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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3872

03/15/2018 Authored by Theis
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to labor and industry; repealing licensing requirements for residential
1.3 trades; repealing Minnesota Statutes 2016, sections 326B.801; 326B.802; 326B.805;
1.4 326B.809; 326B.81; 326B.811; 326B.814; 326B.815; 326B.821, subdivisions 1,
1.5 2, 21; 326B.825; 326B.83; 326B.835; 326B.84; 326B.845; 326B.85; 326B.855;
1.6 326B.86; 326B.865; 326B.87; 326B.875; 326B.88; 326B.885, subdivisions 1, 2;
1.7 326B.89, subdivisions 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18; Minnesota
1.8 Statutes 2017 Supplement, section 326B.89, subdivisions 1, 5.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. REVISOR'S INSTRUCTION.

1.11 The revisor of statutes shall prepare a technical corrections bill for introduction in the
1.12 2019 legislative session that includes any technical or conforming changes necessary to
1.13 effectuate the repeal of residential trades licensure in section 2.

1.14 Sec. 2. REPEALER.

1.15 (a) Minnesota Statutes 2016, sections 326B.801; 326B.802; 326B.805; 326B.809;
1.16 326B.81; 326B.811; 326B.814; 326B.815; 326B.821, subdivisions 1, 2, and 21; 326B.825;
1.17 326B.83; 326B.835; 326B.84; 326B.845; 326B.85; 326B.855; 326B.86; 326B.865; 326B.87;
1.18 326B.875; 326B.88; 326B.885, subdivisions 1 and 2; and 326B.89, subdivisions 2, 3, 4, 6,
1.19 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, and 18, are repealed.

1.20 (b) Minnesota Statutes 2017 Supplement, section 326B.89, subdivisions 1 and 5, are
1.21 repealed.

326B.801 SCOPE.

Except as otherwise provided by law, sections 326B.801 to 326B.885 apply to residential contractors, residential remodelers, residential roofers, and manufactured home installers.

326B.802 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 326B.802 to 326B.885.

Subd. 2. **Affiliate.** An "affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Subd. 3. **Gross annual receipts.** "Gross annual receipts" means the total amount derived from residential contracting or remodeling activities, regardless of where the activities are performed, and must not be reduced by cost of goods sold, expenses, losses, or any other amount.

Subd. 4. **Lessee.** "Lessee" means one who rents or leases residential real estate pursuant to a written lease agreement of at least one year's duration.

Subd. 5. **Licensee.** "Licensee" means a residential building contractor, residential remodeler, manufactured home installer, or residential roofer licensed under sections 326B.802 to 326B.885.

Subd. 6. **Manufactured home.** "Manufactured home" has the meaning given it in section 327.31, subdivision 6.

Subd. 7. **Manufactured home installer.** "Manufactured home installer" has the meaning given it in section 327.31, subdivision 11.

Subd. 8. **Mechanical contractor.** "Mechanical contractor" means a person, sole proprietor, partnership, joint venture, corporation, or other organization which is in the business of erection, installation, alteration, repair, relocation, replacement, addition to, use, or maintenance of any heating, ventilating, cooling, process piping, plumbing, fire protection, or refrigeration systems, incinerators, or other miscellaneous heat-producing appliance, piping, or equipment or appliances associated with those systems.

Subd. 9. **Owner.** "Owner," when used in connection with real property, means a person who has any legal or equitable interest in the real property.

Subd. 10. **Qualifying person.** "Qualifying person" means the individual who fulfills the examination and education requirements for licensure on behalf of the licensee.

Subd. 11. **Residential building contractor.** "Residential building contractor" means a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills as defined in this section. A residential building contractor may also contract or offer to contract with an owner to improve existing residential real estate.

Subd. 12. **Residential remodeler.** "Residential remodeler" means a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills as defined in this section.

Subd. 13. **Residential real estate.** "Residential real estate" means a new or existing building constructed for habitation by one to four families, and includes detached garages.

Subd. 14. **Residential roofer.** "Residential roofer" means a person in the business of contracting, or offering to contract with an owner, to complete work on residential real estate in roof coverings, roof sheathing, roof weatherproofing and insulation, and repair of roof systems, but not construction of new roof systems.

Subd. 15. **Special skill.** "Special skill" means one of the following eight categories:

(a) **Excavation.** Excavation includes work in any of the following areas:

- (1) excavation;
- (2) trenching;
- (3) grading; and
- (4) site grading.

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(b) **Masonry and concrete.** Masonry and concrete includes work in any of the following areas:

- (1) drain systems;
- (2) poured walls;
- (3) slabs and poured-in-place footings;
- (4) masonry walls;
- (5) masonry fireplaces;
- (6) masonry veneer; and
- (7) water resistance and waterproofing.

(c) **Carpentry.** Carpentry includes work in any of the following areas:

- (1) rough framing;
- (2) finish carpentry;
- (3) doors, windows, and skylights;
- (4) porches and decks, excluding footings;
- (5) wood foundations; and
- (6) drywall installation, excluding taping and finishing.

(d) **Interior finishing.** Interior finishing includes work in any of the following areas:

- (1) floor covering;
- (2) wood floors;
- (3) cabinet and counter top installation;
- (4) insulation and vapor barriers;
- (5) interior or exterior painting;
- (6) ceramic, marble, and quarry tile;
- (7) ornamental guardrail and installation of prefabricated stairs; and
- (8) wallpapering.

(e) **Exterior finishing.** Exterior finishing includes work in any of the following areas:

- (1) siding;
- (2) soffit, fascia, and trim;
- (3) exterior plaster and stucco;
- (4) painting; and
- (5) rain carrying systems, including gutters and down spouts.

