

Public Chapter 1149 and the Construction Industry

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Summary of PC 1149

- Public Chapter 1041, which required everyone on a construction site to be covered by a work comp policy, was in effect for about 3 weeks at the beginning of this year
 - The General Assembly suspended that law in an extraordinary session because it went too far in correcting the employee misclassification issue
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Summary of PC 1149

- In June, the General Assembly passed Public Chapter 1149, which seeks to strike a balance between a law that went too far and a law allowed too much abuse with regard to misclassifying employees as subcontractors
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Summary of PC 1149

- Public Chapter 1149 will allow legitimate business owners in the construction industry to obtain an exemption from the requirement to cover themselves with a work comp policy
 - Employers in construction will still need to cover their employees, even if they have only one employee
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Summary of PC 1149

- Who can obtain the exemption?
 - Up to 3 officers of a corporation
 - Member of LLC if such member owns at least 30% of the business
 - Partner if such partner owns at least 30% of the business
 - Sole proprietors
 - Up to 3 owners of family-owned businesses (no 30% ownership threshold)
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Summary of PC 1149

- How do I apply for the exemption?
 - The exemption application will go through the Secretary of State's office
 - The application will be a one-page document that asks for certain information, including a FEIN
 - You must be in good standing with the Department of Revenue
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Summary of PC 1149

- You will be able to submit the application online or via hard copy
 - Once the application is accepted, it will be included in the exemption registry, which will be posted online so that you can verify someone's status (this will be similar to the business information search that is currently available on the Secretary of State's website)
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Summary of PC 1149

- Do I need a license from the Board for Licensing Contractors to get the exemption?
 - No, if you are not currently required to have such a license, then you will not need one for the exemption
 - If you do not have a license, then you will need to register as a construction services provider when you apply for the exemption (same application, not a separate process)
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Summary of PC 1149

- Likewise, you will not be required to have a local business license if you are not currently required to have one
 - The application will ask you to list the local licenses that you do have
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Summary of PC 1149

- How much will it cost?
 - The exemption costs \$100 and is good for two years
 - If you are not licensed by the Board for Licensing Contractors, then you will pay an additional \$100 to register as a construction services provider, which is also good for two years
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Summary of PC 1149

- Is there a difference between residential and commercial jobs?
 - Yes, the difference is with regard to those performing direct labor (non-supervisory class codes). Only 3 such direct laborers can be exempt on a commercial job site, regardless of how many are on the exemption registry. The priority for those 3 direct labor exemptions is on a “first come, first served” basis.
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Summary of PC 1149

- On a residential job site, however, anyone who is on the exemption registry can maintain the exemption while on that job.
 - The rule for residential jobs also applies to public works for residential services and to jobs that small commercial contractors can contract for.
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Summary of PC 1149

- If I am a subcontractor, can I be covered under the general contractor's policy?
 - Yes, regardless of whether you have a valid exemption. If you and the general agree to such, then you can elect under the general's policy. The general, or its agent, will need to file the I-15 form with the Department of Labor.
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Summary of PC 1149

- If I am a general contractor, can I require everyone on the job site to be covered by a policy?
 - Yes, regardless of whether your subs have valid exemptions, you can still require everyone to be covered by a policy.
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Summary of PC 1149

- If I maintain a valid exemption and get hurt on a job site, what remedies do I have?
 - If you are not otherwise covered by a work comp policy, then your only remedies would be under tort law where you would have the burden of proving fault.
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Summary of PC 1149

- If a Department of Labor investigator comes to my job site, what kind of documentation do I need to show proper coverage?
 - If you maintain an exemption, then it would be best to have your certificates from the Secretary of State's office. You would also need to provide proof of coverage for any employees that you may have.
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Summary of PC 1149

- When does PC 1149 go into effect?
 - The main provisions will go into effect on March 1, 2011.
 - If you are not required to be licensed by the Board for Licensing Contractors, then you may begin applying for the exemption on January 4, 2011
 - If you do have such a license, then you may begin applying on February 1, 2011.
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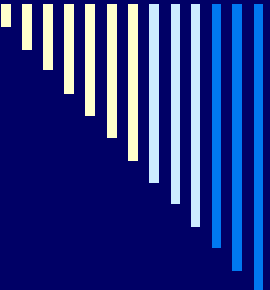
Changes for Commercial Construction Policyholder

