

(4) an expenditure by an organization which is a contribution to a parent organization, foundation, or affiliate of the contributing organization, if the parent organization, foundation, or affiliate has provided to the contributing organization within one year of the contribution any money, grants, property, or other thing of value;

(5) a contribution by a licensed organization to another licensed organization unless the board has specifically authorized the contribution. The board must authorize such a contribution when requested to do so by the contributing organization unless it makes an affirmative finding that the contribution will not be used by the recipient organization for one or more of the purposes in paragraph (a); ~~or~~

(6) the erection, acquisition, improvement, or expansion of real property or capital assets which will be used for one or more of the purposes in paragraph (a), clause (7), unless the organization making the expenditures notifies the board at least 15 days before making the expenditure; or

(7) a contribution to a statutory or home rule charter city, county, or town by a licensed organization with the knowledge that the governmental unit intends to use the contribution for a pension or retirement fund.

**Sec. 2. [471.6151] CONTRIBUTIONS FROM LAWFUL GAMBLING ORGANIZATIONS.**

Contributions of receipts derived from lawful gambling to a statutory or home rule charter city, county, or town made by an organization licensed to conduct lawful gambling under chapter 349 may not be used for the benefit of a pension or retirement fund.

**Sec. 3. EFFECTIVE DATE.**

Sections 1 and 2 are effective the day following final enactment.

Presented to the governor May 14, 1993

Signed by the governor May 17, 1993, 4:52 p.m.

**CHAPTER 245—H.F.No. 948**

*An act relating to commerce; modifying the definition of business license; regulating residential building contractors and remodelers; providing licensing requirements; prescribing the powers and duties of the commissioner; establishing a contractor's recovery fund; appropriating money; amending Minnesota Statutes 1992, sections 116J.70, subdivision 2a; 326.83, subdivisions 4, 6, 7, 8, 10, and by adding subdivisions; 326.84, subdivisions 1 and 3; 326.85, subdivision 1; 326.86; 326.87, subdivision 2; 326.88; 326.89, subdivisions 2, 3, and by adding subdivisions; 326.90; 326.91, subdivisions 1 and 2; 326.92, subdivisions 1 and 3;*

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*326.93, subdivision 1; 326.94; 326.97, subdivision 1, and by adding a subdivision; 326.99; and 326.991; proposing coding for new law in Minnesota Statutes, chapter 326; repealing Minnesota Statutes 1992, section 326.84, subdivision 2.*

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

Section 1. Minnesota Statutes 1992, section 116J.70, subdivision 2a, is amended to read:

Subd. 2a. **LICENSE; EXCEPTIONS.** "Business license" or "license" does not include the following:

(1) any occupational license or registration issued by a licensing board listed in section 214.01 or any occupational registration issued by the commissioner of health pursuant to section 214.13;

(2) any license issued by a county, home rule charter city, statutory city, township, or other political subdivision;

(3) any license required to practice the following occupation regulated by the following sections:

- (a) abstracters regulated pursuant to chapter 386;
- (b) accountants regulated pursuant to chapter 326;
- (c) adjusters regulated pursuant to chapter 72B;
- (d) architects regulated pursuant to chapter 326;
- (e) assessors regulated pursuant to chapter 270;
- (f) attorneys regulated pursuant to chapter 481;
- (g) auctioneers regulated pursuant to chapter 330;
- (h) barbers regulated pursuant to chapter 154;
- (i) beauticians regulated pursuant to chapter 155A;
- (j) boiler operators regulated pursuant to chapter 183;
- (k) chiropractors regulated pursuant to chapter 148;
- (l) collection agencies regulated pursuant to chapter 332;
- (m) cosmetologists regulated pursuant to chapter 155A;
- (n) dentists, registered dental assistants, and dental hygienists regulated pursuant to chapter 150A;
- (o) detectives regulated pursuant to chapter 326;