(f) **Drywall and plaster.** Drywall and plaster includes work in any of the following areas:

- (1) installation;
- (2) taping;
- (3) finishing;
- (4) interior plaster;
- (5) painting; and
- (6) wallpapering.

(g) **Residential roofing.** Residential roofing includes work in any of the following areas:

- (1) roof coverings;
- (2) roof sheathing;

- (3) roof weatherproofing and insulation; and
- (4) repair of roof support system, but not construction of new roof support system.
- (h) **General installation specialties.** Installation includes work in any of the following areas:
 - (1) garage doors and openers;
 - (2) pools, spas, and hot tubs;
 - (3) fireplaces and wood stoves;
 - (4) asphalt paving and seal coating; and
 - (5) ornamental guardrail and prefabricated stairs.

Subd. 16. **Specialty contractor.** "Specialty contractor" means a person in the business of contracting or offering to contract to build or improve residential real estate by providing only one special skill as defined in this section.

Subd. 17. **Garage.** "Garage" means a structure attached to or in reasonable proximity to a dwelling, which is used or intended to be used primarily for the protection or storage of automobiles or other personal vehicles owned or driven by the occupants of the dwelling.

326B.805 LICENSING REQUIREMENTS.

Subdivision 1. **Persons required to be licensed.** A person who meets the definition of a residential building contractor as defined in section 326B.802, subdivision 11, must be licensed as a residential building contractor by the commissioner. A person who meets the definition of a residential remodeler as defined in section 326B.802, subdivision 12, must be licensed by the commissioner as a residential remodeler or residential building contractor. A person who meets the definition of a residential roofer as defined in section 326B.802, subdivision 14, must be licensed by the commissioner as a residential roofer, residential building contractor, or residential remodeler. A person who meets the definition of a manufactured home installer as defined in section 327.31, subdivision 11, must be licensed as a manufactured home installer by the commissioner.

Subd. 1a. **Pre-1978 structures.** A licensee performing renovation defined by Code of Federal Regulations, title 40, section 745.83, on a residential structure constructed prior to 1978 must comply with section 326B.106, subdivision 14.

Subd. 2. **Persons who may be licensed.** A person who meets the definition of a specialty contractor as defined in section 326B.802, subdivision 16, may be licensed by the commissioner as a residential building contractor or residential remodeler.

Subd. 3. **Prohibition.** Except as provided in subdivision 6, no persons required to be licensed by subdivision 1 may act or hold themselves out as a residential building contractor, residential remodeler, residential roofer, or manufactured home installer for compensation without a license issued by the commissioner.

Subd. 4. **Licensing criteria.** The examination and education requirements for licensure under sections 326B.805 to 326B.885 must be fulfilled by a qualifying person designated by the potential licensee. If the qualifying person is a managing employee, the qualifying person must be an employee who is regularly employed by the licensee and is actively engaged in the business of residential contracting or residential remodeling on behalf of the licensee. For a sole proprietorship, the qualifying person must be the proprietor or managing employee. For a partnership, the qualifying person must be a general partner or managing employee. For a limited liability company, the qualifying person must be a chief manager or managing employee. For a corporation, the qualifying person must be an owner, officer, or managing employee. A qualifying person for a corporation or limited liability company may act as the qualifying person for more than one corporation or limited liability company if there is common ownership of at least 25 percent among each of the licensed corporations or limited liability companies for which the person acts in the capacity of qualifying person.

Subd. 5. **Required information.** (a) Each licensee or applicant for licensure shall provide to the commissioner a current street address and telephone number where the licensee resides, and a street address and telephone number where the licensee's business is physically located. A post office box address is not sufficient to satisfy this requirement. Each licensee or applicant for licensure must notify the commissioner in writing of any change in the required information within 15 days of the change.

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(b) Each licensee or applicant for licensure must notify the commissioner in writing upon any change in control, ownership, officers or directors, personal name, business name, license name, or qualifying person, within 15 days of the change.

(c) Each licensee or applicant for licensure must notify the commissioner in writing if the licensee or applicant for licensure is found to be a judgment debtor based upon conduct requiring licensure pursuant to sections 326B.802 to 326B.885 within 15 days of the finding.

(d) Each licensee or applicant for licensure must notify the commissioner in writing within 15 days of filing a petition for bankruptcy.

(e) Each licensee or applicant for licensure must notify the commissioner in writing within ten days if the licensee or applicant for licensure has been found guilty of a felony, gross misdemeanor, misdemeanor, or any comparable offense related to residential contracting, including convictions of fraud, misrepresentation, misuse of funds, theft, criminal sexual conduct, assault, burglary, conversion of funds, or theft of proceeds in this or any other state or any other United States jurisdiction.

Subd. 6. **Exemptions.** The license requirement does not apply to:

(1) an employee of a licensee performing work for the licensee;

(2) a material person, manufacturer, or retailer furnishing finished products, materials, or articles of merchandise who does not install or attach the items;

(3) an owner of residential real estate who builds or improves any structure on residential real estate, if the building or improving is performed by the owner's bona fide employees or by individual owners personally. This exemption does not apply to an owner who constructs or improves property for purposes of speculation if the building or improving is performed by the owner's bona fide employees or by individual owners personally. A residential building contractor or residential remodeler will be presumed to be building or improving for purposes of speculation if the contractor or remodeler constructs or improves more than one property within any 24-month period;

(4) an architect or professional engineer engaging in professional practice as defined by section 326.02, subdivisions 2 and 3;

(5) a person whose total gross annual receipts for performing specialty skills for which licensure would be required under this section do not exceed \$15,000;

(6) a mechanical contractor;

(7) a plumber, electrician, or other person whose profession is otherwise subject to statewide licensing, when engaged in the activity which is the subject of that licensure;

(8) specialty contractors who provide only one special skill as defined in section 326B.802;

(9) a school district, or a technical college governed under chapter 136F; and

(10) Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf.

