

(C) The period in which the provider is exempt, including the date and time in which such exemption expires; and

(D) Any other identifying information the secretary of state deems necessary for the public to identify such provider.

(b) The provider shall not be exempt from the requirement of § 50-6-902(a) until the provider's application is filed by the secretary of state and the applicant's name and other identifying information is published on the registry. If a provider's exemption is revoked pursuant to § 50-6-908, such revocation is effective upon the provider's name and other identifying information no longer appearing on the registry after being removed by the secretary of state pursuant to § 50-6-908.

(c) A provider listed on the registry may correct a document filed with the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged. A document shall be corrected in a manner established by the secretary of state.

(d) A provider listed on the registry shall maintain a current physical mailing address with the secretary of state. A change of address shall be made in a manner established by the secretary of state.

§ 50-6-906.

(a) If the secretary of state refuses to file an application and list the construction services provider on the registry, the secretary of state shall return such application to the provider within ten (10) business days after the document was received for filing, together with a brief, written explanation of the reason for the secretary of state's refusal to file.

(b) If the secretary of state refuses to file an application and list a provider on the registry, the provider may appeal the refusal to the chancery court of Davidson County. The appeal shall be commenced by petitioning the court to compel listing such provider on the registry and shall attach to the petition the application and the secretary of state's explanation of the secretary of state's refusal to file.

(c) The court may reverse or modify the actions of the secretary of state if the rights of the provider have been prejudiced because the secretary of state's actions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the secretary of state;
- (3) Made upon unlawful procedure; or

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(d) After any hearing deemed necessary by the court, the court may summarily order the secretary of state to list such provider on the registry or take other action the court considers appropriate.

(e) The court's final decision may be appealed as in other civil proceedings.

§ 50-6-907.

(a) The exemption obtained pursuant to this part shall be valid for two (2) years from a date and time set by the secretary of state. No more than sixty (60) days prior to the expiration of the exemption period, a construction services provider may file an application to renew an exemption. Renewal of an exemption shall be made in a manner established by the secretary of state.

(b) The secretary of state shall remove the construction services provider's name from the registry at the close of business on the day the provider's exemption expires. If the exemption expires on a day that state offices are closed or the secretary of state's office is closed, the exemption shall expire at the close of business on the next business day.

(c) A construction services provider whose registration expires under this section may renew the exemption by following the procedure outlined in § 50-6-904.

§ 50-6-908.

(a)(1) Any construction services provider who obtains an exemption and subsequently chooses to revoke such exemption shall:

(A) Give notice to the person or entity for whom the provider may currently be providing services of the revocation in accordance with a form prescribed by the secretary of state;

(B) Attest as to whether or not the provider has any employment related injuries at the time of such revocation that occurred while providing services to a person or entity that did not provide coverage under a policy of workers' compensation; and

(C) Within twenty-four (24) hours of such revocation, notify any person or entity for whom the provider is currently providing services that the provider has voluntarily revoked the provider's workers' compensation exemption.

(2) Upon filing such notice, the secretary of state shall remove the construction services provider's name from the registry.

(3) A construction services provider who revokes an exemption under this section may reapply for an exemption by following the procedure set forth in § 50-6-904.

(b)(1) In addition to the revocation set out in subsection (a), a workers' compensation exemption may be revoked by the secretary of state upon:

(A) Notification from the board that the board has revoked or suspended any license issued to the construction services provider by the board;

(B) Notification from the department of any violations of § 50-6-412 by the construction services provider;

(C) A determination by the secretary of state that the construction services provider no longer meets the requirements for an exemption established pursuant to this part; or

(D) A determination by the secretary of state that the construction services provider failed to renew prior to the expiration date of such exemption or the provider failed to pay any fees required to be paid pursuant to this part.

(2) Any notification of a violation made by the department pursuant to subdivision (b)(1)(B) shall include information indicating whether such violation requires a temporary or permanent revocation pursuant to § 50-6-412.