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- (p) electricians regulated pursuant to chapter 326;
- (q) embalmers regulated pursuant to chapter 149;
- (r) engineers regulated pursuant to chapter 326;
- (s) insurance brokers and salespersons regulated pursuant to chapter 60A;
- (t) certified interior designers regulated pursuant to chapter 326;
- (u) midwives regulated pursuant to chapter 148;
- (v) morticians regulated pursuant to chapter 149;
- (w) nursing home administrators regulated pursuant to chapter 144A;
- (x) optometrists regulated pursuant to chapter 148;
- (y) osteopathic physicians regulated pursuant to chapter 147;
- (z) pharmacists regulated pursuant to chapter 151;
- (aa) physical therapists regulated pursuant to chapter 148;
- (bb) physicians and surgeons regulated pursuant to chapter 147;
- (cc) plumbers regulated pursuant to chapter 326;
- (dd) podiatrists regulated pursuant to chapter 153;
- (ee) practical nurses regulated pursuant to chapter 148;
- (ff) professional fund raisers regulated pursuant to chapter 309;
- (gg) psychologists regulated pursuant to chapter 148;
- (hh) real estate brokers, salespersons, and others regulated pursuant to chapters 82 and 83;
- (ii) registered nurses regulated pursuant to chapter 148;
- (jj) securities brokers, dealers, agents, and investment advisers regulated pursuant to chapter 80A;
- (kk) steamfitters regulated pursuant to chapter 326;
- (ll) teachers and supervisory and support personnel regulated pursuant to chapter 125;
- (mm) veterinarians regulated pursuant to chapter 156;
- (nn) water conditioning contractors and installers regulated pursuant to chapter 326;

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(oo) water well contractors regulated pursuant to chapter 156A;

(pp) water and waste treatment operators regulated pursuant to chapter 115;

(qq) motor carriers regulated pursuant to chapter 221;

(rr) professional corporations regulated pursuant to chapter 319A;

(ss) real estate appraisers regulated pursuant to chapter 82B;

(tt) residential building contractors, residential remodelers, and specialty contractors regulated pursuant to chapter 326;

(4) any driver's license required pursuant to chapter 171;

(5) any aircraft license required pursuant to chapter 360;

(6) any watercraft license required pursuant to chapter 86B;

(7) any license, permit, registration, certification, or other approval pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with the resources of land, air, or water, which is required to be obtained from a state agency or instrumentality; and

(8) any pollution control rule or standard established by the pollution control agency or any health rule or standard established by the commissioner of health or any licensing rule or standard established by the commissioner of human services.

Sec. 2. Minnesota Statutes 1992, section 326.83, subdivision 4, is amended to read:

Subd. 4. **LICENSEE.** "Licensee" means a residential building contractor, or residential remodeler, ~~or specialty contractor~~ licensed under sections 326.83 to ~~326.98~~ 326.991.

Sec. 3. Minnesota Statutes 1992, section 326.83, subdivision 6, is amended to read:

Subd. 6. **PUBLIC MEMBER.** "Public member" means a person who is not, and never was, a residential ~~builder,~~ building contractor, residential remodeler, or specialty contractor or the spouse of such person, or a person who has no, or never has had a, material financial interest in acting as a residential building contractor, residential remodeler, or specialty contractor or a directly related activity.

Sec. 4. Minnesota Statutes 1992, section 326.83, subdivision 7, is amended to read:

Subd. 7. **RESIDENTIAL REMODELER.** "Residential remodeler" means a person in the business of contracting or offering to contract with an owner to

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improve existing residential real estate by providing two or more special skills as defined in this section. ~~A remodeler has two or more special skills.~~

Sec. 5. Minnesota Statutes 1992, section 326.83, subdivision 8, is amended to read:

Subd. 8. **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 improve 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.~~

Sec. 6. Minnesota Statutes 1992, section 326.83, subdivision 10, is amended to read:

Subd. 10. **SPECIALTY CONTRACTOR.** "Specialty contractor" means a person ~~other than a residential building contractor, remodeler, or material supplier~~ in the business of contracting or offering to contract to ~~make part of an improvement to~~ build or improve residential real estate, including roofing by providing one special skill as defined in this section.

Sec. 7. Minnesota Statutes 1992, section 326.83, is amended by adding a subdivision to read:

Subd. 11. 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.

(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

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(7) water resistance and waterproofing.

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

(1) rough framing;

(2) finish carpentry;

(3) siding;

(4) doors, windows, and skylights;

(5) exterior covering;

(6) porches and decks;

(7) wood foundations;

(8) insulation and vapor barrier;

(9) drywall installation, excluding taping and finishing;

(10) cabinet and counter top installation;

(11) wood floors;

(12) installation of roofing materials, excluding roofing; and

(13) soffit, fascia, and trim.

(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;

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(2) doors, skylights, and windows;

(3) soffit, fascia, and trim;

(4) exterior plaster and stucco;

(5) painting; and

(6) 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) **ROOFING.** 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;

(5) exterior plaster and stucco; and

(6) ornamental guardrail and prefabricated stairs.