To qualify for the exemption in clause (5), a person must obtain a certificate of exemption from licensure from the commissioner. A certificate of exemption will be issued upon the applicant's filing with the commissioner, an affidavit stating that the applicant does not expect to exceed \$15,000 in gross annual receipts derived from performing services which require licensure under this section during the calendar year in which the affidavit is received. For the purposes of calculating fees under section 326B.092, a certificate of exemption is an entry level license. To renew the exemption in clause (5), the applicant must file an affidavit stating that the applicant did not exceed \$15,000 in gross annual receipts during the past calendar year. If a person, operating under the exemption in clause (5), exceeds \$15,000 in gross receipts during any calendar year, the person must immediately surrender the certificate of exemption and apply for the appropriate license. The person must remain licensed until such time as the person's gross annual receipts during a calendar year fall below \$15,000. The person may then apply for an exemption for the next calendar year.

326B.809 WRITTEN CONTRACT REQUIRED.

(a) All agreements including proposals, estimates, bids, quotations, contracts, purchase orders, and change orders between a licensee and a customer for the performance of a licensee's services must be in writing and must contain the following:

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- (1) a detailed summary of the services to be performed;
- (2) a description of the specific materials to be used or a list of standard features to be included;
and
- (3) the total contract price or a description of the basis on which the price will be calculated.

(b) Before entering into an agreement, the licensee shall provide a prospective customer with written performance guidelines for the services to be performed. Performance guidelines also must be included or incorporated by reference in the agreement. All agreements shall be signed and dated by the licensee and customer.

(c) The licensee shall provide to the customer, at no charge, a signed and dated document at the time that the licensee and customer sign and date the document. Documents include agreements, performance guidelines, and mechanic's lien waivers.

326B.81 RESIDENTIAL ROOFERS.

Residential roofers are subject to all of the requirements of sections 326B.802 to 326B.885, except the recovery fund in section 326B.89.

326B.811 RESIDENTIAL ROOFING CONTRACT; RIGHT TO CANCEL.

Subdivision 1. **Required.** A person who has entered into a written contract with a residential building contractor, residential remodeler, or residential roofer to provide goods and services to be paid by the insured from the proceeds of a property or casualty insurance policy has the right to cancel the contract within 72 hours after the insured has been notified by the insurer that the claim has been denied. Cancellation is evidenced by the insured giving written notice of cancellation to the contractor at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox, properly addressed to the contractor and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

Subd. 2. **Writing required; notice of right to cancel; notice of cancellation.** (a) Before entering a contract referred to in subdivision 1, the contractor must:

- (1) furnish the insured with a statement in boldface type of a minimum size of ten points, in substantially the following form:

"You may cancel this contract at any time within 72 hours after you have been notified that your insurer has denied your claim to pay for the goods and services to be provided under this contract. See attached notice of cancellation form for an explanation of this right."; and

- (2) furnish each insured a fully completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract and easily detachable, and which shall contain in boldface type of a minimum size of ten points the following information and statements:

"NOTICE OF CANCELLATION

If your insurer denies your claim to pay for goods and services to be provided under this contract, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time within 72 hours after you have been notified that your claim has been denied. If you cancel, any payments made by you under the contract will be returned within ten business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION.

.....

(date)

.....

(Insured's signature)"

Subd. 3. **Return of payments; compensation.** Within ten days after a contract referred to in subdivision 1 has been canceled, the contractor must tender to the insured any payments made by

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the insured and any note or other evidence of indebtedness. However, if the contractor has performed any emergency services, the contractor is entitled to compensation for such services.

Subd. 4. **Definition.** For the purposes of this section, "contractor" means a residential building contractor who is providing roofing services, a residential remodeler who is providing roofing services, or a residential roofer.

326B.814 REHABILITATION OF CRIMINAL OFFENDERS.

Chapter 364 does not apply to an applicant for a license or to a licensee where the underlying conduct on which the conviction is based would be grounds for denial, censure, suspension, or revocation of the license.

326B.815 FEES.

Subdivision 1. **Fees.** (a) For the purposes of calculating fees under section 326B.092, an initial or renewed residential contractor, residential remodeler, or residential roofer license is a business license. Notwithstanding section 326B.092, the licensing fee for manufactured home installers under section 327B.041 is \$300 for a three-year period.

(b) All initial and renewal licenses, except for manufactured home installer licenses, shall be effective for two years and shall expire on March 31 of the year after the year in which the application is made.

(c) The commissioner shall in a manner determined by the commissioner, without the need for any rulemaking under chapter 14, phase in the renewal of residential contractor, residential remodeler, and residential roofer licenses from one year to two years. By June 30, 2011, all renewed residential contractor, residential remodeler, and residential roofer licenses shall be two-year licenses.

Subd. 2. **Local surcharge.** A local government unit may place a surcharge in an amount no greater than \$5 on each land use, zoning, or building permit that requires a licensed residential building contractor, residential remodeler, residential roofer, or manufactured home installer for the purpose of license verification. The local government may verify a license by telephone, facsimile or electronic communication. A local government unit shall not issue a land use, zoning, or building permit unless the required license has been verified and is current.

326B.821 CONTINUING EDUCATION; HOURS.

Subdivision 1. **Purpose.** The purpose of this section is to establish standards for residential building contractor continuing education.

Subd. 2. **Hours.** A qualifying person of a licensee must provide proof of completion of 14 hours of continuing education per two-year licensure period.

Credit may not be earned if the licensee has previously obtained credit for the same course as either a student or instructor during the same licensing period.

