

Public Necessity Rules  
of the  
Tennessee Board for Licensing Contractors

Statement of Necessity Requiring Public Necessity Rules

Pursuant to T.C.A. § 4-5-209, the Board for Licensing Contractors (“Board”) is authorized to promulgate public necessity rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules. T.C.A. §4-5-209(b) provides that a public necessity rule may only be effective for a period of not longer than one hundred and sixty-five (165) days and may only be readopted as provided by T.C.A. §4-5-208 for readoption of emergency rules. T.C.A. § 4-5-208 provides that an agency may adopt an emergency rule if an agency finds that an immediate danger to the public health, safety or welfare exists and the nature of the danger is such that any other form of rulemaking would not adequately protect the public. The statute further provides that an agency shall not adopt the same emergency rule within one (1) calendar year from its adoption, unless the agency clearly establishes that it could not reasonably be foreseen during the initial one hundred and sixty-five day (165) period that such an emergency would continue or would likely recur during the next nine (9) months.

T.C.A. § 62-6-111(a)(1) and Chapter 130 of the Public Acts of 2007, (hereinafter “Act”), passed May 10, 2007 and made effective July 1, 2007, required the Board for Licensing Contractors to establish rules for the amount of general liability insurance and any other information the Board may require regarding new and renewal applicants for general contractor licenses. Although the law provides that the applicants and licensees shall submit an affidavit affirming that they maintain general liability insurance and the amount of general liability insurance, the law does not provide how much general liability insurance an applicant and licensee must maintain.

Public Chapter 460, which was passed on June 4, 2007 and also made effective on July 1, 2007, served to delete T.C.A. §§ 62-37-101, et seq. (“Home Improvement Licensing Act”) in its entirety and create a new section under the “Contractor’s Licensing Act of 1994”, specifically T.C.A. §§ 62-6-501, et seq., meant to specifically govern Home Improvement Contractors. Although Chapter 130 previously amended the Home Improvement Licensing Act to require proof of general liability insurance of new and renewal home improvement contractor applicants, the correlating provision of the enacted Chapter 460 did not include this specific requirement into the new section created in the Contractor’s Licensing Act.

On or about September 6, 2007, the Tennessee Code Commission prepared the 2007 supplement for publication of the official Tennessee Code Annotated, which was subsequently published in October of 2007. In this official publication, T.C.A. § 62-6-506(a)(5), based on Public Chapter 130 and Chapter 460, included a requirement for new and renewal applicants for a home improvement contractor license to provide the Board evidence of general liability insurance, including the amount of coverage (see Compiler’s Notes).

As a result, public necessity rules affecting general contractor and home improvement contractor applicants and licensees were adopted by the Board on September 25, 2007. Due to the October 2007 version of the law published by the Codes Commission and the length of time necessary to complete the rulemaking process, public necessity rules were required in order for the Board to comply with the enactment of the general assembly and to ensure that the Board for Licensing Contractors has the resources necessary to implement the Act. The public necessity rules became effective on December 11, 2007 and are set to expire on May 24, 2008. The Board conducted a rule-making hearing on March 26, 2008 to consider comments on the adoption of these as permanent rules. The permanent rules will become effective on July 12, 2008.

The Board has authorized the filing of these public necessity rules to continue the effectiveness of the public necessity rules that are currently in place. Without the continuation of the public necessity rules, there will be no rules in place for the period of time between May 24, 2008 (the last day that the public necessity rules are effective) and July 12, 2008 (the first day that the permanent rules are effective). Without any rules in place

governing the type of general liability insurance documentation required of general and home improvement contractor applicants and licensees, there will be no mechanism by which the Board will be able to license, discipline, or regulate these entities/individuals. The public health, safety and welfare would be impaired if these public necessity rules are not continued because those entities/individuals that apply for or are renewing their licenses have no method to determine the appropriate evidence needed to obtain and/or renew their general contractor or home improvement contractor license. It is also necessary to continue the public necessity rules because the agency could not have reasonably foreseen that this emergency would continue or recur when they promulgated the public necessity rules in 2007; the agency could not have anticipated the gap between the effectiveness of the public necessity rules and the permanent rules that would leave individuals or entities providing pre-licensing courses to general contractors unregulated.

For a copy of this public necessity rule, contact Carolyn Lazenby, Executive Director of the Board for Licensing Contractors at 500 James Robertson Parkway, Davy Crockett Tower, 1st Floor, Nashville, Tennessee 37243, telephone (615) 741-8307.

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Public Necessity Rules  
of the  
Department of Commerce and Insurance  
Board for Licensing Contractors

Chapter 0680-06  
General Liability Insurance

New Rules

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0680-06-.01 Definitions.

- (1) "Applicant" means an individual or entity who/that is applying for a home improvement contractor license or a general contractor license with the Board.
- (2) "Board" means the Board for Licensing Contractors created by T.C.A. § 62-6-104.
- (3) "General Liability Insurance" means an insurance policy providing insurance coverage for negligent acts or other acts of the principal insured or the principal insured's agents or employees, operating in the course and scope of the agency or employment.
- (4) "Licensee" means an individual or entity who/that is licensed with the Board as a home improvement contractor or a general contractor.

Authority: Chapter 130 and Chapter 460 of the Public Acts of 2007, §1 and T.C.A. §§ 62-6-108 and 62-6-111(a)(1) [effective July 1, 2007] and 62-6-506(b)(5) [effective July 1, 2007].

0680-06-.02 Amount of Insurance.

- (1) Board licensees and applicants shall maintain general liability insurance as follows:
  - (a) In the case of all home improvement contractor applicants or licensees, or if a general contractor applicant's or a licensee's monetary limit is between the amounts of zero dollars (\$0) and five hundred thousand dollars (\$500,000), then the applicant or licensee shall obtain a general liability insurance policy in an amount not less than one hundred thousand dollars (\$100,000).
  - (b) If an applicant's or a licensee's monetary limit is between the amounts of five hundred thousand one dollar (\$500,001) and one million five hundred thousand dollars (\$1,500,000), then the applicant or licensee shall obtain a general liability insurance policy in an amount not less than five hundred thousand dollars (\$500,000).
  - (c) If an applicant's or a licensee's monetary limit is one million five hundred thousand one dollar (\$1,500,001) or more, then the applicant or licensee shall obtain a general liability insurance policy in an amount of not less than one million dollars (\$1,000,000).

Authority: Chapter 130 and Chapter 460 of the Public Acts of 2007, §1 and T.C.A. §§ 62-6-108 and 62-6-111(a)(1) [effective July 1, 2007] and 62-6-506(b)(5) [effective July 1, 2007].

0680-06-.03 Proof of Insurance.

- (1) Applicants shall provide the Board with a copy of a certificate of insurance upon applying for licensure with the Board as proof of having obtained a general liability insurance policy.
- (2) Licensees shall provide the Board with a copy of a certificate of insurance upon renewing his/her/its license as proof of having maintained a general liability insurance policy.
- (3) Applicants and licensees shall name the Board as the certificate holder on the general liability insurance policy.

Authority: Chapter 130 and Chapter 460 of the Public Acts of 2007, §1 and T.C.A. §§ 62-6-108 and 62-6-111(a)(1) [effective July 1, 2007] and 62-6-506(b)(5) [effective July 1, 2007].

The public necessity rules set out herein were properly filed in the Department of State on the 29th day of May, 2008, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 10th day of November, 2008. (FS 05-14-08; DBID 2888)