(3) If a provider's exemption is revoked pursuant to this section, the secretary of state shall:

(A) Remove the construction services provider's name from the registry within seven (7) days of receipt of notification from the department or the board, or upon making a determination as provided in subdivision (b)(1)(C) or (D); and

(B) Notify the construction services provider that such provider is required to notify, within twenty-four (24) hours of such revocation, any person or entity for whom the provider is currently providing services that the provider's workers' compensation exemption has been revoked.

(4) If a provider's exemption is revoked pursuant to subdivision (b)(1), the administrative and judicial procedures available to such provider shall be those procedures set out in § 50-6-906.

(c) If a construction services provider's exemption is revoked pursuant to this section, the construction services provider shall be required to carry workers' compensation insurance as provided in § 50-6-902(a); provided, that such construction services provider does not otherwise meet an exemption set out in § 50-6-902(b).

(d) A construction services provider whose exemption is revoked for any reason set out in this part shall be notified of such revocation in writing, and shall not be entitled to a refund of filing fees.

§ 50-6-909.

(a) Except as provided in § 50-6-412(h)(2), a construction services provider whose exemption is revoked pursuant to § 50-6-908 may apply to reinstate such exemption in the same manner as provided for in this part for an initial application.

(b) A construction services provider whose exemption is revoked under § 50-6-908(b) may only be granted a reinstatement of exemption:

(1) Upon notification to the secretary of state from the board that such provider's license is no longer revoked or suspended;

(2) Upon notification from the Department of Labor and Workforce Development to the secretary of state that the provider qualified for reinstatement pursuant to § 50-6-412(g); and

(3) If the secretary of state determines that the provider meets the requirements for an exemption established pursuant to this part.

(c) Upon verification by the secretary of state that the requirements of subsection (b) are met, the secretary of state shall file the application in accordance with § 50-6-905.

§ 50-6-910.

Any action to recover damages for injury, as defined by § 50-6-102, by a construction services provider who was on the registry at the time of such injury, who was not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider was providing services at the time of such injury, and was a provider who was eligible for an exemption pursuant to § 50-6-914(b)(2) at the time of such injury, shall proceed as at common law, and the defendant in the suit may make use of all common law defenses; provided, however, such construction services provider shall forego

the right to sue to establish or reestablish workers' compensation coverage for any injuries that occurred while the construction services provider was listed on the registry.

§ 50-6-911.

(a)(1) The secretary of state shall provide notice on its Web site that the registry is for purposes of establishing providers who are exempt from workers' compensation coverage and in no way reflects licensing or certification of any construction services provider.

(2) The board, the Department of Commerce and Insurance and the Department of Labor and Workforce Development shall each develop a notice provision to inform the public that any person or entity interested in determining whether a construction services provider is exempt from workers' compensation coverage shall review the secretary of state's Web site. Such notice provision shall be prominently displayed on the Web sites of the board, the Department of Commerce and Insurance and the Department of Labor and Workforce Development.

(b)(1) The secretary of state shall provide notice to the Department of Labor and Workforce Development, the board and the Department of Commerce and Insurance when a construction services provider is added to or removed from the registry.

(2) If any construction services provider has a license issued by the board, and such license is revoked or suspended, the board shall immediately notify the secretary of state, in order for the secretary of state to revoke such provider's exemption pursuant to § 50-6-908(b).

§ 50-6-912.

(a) The secretary of state may charge the following maximum fees for each of the following:

- (1) The issuance of a construction services provider registration to providers who have not been issued a license by the board.....\$100
- (2) The issuance of a construction services provider workers' compensation exemption.....\$100
- (3) The filing of correction information pursuant to § 50-6-905(c)..... \$20
- (4) The filing of change of address information pursuant to § 50-6-905(d)..... \$20

(5) The filing of a construction services provider workers' compensation exemption renewal\$100

(6) The filing of a construction services provider registration renewal to providers who have not been issued a license by the board.....\$100

(7) The filing of a revocation pursuant to § 50-6-908(a)..... \$20

(8) The issuance of a copy of the notice issued pursuant to § 50-6-905(a)(1)..... \$20

(b) In addition to the maximum fees authorized in subsection (a), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.