Subd. 21. **Residential building contractor, remodeler, and roofer education.** (a) Each licensee must, during each continuing education reporting period, complete and report one hour of continuing education relating to energy codes or energy conservation measures applicable to residential buildings.

(b) Immediately following the adoption date of a new residential code, the commissioner may prescribe that up to seven of the required 14 hours of continuing education credit per licensure period include education hours specifically designated to instruct licensees on new or existing State Building Code provisions.

326B.825 LOSS OF QUALIFYING PERSON.

Upon the departure or disqualification of a licensee's qualifying person because of death, disability, retirement, position change, or other reason, the licensee must notify the commissioner within 15 business days. The licensee shall have 120 days from the departure of the qualifying person to obtain a new qualifying person. Failure to secure a new qualifying person within 120 days will, with or without notice, result in the automatic termination of the license.

326B.83 APPLICATION AND EXAMINATION.

Subdivision 1. **Form.** (a) An applicant for a license under sections 326B.802 to 326B.885 must submit an application, under oath and accompanied by the fees required by section 326B.092, on a form prescribed by the commissioner.

(b) If one of the categories in the application does not apply, the applicant must identify the category and state the reason the category does not apply. The commissioner may refuse to issue a license if the application is not complete or contains unsatisfactory information.

Subd. 2. **Contents.** Each application must include the following information regarding the applicant:

- (1) Minnesota workers' compensation insurance certificate;
- (2) employment insurance account number;
- (3) certificate of liability insurance;
- (4) type of license requested;
- (5) name, current address, and telephone number where the applicant resides;
- (6) name and address of the applicant's qualifying person, if other than applicant;

(7) if the applicant is a sole proprietorship, the name and address of the sole proprietor; if the applicant is a partnership, the name and address of each partner; if the applicant is a limited liability company, the name and address of each governor and manager; if the applicant is a corporation, the name and address of each of the corporate officers, directors, and all shareholders holding more than ten percent of the outstanding stock in the corporation;

(8) name and address of the applicant's agent in this state authorized to receive service of process, and a consent to service of process as required by section 326B.855;

(9) current street address and telephone number where the business is physically located;

(10) whether the applicant, any employee, or qualifying person has ever been licensed in this or any other state and has had a professional or vocational license reprimanded, censured, limited, conditioned, refused, suspended, or revoked, or has been the subject of any administrative action;

(11) whether the applicant, qualifying person, or any of the applicant's corporate or partnership directors, limited liability company governors, officers, limited or general partners, managers, all shareholders holding more than ten percent of the share of the corporation that have been issued, or all members holding more than ten percent of the voting power of the membership interests that have been issued, has been convicted of a crime that either related directly to the business for which the license is sought or involved fraud, misrepresentation, or misuse of funds; has suffered a judgment in a civil action involving fraud, misrepresentation, construction defect, negligence, breach of contract, or conversion of funds within the ten years prior to the submission of the application; or has had any government license or permit reprimanded, censured, limited, conditioned, suspended, or revoked as a result of an action brought by a federal, state, or local governmental unit or agency in this or any other state;

(12) the applicant's and qualifying person's business history for the past five years and whether the applicant, a managing employee, or qualifying person has ever filed for bankruptcy or protection from creditors or has any unsatisfied judgments against the applicant, employee, or qualifying person;

(13) where the applicant is a firm, partnership, sole proprietorship, limited liability company, corporation, or association, whether there has been a sale or transfer of the business or other change in ownership, control, or name in the last five years and the details thereof, and the names and addresses of all prior, predecessor, subsidiary, affiliated, parent, or related entities, and whether each such entity, or its owners, officers, directors, members or shareholders holding more than ten percent of the stock, or an employee has ever taken or been subject to an action that is subject to clause (10), (11), or (12) in the last ten years; and

(14) whether the qualifying person is the qualifying person for more than one licensee.

For purposes of this subdivision, "applicant" includes employees who exercise management or policy control over the residential contracting, residential remodeling, residential roofing, or manufactured home installation activities in the state of Minnesota, including affiliates, partners,

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directors, governors, officers, limited or general partners, managers, all shareholders holding more than ten percent of the shares that have been issued, a shareholder holding more than ten percent of the voting power of the shares that have been issued, or all members holding more than ten percent of the membership interests that have been issued or more than ten percent of the voting power of the membership interests that have been issued.

The commissioner may require further information as the commissioner deems appropriate to administer the provisions and further the purposes of this chapter.

Subd. 3. **Examination.** (a) Each qualifying person must pass a written examination for the type of license requested. The commissioner may establish the examination qualifications, including related education experience and education, the examination procedure, and the examination for each licensing group. The examination must include at a minimum the following areas:

(1) appropriate knowledge of technical terms commonly used and the knowledge of reference materials and code books to be used for technical information; and

(2) understanding of the general principles of business management and other pertinent state laws.

(b) Each examination must be designed for the specified type of license requested.

Subd. 4. **Exemption.** A general retailer whose primary business is not being a residential building contractor, residential remodeler, residential roofer, or manufactured home installer, and who has completed a license examination meeting or exceeding Minnesota's examination requirements in another state is exempt from subdivision 3 and sections 326B.0981, 326B.099, 326B.821, and 326B.825.

Subd. 5. **Additional licensing requirements.** As an alternative to denying an application for licensure pursuant to section 326B.84, the commissioner may, as a condition of licensure and based upon information received pursuant to subdivision 2, clauses (10) to (12), or a finding pursuant to section 326B.84, clauses (1) to (9), impose additional insurance, bonding, reporting, record keeping, and other requirements on the applicant as are reasonable to protect the public.

Subd. 6. **License.** A nonresident of Minnesota may be licensed as a residential building contractor, residential remodeler, residential roofer, or manufactured home installer upon compliance with all the provisions of sections 326B.092 to 326B.098 and 326B.802 to 326B.885.