- Front End Requirements
 - Premium Charges for Non-Exempt jobs
 - Premium Audit Procedures
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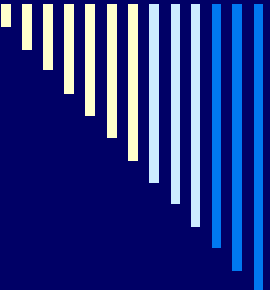
Presentation Going Forward Caveats

- ❑ The *following slides* depict contractors who have a *valid exemption* from the Secretary of State's office.
- ❑ Billing and audit procedures are currently in draft form and are subject to change.
- ❑ Procedures are for Assigned Risk carriers
- ❑ Final Assigned Risk Policyholder Notice should be available on by December 30 @ TN.gov/commerce/insurance.



What will be required of us from our assigned risk carrier on the *front end*?

- A policyholder notice will be sent out to all construction policyholders before March 1, 2011 explaining new documentation requirements
 - Policyholders with 3/1/11 or later effective dates who contract on “commercial construction projects” (CCPs) to any degree must provide rating information within 30 days of the effective date.
 - In-force policies with 180 days or more left in the policy term will be billed based upon 25% of their estimated net profit/earnings or corporate payroll, if no information is furnished.
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What will be required of us from our assigned risk carrier on the *front end*?

- ❑ In-force policies with less than 180 days left in the policy term will be adjusted on audit.
 - ❑ All contractors with policies over 180 days left on their policies and for new or renewal business 3/1/11 and after will be required to complete a Policyholder Verification form which estimates premium based upon new rating rules.
 - ❑ CCP *front end* premium adjustments of over \$1,000 will be billed on *monthly* installments.
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How Will Our Premium Be Charged?

- Premium charges are based on the proportion of total gross receipts attributable to CCPs.
 - The policyholder is required to **verify** that the remaining “gross receipts” are related to “non-commercial” construction work. **Verification required** will be in the form of:
 - Copies of contracts
 - Copies of building permits
 - Invoices
 - General ledger information for all non-CCP construction work.
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How Will Our Premium Be Charged?

Net profit/earnings, or corporate payroll will be adjusted based upon the proportion of gross receipts attributable to non-exempt (i.e. not one of the three allowed) CCPs.

- Minimum “payroll” for commercial construction service providers is:
 - * \$9,950 for sole proprietors/partners
 - * \$9,880 for corporations



Premium Audit Procedures

- ❑ Record keeping requirements under PC 1149 are stringent!
 - ❑ Business as usual for many folks won't cut it.
 - ❑ It's up to contractors to validate their non-commercial exposure.
 - ❑ Avoid premium disputes by keeping good records.
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Premium Audit Procedures

- ❑ Commercial “Construction Services Providers” (even if only a negligible amount of exposure) will be required to submit a list of all jobs broken down between CCP work and non-commercial work.
 - ❑ The listing will include the name of the general contractor, general’s phone number, and gross receipts for each job.
 - ❑ Copies of permits or contracts, invoices and general ledger information will be required for all contractors to document their exposure.
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Premium Audit Procedures

- ❑ All commercial jobs will require exemption letters from the general contractor on their letterhead, if applicable, or be appropriately classified 5604 or 5606 (non-direct laborers).
 - ❑ If documentation is non-existent or poor, the premium audit may be returned as “non-responsive” affecting assigned risk plan eligibility.
 - ❑ *No installments* will be offered for audit additional premiums.
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Full Term Rating Example: Sole Proprietor

\$45,000 Schedule C

Gross Receipts:	\$100,000
Verifiable Non-CCP receipts:	50,000
Less Exempt CCP:	<u>4,500</u>
Chargeable receipts	45,500

CCP Portion of gross receipts: $45,500/100,000$

$\$45,000 \times .455 = \$20,475$

$\$15 \text{ Rate} \times \$20,475/100 = \$3,071$

No IRS Tax form: $\$15.00 \times 58,500/100 \times .455 = \$3,993$