(c) Except as provided in subsections (a) and (b), no other fees shall be charged by the secretary of state to administer this part.

§ 50-6-913.

(a) There is created a fund to be known as the "Employee Misclassification Education and Enforcement Fund". Any fee collected pursuant to § 50-6-912(a) shall be deposited in the Employee Misclassification Education and Enforcement Fund. Monies in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the Commissioner of Labor and Workforce Development.

(b) All costs of the secretary of state associated with the administration of this part shall be paid by the Commissioner of Labor and Workforce Development from the Employee Misclassification Education and Enforcement Fund. Monies remaining in the fund after such payment may be expended, subject to appropriation by the general assembly, at the direction of the Commissioner of Labor and Workforce Development for education of employers and employees regarding the requirements of this part and in support of the ongoing investigation and prosecution of employee misclassification.

(c) Any amount in the Employee Misclassification Education and Enforcement Fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in subdivision. Interest accruing on investments and deposits of the Employee Misclassification Education and Enforcement Fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

§ 50-6-914.

(a) Except as provided for in subsection (b), a general contractor, intermediate contractor or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the general contractor, intermediate contractor or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

(b)(1) Notwithstanding subsection (a) and subject to subdivision (b)(2), a general contractor, intermediate contractor or subcontractor shall not be liable for workers' compensation to a construction services provider listed on the registry established pursuant to this part.

(2)(A) No more than three (3) construction services providers who are performing direct labor on a commercial construction project may be exempt from § 50-6-902(a).

(B) For purposes of subdivision (b)(2)(A), the three (3) construction services providers shall be the first three (3) construction services providers listed on the registry who sign a contract to provide services on a commercial construction project.

(C) It shall be the responsibility of the general contractor to provide notice to any construction services provider who provides services to such general contractor and who is listed on the registry that such provider is not eligible for an exemption pursuant to this part while working on the general contractor's commercial construction project.

(c) Any general contractor, intermediate contractor or subcontractor who pays compensation under subsection (a) may recover the amount paid from any person or entity who, independently of this section, would have been liable to pay compensation to the injured employee, or from any subcontractor.

(d) Every claim for compensation under this section shall be presented first to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the general contractor, intermediate contractor or subcontractor; provided, that the collection of full compensation from one (1) employer shall bar recovery by the employee against any others, and the employee shall not collect from all employers a total compensation in excess of the amount for which any of the contractors is liable.

(e) This section applies only in cases where the injury occurred on, in, or about the premises on which the general contractor has undertaken to execute work or that are otherwise under the general contractor's control or management.

§ 50-6-915.

Notwithstanding any law to the contrary, records maintained by the secretary of state relative to the construction services provider registration and to the workers' compensation exemption registration, other than records displayed on the registry established pursuant to this part, shall not constitute a public record as defined in § 10-7-503 and shall not be open for public inspection.

§ 50-6-916.

Nothing in this part shall be construed as preventing or prohibiting any contractor from requiring a certificate of workers' compensation insurance from any of its subcontractors or any construction services providers providing services to such contractor.

§ 50-6-917.

A policy of workers' compensation insurance issued through the assigned risk plan as provided in § 56-5-314 that insures a person engaged in the construction industry shall be governed by this part, and a state agency shall not impose requirements relative to this part on such a policy other than those imposed by this part.

§ 50-6-918.

Beginning with fiscal year 2012-2013, and each fiscal year thereafter, the Employee Misclassification Advisory Taskforce created pursuant to § 50-6-919 shall make recommendations to the general assembly regarding programs and services to be funded from the Employee Misclassification Education and Enforcement Fund created pursuant to § 50-6-913.