326B.835 LOCAL LICENSES.

Subdivision 1. **Local license prohibited.** Except as provided in subdivision 2, a political subdivision may not require a person licensed under sections 326B.802 to 326B.885 to also be licensed or pay a registration or other fee related to licensure under any ordinance, law, rule, or regulation of the political subdivision. This section does not prohibit charges for building permits or other charges not directly related to licensure.

Subd. 2. **Exception.** This section does not prohibit a political subdivision from requiring licensure or certification under any ordinance, law, rule, or regulation of the political subdivision for persons who engage in the installation of an on-site sewage treatment system.

326B.84 GROUNDS FOR SANCTIONS.

The commissioner may use any enforcement provision in section 326B.082 against an applicant for, qualifying person of, or holder of a license or certificate of exemption, if the applicant, licensee, certificate of exemption holder, qualifying person, or owner, officer, member, managing employee, or affiliate of the applicant, licensee, or certificate of exemption holder:

(1) has filed an application for licensure or a certificate of exemption which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(2) has engaged in a fraudulent, deceptive, or dishonest practice;

(3) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business;

(4) has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public;

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(5) has violated or failed to comply with any provision of sections 326B.802 to 326B.885, any rule or order under sections 326B.802 to 326B.885, or any other law, rule, or order related to the duties and responsibilities entrusted to the commissioner;

(6) has been convicted of a violation of the State Building Code or has refused to comply with a correction order issued by a certified building official, or in local jurisdictions that have not adopted the State Building Code has refused to correct a violation of the State Building Code when the violation has been documented by a certified building official;

(7) has failed to use the proceeds of any payment made to the licensee for the construction of, or any improvement to, residential real estate, as defined in section 326B.802, subdivision 13, for the payment of labor, skill, material, and machinery contributed to the construction or improvement, knowing that the cost of any labor performed, or skill, material, or machinery furnished for the improvement remains unpaid;

(8) has not furnished to the person making payment either a valid lien waiver as to any unpaid labor performed, or skill, material, or machinery furnished for an improvement, or a payment bond in the basic amount of the contract price for the improvement conditioned for the prompt payment to any person or persons entitled to payment;

(9) has engaged in an act or practice that results in compensation to an aggrieved owner or lessee from the contractor recovery fund pursuant to section 326B.89, unless:

(i) the applicant or licensee has repaid the fund twice the amount paid from the fund, plus interest at the rate of 12 percent per year; and

(ii) the applicant or licensee has obtained a surety bond in the amount of at least \$40,000, issued by an insurer authorized to transact business in this state;

(10) has engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit or arbitration arising out of their activities as a licensee or certificate of exemption holder under this chapter;

(11) has had a judgment entered against them for failure to make payments to employees, subcontractors, or suppliers, that the licensee has failed to satisfy and all appeals of the judgment have been exhausted or the period for appeal has expired;

(12) if unlicensed, has obtained a building permit by the fraudulent use of a fictitious license number or the license number of another, or, if licensed, has knowingly allowed an unlicensed person to use the licensee's license number for the purpose of fraudulently obtaining a building permit; or has applied for or obtained a building permit for an unlicensed person;

(13) has made use of a forged mechanic's lien waiver under chapter 514;

(14) has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises;

(15) has engaged in an act or practice whether or not the act or practice directly involves the business for which the person is licensed, that demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the commissioner; or

(16) has failed to comply with requests for information, documents, or other requests from the department within the time specified in the request or, if no time is specified, within 30 days of the mailing of the request by the department.

326B.845 PENALTIES.

Subdivision 1. **Gross misdemeanor.** An individual who violates an order of the commissioner or is the manager, officer, or director of a person who violates an order issued by the commissioner is guilty of a gross misdemeanor.

Subd. 2. **Lien rights.** An unlicensed person who knowingly violates sections 326B.802 to 326B.885 has no right to claim a lien under section 514.01 and the lien is void. Nothing in this section affects the lien rights of material suppliers and licensed contractors to the extent provided by law.

326B.85 BUILDING PERMIT CONDITIONED ON LICENSURE; NOTICE OF PERMIT APPLICATION.

Subdivision 1. **Building permit.** A political subdivision shall not issue a building permit to an unlicensed person who is required to be licensed under sections 326B.802 to 326B.885. A political subdivision that issues zoning or land use permits in lieu of a building permit shall not issue those permits to an unlicensed person who is required to be licensed under sections 326B.802 to 326B.885. The political subdivision shall report the person applying for the permit to the commissioner who may bring an action against the person.

Subd. 2. **Notice of building permit application.** A political subdivision shall notify the department when an application for a building permit involving the construction of new residential real estate has been received from an unlicensed person by submitting a copy of the application to the department within two business days of receipt of the application. The political subdivision may submit a copy of the building permit application by facsimile, United States mail, or electronic communication.

326B.855 SERVICE OF PROCESS.

Subdivision 1. **Procedure.** Every applicant for licensure or certificate of exemption under sections 326B.802 to 326B.885 shall irrevocably consent to the appointment of the commissioner and successors in office to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or a successor, executor, or administrator which arises under sections 326B.802 to 326B.885 or any rule or order thereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service under this section shall be made in compliance with subdivision 3.

Subd. 2. **Service on commissioner.** (a) When a person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections 326B.802 to 326B.885, or any rule or order under those sections, and the person has not consented to service of process under subdivision 1, that conduct is equivalent to an appointment of the commissioner and successors in office as the person's agent to receive service of process in any noncriminal suit, action, or proceeding against the person that is based on that conduct and is brought under sections 326B.802 to 326B.885, or any rule or order under those sections, with the same force and validity as if served personally on the person consenting to the appointment of the commissioner and successors in office. Service under this section shall be made in compliance with subdivision 3.

