the earlier of the time the application is received by the filing office on the next day the office is open for business, or the close of business on the next day the filing office is open for business.
- (e) Direct on-line and web page data entry (if and when operational). Exemption applications may be entered on-line. The file time for an application delivered by this method is the time that all required elements of the application have been entered into the filing office's direct on-line entry system in the proper format and such entry is acknowledged by such system.

Authority: T.C.A. §50-6-904 and Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.04 DOCUMENT FORM REQUIREMENTS.

- (1) Exemption applications and amendment documents in written form shall conform to the forms designed by the secretary of state.
- (2) Exemption applications and amendment documents filed online (if and when operational) shall conform to the forms designed by the secretary of state.

Authority: T.C.A. §§50-6-904, 50-6-905 and Tenn. Pub. Acts, ch. 1149, §19(a).

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).
- (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. §§50-6-904, 50-6-905, 50-6-908, 50-6-912, 50-6-913 and Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.06 METHODS OF PAYMENT.

- (1) Filing fees and online transaction fees may be paid by the following methods:
 - (a) Cash. The filing office will only accept cash payment in person to the cashier in the Division of Accounting at the filing office.
 - (b) Cashier's Check. The filing office may accept a cashier's check that contains the name of the remitter. The cashier's check must be dated within three (3) months of the filing date and must be made payable to the Tennessee Secretary of State. The amount of the Cashier's check must be printed in numerals in dollars and cents, and the cashier's check must contain at least one signature of a person authorized at the financial institution to sign cashier's checks.
 - (c) Paper Check. The filing office may accept a paper check that contains the following information: the name and address of the remitter must be printed on the check; the check must be dated with the current date; the check must be made payable to the Tennessee Secretary of State; the amount of the check must be written in numerals in United States Dollars and Cents; the legal amount of the check must be written out in words; and the check must contain at least one signature of a person authorized to sign checks on the remitter's account. Paper checks presented for payment may be converted to The Check Clearing for the 21st Century Act standard.
 - (d) Electronic Check (if and when operational). The filing office may accept an electronic check for payment that contains the following information: the name and address of the remitter, the remitter's ABA routing/transit number, the remitter's bank account number, the name of the remitter's bank account, the amount of the electronic check in united states dollars and cents.

- (e) Money Order. A money order that is made payable to the Tennessee Secretary of State and lists the filing office's street address, the name of the remitter, the address of the remitter, the date the money order was issued, and the amount of the money order in United States Dollars and Cents.
- (f) Electronic funds transfer (if and when operational). The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.
- (g) Debit card (if and when operational). The filing office may accept payment by debit cards issued by approved debit card issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued, the card security code, and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.
- (h) Credit card (if and when operational). The filing office may accept payment by the following credit cards issued by approved credit card issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the person or entity to whom the card was issued, the card security code, and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming.

Authority: Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.07 OVERPAYMENT AND UNDERPAYMENT POLICIES.

- (1) Overpayment. The filing officer shall submit a refund request to the Accounting Division who will process any overpayment to the remitter.
- (2) Underpayment. Upon receipt of a document with an insufficient payment, the filing officer shall return the document along with the original payment to the remitter.

Authority: Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.08 RECORDS SERVICES.

- (1) Construction services provider registration records and workers' compensation records other than records displayed on the registry do not constitute a public record as defined in T.C.A. §10-7-501 *et seq.* and shall not be open for public inspection.
- (2) Exemption applications that meet the requirements of T.C.A. Title 50, Chapter 6, Part 9 shall be published on the registry contained on the secretary of state's website.

Authority: T.C.A. §§50-6-904, 50-6-905 and 50-6-915 and Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.09 NEW PRACTICES AND TECHNOLOGIES.

- (1) The filing officer is authorized to adopt practices and procedures to accomplish receipt, processing, maintenance, retrieval and transmission of, and remote access to filing data by means of electronic, voice, optical and/or other technologies, and, without limiting the foregoing, to maintain and operate, in addition to or in lieu of a paper-based system, a non-paper-based filing system utilizing any of such technologies.

Authority: Tenn. Pub. Acts, ch. 1149, §19(a).

1360-09-01-.10 EFFECTIVE DATE.

- (1) The rules established in Chapter 1360-09-01 shall become effective on January 1, 2011.

Authority: Tenn. Pub. Acts, ch. 1149, §19(a).

* 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 an emergency rule(s), lawfully promulgated and adopted.



Date: 11/17/10

Signature: Tre Hargett

Name of Officer: TRE HARGETT

Title of Officer: SECRETARY OF STATE

Subscribed and sworn to before me on: 11/17/10

Notary Public Signature: Tre Hargett

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.

RE Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
12-6-10
 Date

Department of State Use Only

Filed with the Department of State on: 12/7/10

Effective for: 180 *days

Effective through: 6/5/11

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

Tre Hargett
 Tre Hargett
 Secretary of State

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 PUBLICATIONS

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 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 rule describes the filing requirements to obtain a workers' compensation exemption registration and/or registration as a construction services provider.