Sec. 8. Minnesota Statutes 1992, section 326.83, is amended by adding a subdivision to read:

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Subd. 5b. PERSON. "Person" means a natural person, firm, partnership, limited liability company, corporation, or association, and the officers, directors, employees, or agents of that person.

Sec. 9. Minnesota Statutes 1992, section 326.83, is amended by adding a subdivision to read:

Subd. 6a. QUALIFYING PERSON. "Qualifying person" means the individual who fulfills the examination and education requirements for licensure on behalf of the licensee.

Sec. 10. Minnesota Statutes 1992, section 326.83, is amended by adding a subdivision to read:

Subd. 3a. GROSS ANNUAL RECEIPTS. "Gross annual receipts" means the total amount derived from residential contracting or remodeling activities, and must not be reduced by cost of goods sold, expenses, losses, or any other amount.

Sec. 11. Minnesota Statutes 1992, section 326.83, is amended by adding a subdivision to read:

Subd. 1a. AFFILIATE. An "affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Sec. 12. Minnesota Statutes 1992, section 326.83, is amended by adding a subdivision to read:

Subd. 5a. OWNER. Except in section 326.91, subdivision 1, "owner" means a person who has any legal or equitable interest in real property. For purposes of sections 326.83 to 326.991, "owner" does not include a residential building contractor or residential remodeler who constructs or improves its own property for purposes of speculation. A residential building contractor or residential remodeler will be presumed to be building or improving for purposes of speculation if it constructs or improves more than one property within any 12-month period.

Sec. 13. Minnesota Statutes 1992, section 326.83, is amended by adding a subdivision to read:

Subd. 3b. LESSEE. "Lessee" means one who rents residential real estate pursuant to a written lease agreement of at least one year's duration.

Sec. 14. Minnesota Statutes 1992, section 326.84, subdivision 1, is amended to read:

Subdivision 1. PERSONS REQUIRED TO BE LICENSED. A person who meets the definition of a residential remodeler as defined in section 326.83, subdivision 7, or a residential building contractor as defined in section 326.83, subdivision 8, must be licensed as a residential building contractor or residential remodeler.

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Subd. 1a. PERSONS WHO MAY BE LICENSED. A person who meets the definition of a specialty contractor as defined in section 326.83, subdivision 10, may be licensed as a residential building contractor or residential remodeler unless required to be licensed by the state as a specialty contractor.

Subd. 1b. PROHIBITION. Except as provided in subdivision 3, no person may engage in the work of a persons required to be licensed by subdivision 1 may act or hold themselves out as residential building contractor, remodeler, or specialty contractor contractors or residential remodelers for compensation without a valid license issued by the commissioner. The commissioner shall recommend which types of one-skill competency or single special skill groups must be licensed as specialty contractors and report to the legislature by January 31, 1992, with the recommended types of specialty groups, the licensing procedures, and potential continuing education requirements.

Subd. 1c. LICENSING CRITERIA. The examination and education requirements for licensure under sections 326.84 to 326.991 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 a chief executive officer or managing employee. A qualifying person for a corporation may act as a qualifying person for one additional corporation if one of the following conditions exists:

(1) there is a common ownership of at least 25 percent of each licensed corporation for which the person acts in a qualifying capacity; or

(2) one corporation is a subsidiary of another corporation for which the same person acts in a qualifying capacity. "Subsidiary," as used in this section, means a corporation of which at least 25 percent is owned by the parent corporation.

Sec. 15. Minnesota Statutes 1992, section 326.84, subdivision 3, is amended to read:

Subd. 3. **EXCEPTIONS 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 or owners of residential real estate ~~who improve the residential~~

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real estate or who build or improve a structure on the residential real estate and who do the work themselves or jointly with the owner's own employees or agents. This exemption does not apply to a person who engages in a pattern of building or improving real estate for purposes of resale. Such a pattern is presumed to exist if the person sells more than one property so built or improved within any 12-month period;

(4) an architect or engineer engaging in professional practice as defined in this chapter;

(5) a person engaging in any project by one or more contracts, for which the aggregate contract price, including labor, materials, installation, and all other items, is less than \$2,500. The \$2,500 limit may be exceeded by the unlicensed person if the person's whose total gross annual receipts from projects regulated under this section do not exceed \$15,000;

(6) a mechanical contractor, ~~plumber, or electrician;~~

(7) a person doing excavation for the installation of an on-site sewage treatment system;

(8) all specialty contractors that were required to be licensed by the state before the effective date of Laws 1991, chapter 306, sections 7 to 22; and a plumber, electrician, or other person whose profession is otherwise subject to statewide licensing, when engaged in the activity which is the subject of licensure;

(9) (8) specialty contractors that are not required to be licensed, as determined by the legislature: who provide only one special skill as defined in section 326.83;

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

(10) manufactured housing installers.