(b) Subdivision 3 applies in all other cases in which a person, including a nonresident of this state, has filed a consent to service of process. This paragraph supersedes any inconsistent provision of law.

(c) Subdivision 3 applies in all cases in which service of process is allowed to be made on the commissioner.

Subd. 3. **How made.** Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail, and is not effective unless:

(1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and

(2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

326B.86 BOND; INSURANCE.

Subdivision 1. **Bond.** (a) Licensed manufactured home installers and licensed residential roofers must give and maintain a bond to the state. The bond must comply with section 326B.0921.

(b) A licensed residential roofer must post a bond with a penal sum of at least \$15,000.

(c) A licensed manufactured home installer must post a bond with a penal sum of at least \$2,500.

Bonds issued under sections 326B.802 to 326B.885 are not state bonds or contracts for purposes of sections 8.05 and 16C.05, subdivision 2.

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Subd. 2. **Insurance.** Each licensee shall have and maintain in effect commercial general liability insurance, which includes premises and operations insurance and products and completed operations insurance, with limits of at least \$100,000 per occurrence, \$300,000 aggregate limit for bodily injury, and property damage insurance with limits of at least \$25,000 or a policy with a single limit for bodily injury and property damage of \$300,000 per occurrence and \$300,000 aggregate limits. The insurance must be written by an insurer licensed to do business in this state. Each licensee shall maintain on file with the commissioner a certificate evidencing the insurance. In the event of a policy cancellation, the insurer shall send written notice to the commissioner at the same time that a cancellation request is received from or a notice is sent to the insured. The commissioner may increase the minimum amount of insurance required for any licensee or class of licensees if the commissioner considers it to be in the public interest and necessary to protect the interests of Minnesota consumers.

326B.865 SIGN CONTRACTOR; BOND.

(a) A sign contractor may post a compliance bond with the commissioner, conditioned that the sign contractor shall faithfully perform duties and comply with laws, ordinances, rules, and contracts entered into for the installation of signs. The bond must be renewed biennially and maintained for so long as determined by the commissioner. The aggregate liability of the surety on the bond to any and all persons, regardless of the number of claims made against the bond, may not exceed the annual amount of the bond. The bond may be canceled as to future liability by the surety upon 30 days' written notice mailed to the commissioner by United States mail.

(b) The amount of the bond shall be \$8,000. The bond may be drawn upon only by a local unit of government that requires sign contractors to post a compliance bond. The bond is in lieu of any compliance bond required by a local unit of government.

(c) For purposes of this section, "sign" means a device, structure, fixture, or placard using graphics, symbols, or written copy that is erected on the premises of an establishment including the name of the establishment or identifying the merchandise, services, activities, or entertainment available on the premises.

(d) Each person giving bond under this section shall pay a biennial bond filing fee of \$100 to the commissioner of labor and industry.

326B.87 LICENSE NUMBER; ADVERTISING.

Subdivision 1. **License number must be displayed.** The license number of a licensee must be placed on all building permits and building permit applications made to or issued by the state or a political subdivision. In jurisdictions that have not adopted the State Building Code, the license number must be placed on the site plan review or zoning permit. License numbers must be on all business cards and all contracts to perform work for which a license is required.

Subd. 2. **Advertising.** The license number of a licensee must appear in any advertising by that licensee including but not limited to signs, vehicles, business cards, published display ads, flyers, brochures, Web sites, and Internet ads.

Subd. 3. **Contracts.** Contracts entered into by a licensee must state that the person is licensed and must state the license number.

326B.875 DISCLOSURES.

If a licensee sells or offers to sell residential property, constructed by the licensee, which is or has been occupied by the licensee, the licensee must, prior to entering into a binding purchase agreement, provide to the buyer a written disclosure which states that any claims that arise as a result of the licensee's construction of the property: (1) will not be covered under the statutory warranty established by chapter 327A, and (2) if the licensee has occupied the residential property for one year or more, will not be eligible for reimbursement from the contractor's recovery fund.

326B.88 PUBLIC EDUCATION.

The commissioner may develop materials and programs to educate the public concerning licensure requirements. The commissioner may develop materials for reporting unlicensed contracting activity. The commissioner shall provide information in other languages.

326B.885 LICENSE RENEWAL.

Subdivision 1. **Renewal.** A licensee whose fully completed renewal application has been properly and timely filed and who has not received a notice of denial of renewal is considered to have been approved for renewal and may continue to transact business whether or not the renewed license has been received. Applications are timely if received by March 1 of the renewal year. Applications must be made on a form approved by the commissioner. An application for renewal that does not contain all of the information requested is an incomplete application and will not be processed.

Subd. 2. **Renewal period.** (a) A residential contractor, residential remodeler, and residential roofer license shall have a renewal period of two years. The commissioner shall in a manner determined by the commissioner, without the need for any rulemaking under chapter 14, phase in the renewal of residential contractor, residential remodeler, and residential roofer licenses from one year to two years. By June 30, 2011, all renewed residential contractor, residential remodeler, and residential roofer licenses shall be two-year licenses.

(b) A manufactured home installer's license shall have a renewal period of three years, effective for all renewals and new licenses issued after December 31, 2008.

326B.89 CONTRACTOR RECOVERY FUND.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Gross annual receipts" means the total amount derived from residential contracting or residential remodeling activities, regardless of where the activities are performed, and must not be reduced by costs of goods sold, expenses, losses, or any other amount.

(c) "Licensee" means a person licensed as a residential contractor or residential remodeler.

(d) "Residential real estate" means a new or existing building constructed for habitation by one to four families, and includes detached garages intended for storage of vehicles associated with the residential real estate.

