

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

Statement of Necessity Requiring Public Necessity Rules

Pursuant to Tenn. Code Ann. § 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 Tenn. Code Ann. Title 4, Chapter 5, for the promulgation of permanent rules. Tenn. Code Ann. §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 Tenn. Code Ann. §4-5-208 for re-adoption of emergency rules. Tenn. Code Ann. § 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.

Tenn. Code Ann. § 62-6-138 and Chapter 657 of the Public Acts of 2006 (hereinafter “Act”) requires the Board for Licensing Contractors to establish rules for reviewing and approving pre-licensing general contracting educational courses effective January 1, 2007. As a result, public necessity rules were adopted by the Board on October 31, 2006. The public necessity rules became effective on December 28, 2006 and are effective until June 10, 2007. Public necessity rules were required in order to establish the requirements for approval of pre-licensing providers of general contractor educational courses to be in effect with enough time for interested persons to file applications. The Act made providing a pre-licensing course without approval by the Board for Licensing Contractors unlawful on January 1, 2007 unless the provider had met a number of prerequisites for approval established by the Board. Public necessity rules were necessary for the Board to establish application requirements and to begin accepting and considering applications for providers of pre-licensing courses on January 1, 2007. Due to 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 Board conducted a rulemaking hearing on January 24, 2007 to consider comments on the adoption of these as permanent rules and the permanent rules will become effective on July 24, 2007.

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 June 10, 2007 (the last day that the public necessity rules are effective) and July 24, 2007 (the first day that the permanent rules are effective). Without any rules in place governing those companies that offer pre-licensing courses for general contractors, 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 offer pre-licensing courses to general contractors would not be required to adhere to the code of ethics and the standards of practice that are contained in the rules. 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 2006; 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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Chapter 0680-5
Pre-Licensing Courses

New Rules

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0680-5-.01 Definitions.

- (1) "Board" means the board for licensing contractors created by Tenn. Code Ann. § 62-6-104.
- (2) "Pre-licensing course" means any course or workshop related to the practice of general or specialty contracting offered to assist an applicant for preparation of an examination required by the Board excluding courses offered by any public institution.
- (3) "Provider" means any person or entity who offers a pre-licensing course designed to assist an applicant for preparation of an examination required by the Board.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.02 Application.

- (1) Any provider who offers any pre-licensing course shall submit an application on the form prescribed by the Board. The application shall be verified and accompanied by:

- (a) a non-refundable fee in the amount provided in rule 0680-5-.03;
 - (b) a resume for each instructor of such course outlining the instructor's education and experience;
 - (c) a detailed description of the content of such course(s);
 - (d) the projected schedule for the teaching of such course(s);
 - (e) a surety bond to the State of Tennessee Board for Licensing Contractors as obligee in a minimum amount of fifty thousand dollars (\$50,000); and
 - (f) such other information as the Board may reasonably request.
- (2) The applicant shall demonstrate to the satisfaction of the Board that each course submitted for approval will:
- (a) cover subjects which are reasonably related to the practice of construction and suitable to benefit and enrich the students enrolled;
 - (b) be conducted in a facility that contains adequate space, seating, and equipment; and
 - (c) provide adequate means to make up for all classes missed by a student;

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.03 Fees.

- (1) The application and renewal application fee is one thousand five hundred dollars (\$1500) per provider.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.04 Course Approval Periods.

- (1) Each pre-licensing course approval shall remain effective for three (3) years from the date of approval. After three (3) years, the approval of the Board shall expire, unless the Board, after reviewing a renewal pre-licensing course application, approves the course for another such time period.
- (2) All pre-licensing course providers shall be required to resubmit their courses for approval at least one hundred twenty (120) days prior to the applicable expiration date. Failure to meet this deadline may result in the non-approval of a course.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.05 Changes in Applications.

- (1) Any material change in any information furnished in connection with any application of a pre-licensing course (including, but not limited to, an address change of a provider, information concerning course content, instructors, and facilities) shall be submitted to and approved by the Board before taking effect.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.06 Withdrawal of Approval.

- (1) Approval of any course(s) may be withdrawn by the Board if:
 - (a) the establishment or conduct of a course violates, or fails to meet the requirements of, the provisions of this chapter or other applicable law;
 - (b) the information contained in the application is materially inaccurate or misleading;
 - (c) the provider, an instructor, or any other school representative disseminates false or misleading information concerning any course;
 - (d) the sponsor, an instructor, or any other school representative possesses, claims to possess, reveals, or distributes any questions utilized in examinations given by the Board;
 - (e) the performance of the instructor is so deficient as to impair significantly the value of a course provided, however, that the instructor shall receive adequate notice of the discovered deficiency and opportunity to demonstrate satisfactory correction thereof; or
 - (g) the provider, an instructor, or any other school representative disseminates false or misleading information regarding classifications, law, or entices an applicant to apply for unnecessary classes or purchase unnecessary course materials.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.07 Promotional Materials.

- (1) All materials used for advertising or promoting any pre-licensing course shall contain statements or claims that are factually supported.
- (2) No provider shall advertise or promote that fees charged for the pre-licensing courses will be waived if the student fails to pass any examination required by the Board;
- (3) No provider shall advertise or promote any guarantee that a student will successfully pass any examination required by the Board; and
- (4) No provider shall advertise that it has been specially endorsed by the Board.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.08 Relationship with Accountants and Insurance Brokers.

- (1) No provider offering a pre-licensing course shall advise students on financial accounting, insurance requirements or recommend, offer or encourage students to retain a particular accountant, accounting firm or insurance broker to complete any application requirements for a license under Tenn. Code Ann. § 62-6-101 et. seq.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.09 Inspections.

- (1) By applying for the Board's approval of any pre-licensing course, the applicant agrees the Board or its authorized representative may perform periodic inspections and monitoring for the purposes of evaluating facilities, course content, instructor performance, or any other relevant aspect of the administration and conduct of such course.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

0680-5-.10 Citation Penalties.

- (1) The Executive Director of the Board may issue citations against providers offering pre-licensing courses for any violation of Tenn. Code Ann. § 62-6-138 or any rule contained herein. Each citation shall contain an order to cease all violations of this chapter, and an assessment of a civil penalty in accordance with the following schedule:

<u>Violation</u>	<u>Penalty</u>
Tenn. Code Ann. § 62-6-138	\$250 - \$1,000

- (2) In determining the amount of any penalty to be assessed pursuant to this rule, the Executive Director may consider such factors as the following:
 - (a) whether the amount imposed will be 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;
 - (e) the interest of the public;
 - (f) willfulness of the violation;
 - (g) extent to which the licensee has sought to compensate any victim(s) of the violation.

Authority: Chapter 657 of the Public Acts of 2006, §§ 2 and 3 and Tenn. Code Ann. §§ 62-6-108 and 62-6-138 [effective January 1, 2007].

The public necessity rules set out herein was properly filed in the Department of State on this the 11th day of June, 2007, 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 23rd day of November, 2007. (FS 06-05-07, DBID 2549)