To qualify for the exemption in clause (5), a person must obtain a certificate of exemption from licensing 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 contracting activities during the calendar year for which the exemption is requested.

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, and the applicant does not expect to exceed \$15,000 in gross annual receipts during the calendar year for which the exemption is requested.

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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 exemption certificate 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 this exemption for the next calendar year.

Sec. 16. Minnesota Statutes 1992, section 326.85, subdivision 1, is amended to read:

Subdivision 1. **BUILDERS STATE ADVISORY COUNCIL.** The commissioner shall appoint ~~seven~~ eight persons to the builders ~~state~~ advisory council. At least three members of the council must reside in greater Minnesota, as defined in section 116O.02, subdivision 5. At least one member of the council must be a residential building contractor, one a residential remodeler, one a specialty contractor, one a representative of the commissioner, one a local building official, and one a public member and one a representative of organized labor designated by the AFL-CIO, this member shall not be subject to the membership term limits under section 15.059.

Sec. 17. Minnesota Statutes 1992, section 326.86, is amended to read:

#### 326.86 FEES.

Subdivision 1. **LICENSING FEE.** The licensing fee for ~~residential building contractors and remodelers~~ persons licensed pursuant to sections 326.83 to 326.991 is \$60 for the license period ending March 31, 1993, and \$75 for each ~~per year thereafter~~. The commissioner may adjust the fees under section 16A.128 to recover the costs of administration and enforcement. ~~The commissioner shall establish licensing fees for specialty contractors under section 16A.128.~~ The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury and credited to the general fund. A fee of \$25 will be charged for a duplicate license or an amended license reflecting a change of business name, address, or qualifying person.

Subd. 2. **LOCAL SURCHARGE.** A local government unit may place a surcharge in an amount no greater than \$5 on each building permit that requires a licensed residential building contractor, residential remodeler, or specialty contractor for the purpose of license verification. The local government may verify a license by telephone or facsimile machine.

Sec. 18. Minnesota Statutes 1992, section 326.87, subdivision 2, is amended to read:

Subd. 2. **HOURS.** A licensee qualifying person of a ~~general residential contractor or remodeler~~ licensee must provide proof of completion of ~~15~~ seven hours for each ~~two-year license period~~. ~~Continuing real estate hours and continuing general residential contractor or remodeler hours must be granted for the same course if it meets the guidelines for an approved course in each license~~

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program of continuing education per year. To the extent the commissioner considers it appropriate, courses or parts of courses may be considered to satisfy both continuing education requirements under this section and continuing real estate education requirements.

Sec. 19. [326.875] NOTICE OF CHANGE.

Written notice must be given to the commissioner by each licensee of any change in personal name, trade name, qualifying person, address or business location not later than 15 business days after the change. The commissioner shall issue an amended license, if required, for the unexpired period.

Sec. 20. Minnesota Statutes 1992, section 326.88, is amended to read:

326.88 **TEMPORARY LICENSES LOSS OF QUALIFYING PERSON.**

A temporary license must be issued to residential building contractors, remodelers, or specialty contractors if the person who obtained a license under section 326.84, subdivision 2, clause (2) or (3), leaves the partnership or corporation because of death, disability, retirement, or position change. A temporary license expires after one year and may not be renewed. 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 result in the automatic termination of the license.

Sec. 21. Minnesota Statutes 1992, section 326.89, subdivision 2, is amended to read:

Subd. 2. **CONTENTS.** The application must include the following information regarding the applicant:

- (1) Minnesota workers' compensation insurance ~~account number~~ certificate;
- (2) employment insurance account number;
- (3) certificate of liability insurance;
- (4) type of license requested;

(4) (5) name and address of the applicant if the applicant is a sole proprietorship; name and address of each partner if the applicant is a partnership; or name and address of each of the corporate officers, directors, and all shareholders holding more than five percent of the outstanding stock in the corporation;

(i) name and address of the applicant's qualifying person, if other than applicant; and