- (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. 1149 codified in T.C.A. §50-6-901 et seq. which authorizes the Secretary of State to "promulgate rules and regulation to effectuate the purposes" of Tenn. Pub. Acts, ch. 1149.

- (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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- (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 –

Net Impact – \$26,100/FY10-11/General Fund

\$2,300/Recurring/Earmarked for the Department of State

\$712,500/FY10-11 and biennially thereafter/ Workers' Compensation Employee Misclassification Education and Enforcement Fund (WCEMEEF)

Decrease State Revenue – Net Impact –

\$4,600/FY10-11/Tennessee Occupational Safety and Health Act (TOSHA)

\$451,200/FY11-12 and Subsequent Years/General Fund

\$52,300/FY11-12 and Subsequent Years/TOSHA

Increase State Expenditures –

\$374,800/FY10-11/WCEMEEF

\$304,400/FY11-12 and Subsequent Years/WCEMEEF

Assumptions applied to amendments:

- According to the Department of State, approximately 2,375 construction service providers do not have a license issued by the Board and will apply to be listed on the Workers Compensation Exemption Registry which will be valid for two years at a total fee of \$200 each. Approximately 2,375 do have a license issued by the Board and will apply to be listed on the Workers Compensation Exemption Registry at a total fee of \$100 each.

The total increase to biennially recurring state revenue will be \$712,500 $[(2,375 \times \$100) + (2,375 \times \$200)]$.

- According to the Department of State, approximately 400 additional business entities would register with the Secretary of State every year. An increase to state revenue of \$75,000 from registration fees. Three percent (\$2,300) of fee revenue is allocated to the Department of State and 97 percent (\$72,700) is allocated to the General Fund.
- According to the Department of State, computer programming expenditures associated with this bill as amended will increase one-time state expenditures by \$209,700 $[(507 \text{ Business Analysis IT Pro hours} \times \$80.19 \text{ per hour}) + (1,690 \text{ Program Coding} \times \$100 \text{ per hour})]$.
- An increase to recurring state expenditures of \$12,000 for printing, envelopes, and postage and a recurring increase to state expenditures of \$5,800 for Web services (\$480 per month). The total increase to recurring state expenditures will be \$17,800.
- According to the Department of Labor and Workforce Development, the Department currently investigates 900 requests for investigations into workers' compensation premium deductions from wages.
- According to the Department of Labor and Workforce Development, one additional Workers' Compensation Specialist 4 position at a salary of \$57,500 and benefits of \$19,600, three Workers' Compensation Specialist 1 positions at a salary of \$35,000 and benefits of \$11,900 each (one in each grand division), and one Administrative Assistant 3 position at a salary of \$28,700 and benefits of \$9,800 will be needed in order to investigate the additional requests. Other recurring expenditures associated with five additional employees will be \$30,300. The total increase to recurring state expenditures will be \$286,600. In FY10-11, the recurring expenditures for new positions will begin one month before the March 1 effective date. The total increase to recurring state expenditures in FY10-11 will be approximately \$119,400.
- One-time costs associated with the five new positions will be \$28,000 (office supplies and computer equipment).
- The total increase to state expenditures in FY10-11 from the WCEMEEF will be \$374,800. The total increase to recurring state expenditures beginning in FY11-12 will be \$304,400.
- Under current law, certain sole proprietors and partners engaged in the construction industry are not required to carry workers' compensation insurance until March 28, 2011. Beginning March 28, 2011 these workers would be required to carry workers' compensation insurance and pay premium taxes of four percent plus a 0.04 percent surcharge for TOSHA.
- Based on information provided by the Department of Commerce and Insurance, the exemption of individuals carrying workers' compensation insurance will result in a recurring decrease in state revenue of approximately \$700,000 beginning March 28, 2011. The total decrease in FY10-11 will be \$175,000; approximately \$15,900 is earmarked for TOSHA and \$159,100 is from the General Fund. The total decrease in FY11-12 and subsequent years is \$636,400 from the General Fund and \$63,600 from TOSHA.
- It is estimated that 500 additional policies will be purchased by individuals not eligible for exemption, on an average payroll of \$37,500 and an average policy rate of 15 percent will result in an increase to recurring state revenue of approximately \$123,800. Approximately \$11,300 is earmarked for TOSHA and \$112,500 will be deposited into the General Fund.
- The net impact in FY10-11 will be an increase to state revenue of \$26,100 $(\$112,500 + \$72,700 - \$159,100)$ to the General Fund and a decrease to state revenue of \$4,600 $(\$15,900 - \$11,300)$ to TOSHA.
- The net impact in FY11-12 and subsequent years will be a \$451,200 $(\$636,400 - \$112,500 - \$72,700)$ decrease to recurring state revenues in the General Fund and a decrease of \$52,300 $(\$63,600 - \$11,300)$ to TOSHA.

(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