§ 50-6-919.

(a) There is created the Employee Misclassification Advisory Taskforce to study and make recommendations regarding issues relative to employee misclassification in the construction industry.

(b) The taskforce shall study issues relative to employee misclassification in the construction industry, including, but not limited to:

(1) The impact of employee misclassification on state and local governments of this state and the amount of state revenue, if any, that is lost or not collected due to employee misclassification;

(2) The lost earnings of the insurance industry due to employee misclassification;

(3) The estimates of the frequency of occurrence and economic impact of employee misclassification and whether

particular industries are more likely to engage in the misclassification of employees;

(4) Whether state law should specify a uniform definition of the employment relationship and, if so, how it should be defined;

(5) Whether existing Tennessee laws aimed at preventing, investigating and taking enforcement action against the failure of employers to properly classify individuals as employees are effective;

(6) Whether there are ways to facilitate the sharing of information among agencies represented by taskforce members relative to violations of laws by employers who fail to classify individuals as employees;

(7) Whether there are new ways to pool, focus and target investigative and enforcement resources relative to employee misclassification;

(8) New strategies for systematically investigating the failure of employers to properly classify individuals as employees;

(9) Whether improvements are needed to facilitate the filing of complaints and identify potential violators, including, but not limited to, soliciting referrals and other relevant information from the public;

(10) Changes in the law, if any, that need to be made in order to ensure that agencies represented by taskforce members investigating the failure of employers to properly classify individuals as employees under their own statutory or administrative enforcement mechanism have the authority to refer a matter to other participating agencies for assessment of potential liability under the other agencies' relevant statutory or administrative enforcement mechanisms;

(11) Innovative ways to prevent misclassification of employees by employers, such as through disseminating educational materials regarding the legal differences between independent contractors and employees;

(12) Methods by which public awareness of the illegal nature and harms inflicted by the failure of employers to properly classify individuals as employees can be increased; and

(13) Any other issues relative to employee misclassification in the construction industry.

(c) The taskforce shall seek public input and may conduct public hearings or appoint study groups as necessary to obtain information necessary to conduct its study.

(d) Membership on the taskforce shall be as follows:

(1) The Commissioner of Labor and Workforce Development or the commissioner's designee;

(2) The Commissioner of Commerce and Insurance or the commissioner's designee; and

(3) The executive director of the board for licensing contractors or the director's designee.

(e) The secretary of state or the secretary of state's designee, the attorney general and reporter or the attorney general's designee, the chairman of the advisory council on workers' compensation or the chairman's designee, the executive director of the district attorneys general conference or the director's designee, and the director of the Tennessee Bureau of Investigation or the director's designee shall all serve as ex officio nonvoting members of the taskforce. The taskforce may appoint additional ex officio nonvoting members as it deems appropriate.

(f) The Commissioner of the Department of Labor and Workforce Development shall convene the first meeting of the taskforce on or after February 1, 2011, at which meeting the taskforce shall elect its officers from the voting members and otherwise organize itself as it deems appropriate.

(g) On or before February 1, 2012, and on or before February 1 annually thereafter, the taskforce shall submit a report on its findings and progress to the Commerce, Labor and Agriculture Committee of the Senate, and the Consumer and Employee Affairs Committee of the House of Representatives.

(h) To the extent permitted by law, every agency, department, office, division or public authority of this state shall cooperate with the taskforce and furnish such information that the taskforce determines is reasonably necessary to accomplish its purposes.

(i) In accordance with procedures set forth in Title 4, Chapter 5, Part 2, the Department of Labor and Workforce Development, the Department of Commerce and Insurance, and the board for licensing contractors may individually implement recommendations of the taskforce; provided, that such implementation is authorized under the existing statutory authority of the respective departments or board.

§ 50-6-920.