(ii) if the applicant is a sole proprietorship, the name and address of the sole

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proprietor; if 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 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;

~~(5)~~ (6) 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 refused, suspended, or revoked, or has been the subject of any administrative action;

(6) (7) whether the applicant, qualifying person, or any of ~~its~~ the applicant's corporate or partnership directors, limited liability company governors, officers, limited or general partners, managers, ~~or~~ all shareholders holding more than ~~five~~ ten percent of the ~~outstanding stock~~ 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, negligence, or breach of contract, or conversion within the ten years prior to the submission of the application; or has had any government license or permit 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;

~~(7)~~ the applicant's education and experience as they relate to the requested type of license; and

(8) the applicant's and qualifying person's business history for the past five years and whether the applicant, any 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;

(9) 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 (6), (7), or (8) in the last ten years; and

(10) 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 and remodeling activities in the state of Minnesota, including affiliates, partners, directors, governors, officers, limited or general partners, managers, all shareholders holding more than ten percent of the shares that have been issued, a shareholder

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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.

Sec. 22. Minnesota Statutes 1992, section 326.89, subdivision 3, is amended to read:

Subd. 3. **EXAMINATION.** ~~All individual applicants~~ Each qualifying person must satisfactorily complete 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.

Each examination must be designed for the specified type of license requested. The council shall advise the commissioner on the grading, monitoring, and updating of examinations.

Sec. 23. Minnesota Statutes 1992, section 326.89, is amended by adding a subdivision to read:

Subd. 3a. ELIGIBILITY. Any person may take the license examination. After satisfactorily completing the examination, an individual may be designated as the qualifying person for a licensee at any time, if the individual has also fulfilled the continuing education requirements set forth in section 326.87 in the manner required for the qualifying person of a licensee.

Sec. 24. Minnesota Statutes 1992, section 326.89, is amended by adding a subdivision to read:

Subd. 6. ADDITIONAL LICENSING REQUIREMENTS. As an alternative to denying an application for licensure pursuant to section 326.91, subdivision 1, the commissioner may, as a condition of licensure and based upon information received pursuant to section 326.89, subdivision 2, clauses (6) to (8), or a finding pursuant to section 326.91, subdivision 1, clauses (1) to (9), impose additional insurance, bonding, reporting, record keeping, and other requirements on the applicant as are reasonable to protect the public.

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Sec. 25. Minnesota Statutes 1992, section 326.90, is amended to read:

**326.90 LOCAL LICENSES.**

Subdivision 1. LOCAL LICENSE PROHIBITED. Except as provided in ~~section sections~~ 326.991 and 326.90, subdivision 2, a political subdivision may not require a ~~residential building contractor, remodeler, or specialty contractor person licensed under sections 326.83 to 326.991~~ to also be licensed 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.

Sec. 26. Minnesota Statutes 1992, section 326.91, subdivision 1, is amended to read:

Subdivision 1. **CAUSE.** The commissioner may by order deny, suspend, or revoke any license or may censure a licensee, and may impose a civil penalty as provided for in section 45.027, subdivision 6, if the commissioner finds that the order is in the public interest, and that the applicant ~~or~~ licensee, or affiliate of an applicant or licensee, or other agent, owner, partner, director, governor, shareholder, member, officer, qualifying person, or managing employee of the applicant or licensee or any person occupying a similar status or performing similar functions:

(1) has filed an application for a license 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;

(5) has violated or failed to comply with any provision of sections 326.83 to 326.98 or any rule or order under sections 326.83 to 326.98;

(6) has been shown to be incompetent, untrustworthy, or financially irresponsible;

(7) has been convicted of a violation of the state building code;

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(8) 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 326.83, subdivision 9, 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; ~~or~~

(9) 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;

(10) has engaged in conduct which was the basis for a contractor's recovery fund payment pursuant to section 326.975, which payment has not been reimbursed;

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

(12) has had a judgment entered against them for failure to make payments to employees or subcontractors.

Sec. 27. Minnesota Statutes 1992, section 326.91, subdivision 2, is amended to read:

Subd. 2. **ADMINISTRATIVE ACTION.** Section 45.027 applies to any action taken by the commissioner in connection with the administration of sections 326.83 to ~~326.98~~ 326.991.

Nothing in this section prevents the commissioner from denying, suspending, revoking, or restricting a license, or from censuring a licensee based on acts or omissions not specifically enumerated in this subdivision.