(e) "Fund" means the contractor recovery fund.

(f) "Owner" when used in connection with real property, means a person who has any legal or equitable interest in real property and includes a condominium or townhome association that owns common property located in a condominium building or townhome building or an associated detached garage. Owner does not include any real estate developer or any owner using, or intending to use, the property for a business purpose and not as owner-occupied residential real estate.

Subd. 2. **Generally.** The contractor recovery fund is created in the state treasury and shall be administered by the commissioner for the purposes described in this section. Any interest or profit accruing from investment of money in the fund shall be credited to the contractor recovery fund.

Subd. 3. **Fund fees.** In addition to any other fees, a person who applies for or renews a license under sections 326B.802 to 326B.885 shall pay a fee to the fund. The person shall pay, in addition to the appropriate application or renewal fee, the following additional fee that shall be deposited in the fund. The amount of the fee shall be based on the person's gross annual receipts for the person's most recent fiscal year preceding the application or renewal, on the following scale:

Fee	Gross Annual Receipts
\$320	under \$1,000,000
\$420	\$1,000,000 to \$5,000,000
\$520	over \$5,000,000

Subd. 4. **Purpose of fund.** The purpose of this fund is to:

(1) compensate owners or lessees of residential real estate who meet the requirements of this section;

(2) reimburse the department for all legal and administrative expenses, disbursements, and costs, including staffing costs, incurred in administering and defending the fund;

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(3) pay for educational or research projects in the field of residential contracting to further the purposes of sections 326B.801 to 326B.825; and

(4) provide information to the public on residential contracting issues.

Subd. 5. Payment limitations. The commissioner shall not pay compensation from the fund to an owner or a lessee in an amount greater than \$75,000 per licensee. The commissioner shall not pay compensation from the fund to owners and lessees in an amount that totals more than \$300,000 per licensee. The commissioner shall only pay compensation from the fund for a final judgment that is based on a contract directly between the licensee and the homeowner or lessee that was entered into prior to the cause of action and that requires licensure as a residential building contractor or residential remodeler.

Subd. 6. Verified application. To be eligible for compensation from the fund, an owner or lessee shall serve on the commissioner a verified application for compensation on a form approved by the commissioner. The application shall verify the following information:

(1) the specific grounds upon which the owner or lessee seeks to recover from the fund;

(2) that the owner or the lessee has obtained a final judgment in a court of competent jurisdiction against a licensee licensed under section 326B.83;

(3) that the final judgment was obtained against the licensee on the grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance that arose directly out of a contract directly between the licensee and the homeowner or lessee that was entered into prior to the cause of action and that occurred when the licensee was licensed and performing any of the special skills enumerated under section 326B.802, subdivision 15;

(4) the amount of the owner's or the lessee's actual and direct out-of-pocket loss on the owner's residential real estate, on residential real estate leased by the lessee, or on new residential real estate that has never been occupied or that was occupied by the licensee for less than one year prior to purchase by the owner;

(5) that the residential real estate is located in Minnesota;

(6) that the owner or the lessee is not the spouse of the licensee or the personal representative of the licensee;

(7) the amount of the final judgment, any amount paid in satisfaction of the final judgment, and the amount owing on the final judgment as of the date of the verified application;

(8) that the owner or lessee has diligently pursued remedies against all the judgment debtors and all other persons liable to the judgment debtor in the contract for which the owner or lessee seeks recovery from the fund; and

(9) that the verified application is being served within two years after the judgment became final.

The verified application must include documents evidencing the amount of the owner's or the lessee's actual and direct out-of-pocket loss. The owner's and the lessee's actual and direct out-of-pocket loss shall not include any attorney fees, litigation costs or fees, interest on the loss, and interest on the final judgment obtained as a result of the loss or any costs not directly related to the value difference between what was contracted for and what was provided. Any amount paid in satisfaction of the final judgment shall be applied to the owner's or lessee's actual and direct out-of-pocket loss. An owner or lessee may serve a verified application regardless of whether the final judgment has been discharged by a bankruptcy court. A judgment issued by a court is final if all proceedings on the judgment have either been pursued and concluded or been forgone, including all reviews and appeals. For purposes of this section, owners who are joint tenants or tenants in common are deemed to be a single owner. For purposes of this section, owners and lessees eligible for payment of compensation from the fund shall not include government agencies, political subdivisions, financial institutions, and any other entity that purchases, guarantees, or insures a loan secured by real estate.

Subd. 7. Commissioner review. The commissioner shall within 120 days after receipt of the complete verified application:

(1) enter into an agreement with an owner or a lessee that resolves the verified application for compensation from the fund; or

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(2) issue an order to the owner or the lessee accepting, modifying, or denying the verified application for compensation from the fund.

Upon receipt of an order issued under clause (2), the owner or the lessee shall have 30 days to serve upon the commissioner a written request for a hearing. If the owner or the lessee does not serve upon the commissioner a timely written request for hearing, the order issued under clause (2) shall become a final order of the commissioner that may not be reviewed by any court or agency. The commissioner shall order compensation from the fund only if the owner or the lessee has filed a verified application that complies with subdivision 6 and if the commissioner determines based on review of the application that compensation should be paid from the fund. The commissioner shall not be bound by any prior settlement, compromise, or stipulation between the owner or the lessee and the licensee.

Subd. 8. Administrative hearing. If an owner or a lessee timely serves a request for hearing under subdivision 7, the commissioner shall request that an administrative law judge be assigned and that a hearing be conducted under the contested case provisions of chapter 14 within 45 days after the commissioner received the request for hearing, unless the parties agree to a later date. The commissioner must notify the owner or lessee of the time and place of the hearing at least 15 days before the hearing. Upon petition of the commissioner, the administrative law judge shall continue the hearing up to 60 days and upon a showing of good cause may continue the hearing for such additional period as the administrative law judge deems appropriate.

At the hearing the owner or the lessee shall have the burden of proving by substantial evidence under subdivision 6, clauses (1) to (8). Whenever an applicant's judgment is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving the cause of action for fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance. Otherwise, the judgment shall create a rebuttable presumption of the fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance. This presumption affects the burden of producing evidence.

The administrative law judge shall issue findings of fact, conclusions of law, and order. If the administrative law judge finds that compensation should be paid to the owner or the lessee, the administrative law judge shall order the commissioner to make payment from the fund of the amount it finds to be payable pursuant to the provisions of and in accordance with the limitations contained in this section. The order of the administrative law judge shall constitute the final decision of the agency in the contested case. The commissioner or the owner or lessee may seek judicial review of the administrative law judge's findings of fact, conclusions of law, and order in accordance with sections 14.63 to 14.69.

Subd. 9. Satisfaction of applications for compensation. The commissioner shall pay compensation from the fund to an owner or a lessee pursuant to the terms of an agreement that has been entered into under subdivision 7, clause (1), or pursuant to a final order that has been issued under subdivision 7, clause (2), or subdivision 8 by December 1 of the fiscal year following the fiscal year during which the agreement was entered into or during which the order became final, subject to the limitations of this section. At the end of each fiscal year the commissioner shall calculate the amount of compensation to be paid from the fund pursuant to agreements that have been entered into under subdivision 7, clause (1), and final orders that have been issued under subdivision 7, clause (2), or subdivision 8. If the calculated amount exceeds the amount available for payment, then the commissioner shall allocate the amount available among the owners and the lessees in the ratio that the amount agreed to or ordered to be paid to each owner or lessee bears to the amount calculated. The commissioner shall mail notice of the allocation to all owners and lessees not less than 45 days following the end of the fiscal year. Any compensation paid by the commissioner in accordance with this subdivision shall be deemed to satisfy and extinguish any right to compensation from the fund based upon the verified application of the owner or lessee.

Subd. 10. Right of subrogation. Notwithstanding subdivisions 1 to 9 and 11 to 16, the commissioner shall not pay compensation from the fund to an owner or lessee unless and until the owner or lessee executes an assignment to the commissioner of all rights, title, and interest in the final judgment in the amount of the compensation to be paid under an agreement under subdivision 7, clause (1), or a final order issued under subdivision 7, clause (2), or subdivision 8. If the commissioner pays compensation from the fund to an owner or a lessee pursuant to an agreement under subdivision 7, clause (1), or a final order issued under subdivision 7, clause (2), or subdivision 8, then the commissioner shall be subrogated to all of the rights, title, and interest in the owner's or lessee's final judgment in the amount of compensation paid from the fund. The commissioner shall deposit in the fund money recovered under this subdivision.

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Subd. 11. **Effect of section on commissioner's authority.** Nothing contained in this section shall limit the authority of the commissioner to take disciplinary action against a licensee under the provisions of this chapter. A licensee's repayment in full of obligations to the fund shall not nullify or modify the effect of any other disciplinary proceeding brought under the provisions of this chapter.

Subd. 12. **Limitation.** Notwithstanding subdivision 5, nothing may obligate the fund for claims brought by:

(1) insurers or sureties under subrogation or similar theories; or

(2) owners of residential property where the contracting activity complained of was the result of a contract entered into with a prior owner, unless the claim is brought and judgment is rendered for breach of the statutory warranty set forth in chapter 327A.

Subd. 13. **Condominiums or townhouses.** (a) For purposes of this section, the terms "owner" and "lessee" of residential real estate include the following, regardless of the number of residential units per building:

(1) an owner or lessee of an apartment as defined in and governed by chapter 515;

(2) an owner or lessee of a unit in a common interest community created under or governed by chapter 515B;

(3) an owner or lessee of a unit in a planned community or cooperative created prior to June 1, 1994, that has not elected to be governed by chapter 515B;

(4) an association or master association, as defined in chapter 515B, that owns or leases the common elements of a common interest community; and

(5) a homeowners association that owns or leases the common elements in a planned community or cooperative created prior to June 1, 1994, that has not elected to be governed by chapter 515B.

(b) For purposes of this subdivision, "common elements" means common areas and facilities as defined in chapter 515 and common elements as defined in chapter 515B.

Subd. 15. **Appropriation.** Money in the fund is appropriated to the commissioner for the purposes of this section.

Subd. 16. **Additional assessment.** If the balance in the fund is at any time less than the commissioner determines is necessary to carry out the purposes of this section, every licensee, when renewing a license, shall pay, in addition to the annual renewal fee and the fee set forth in subdivision 3, an assessment not to exceed \$200. The commissioner shall set the amount of assessment based on a reasonable determination of the amount that is necessary to restore a balance in the fund adequate to carry out the purposes of this section.

Subd. 17. **Recovery of payments.** If the commissioner pays compensation from the fund on the basis of any false or misleading information provided to the commissioner in connection with the application for compensation, then, upon the application of the commissioner, a district court shall order the owner or lessee to repay to the fund all such compensation paid from the fund. In addition, the state may be allowed an amount determined by the court to be the reasonable value of all or part of the litigation expenses, including attorney fees, incurred by the state. The commissioner shall deposit in the fund money recovered under this subdivision.

Subd. 18. **Payment of penalty.** If an owner or lessee violates section 326B.084 in connection with an application for compensation from the fund, and if the commissioner issues to the owner or lessee an administrative order under section 326B.082, subdivision 7, for that violation of section 326B.084, then the commissioner shall deposit in the fund all penalties paid pursuant to the administrative order.