Sec. 28. Minnesota Statutes 1992, section 326.92, subdivision 1, is amended to read:

Subdivision 1. **MISDEMEANOR.** A person required to be licensed under sections 326.83 to ~~326.98~~ 326.991 who performs unlicensed work as a ~~residential building contractor, remodeler, or specialty contractor~~ is guilty of a misdemeanor.

Sec. 29. Minnesota Statutes 1992, section 326.92, subdivision 3, is amended to read:

Subd. 3. **COMMISSIONER ACTION.** The commissioner may bring actions, including cease and desist actions, against ~~an unlicensed or licensed residential building contractor, remodeler, or specialty contractor~~ any person licensed or required to be licensed under sections 326.83 to 326.991 to protect the public health, safety, and welfare.

New language is indicated by underline, deletions by ~~strikeout~~.



Sec. 30. [326.921] **BUILDING PERMIT CONDITIONED ON LICENSURE.**

A political subdivision shall not issue a building permit to an unlicensed person who is required to be licensed under sections 326.83 to 326.991. The political subdivision shall report the person applying for a building permit to the commissioner who may bring an action against the person.

Sec. 31. Minnesota Statutes 1992, section 326.93, subdivision 1, is amended to read:

Subdivision 1. **LICENSE.** A nonresident of Minnesota may be licensed as a residential building contractor; or residential remodeler; or specialty contractor upon compliance with all the provisions of sections 326.83 to ~~326.98~~ 326.991.

Sec. 32. Minnesota Statutes 1992, section 326.94, is amended to read:

326.94 **BOND; INSURANCE.**

Subdivision 1. **BOND.** (a) ~~Residential building contractors, remodelers, and specialty contractors licensed under section 326.84~~ Licensed manufactured home installers and licensed roofers must post a license bond with the commissioner, conditioned that the applicant shall faithfully perform the duties and in all things comply with all laws, ordinances, and rules pertaining to the license or permit applied for and all contracts entered into. The annual bond must be continuous and maintained for so long as the licensee remains licensed. 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 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 regular mail.

(b) ~~The commissioner shall establish by rule a bond scale based on the gross annual receipts of the licensee. The residential building contractor and remodeler licensees~~ A licensed roofer must post a bond of at least \$5,000. ~~A specialty contractor licensee must post a bond of at least \$2,500. The bond amounts for specialty contractor licensees must be based upon the same classifications as a residential building contractor and remodeler licensee.~~

Subd. 2. **INSURANCE.** ~~Residential building contractors, remodelers, and specialty contractors~~ Licensees must have public liability insurance with limits of at least \$100,000 per occurrence ~~and, which must include at least \$10,000 property damage insurance coverage.~~ The commissioner may increase the minimum amount of insurance required ~~based on the type of license and the annual gross receipts of the licensee 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.~~

Sec. 33. [326.951] **DISCLOSURES.**

New language is indicated by underline, deletions by ~~strikeout~~.

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.

Sec. 34. Minnesota Statutes 1992, section 326.97, subdivision 1, is amended to read:

Subdivision 1. **APPROVAL RENEWAL.** Licensees whose applications have been properly and timely filed and who have not received notice of denial of renewal are considered to have been approved for renewal and may continue to transact business whether or not the renewed license has been received. ~~Application for renewal of a license is required every two years after the initial issuance.~~ Applications are timely if received or postmarked by ~~December 15~~ March 1 of the year prior to the renewal year. Applications must be made on a form approved by the commissioner.

Sec. 35. Minnesota Statutes 1992, section 326.97, is amended by adding a subdivision to read:

Subd. 1a. ANNUAL RENEWAL. Any license issued or renewed after August 1, 1993, must be renewed annually.

Sec. 36. **[326.975] CONTRACTOR'S RECOVERY FUND.**

Subdivision 1. GENERALLY. (a) In addition to any other fees, each applicant for a license under sections 326.83 to 326.98 shall pay a fee to the contractor's recovery fund. The contractor's recovery fund is created in the state treasury and must be administered by the commissioner in the manner and subject to all the requirements and limitations provided by section 82.34 with the following exceptions:

(1) each licensee who renews a license shall pay in addition to the appropriate renewal fee an additional fee which shall be credited to the contractor's recovery fund. The amount of the fee shall be based on the licensee's gross annual receipts for the licensee's most recent fiscal year preceding the renewal, on the following scale:

<u>Fee</u>	<u>Gross Receipts</u>
<u>\$100</u>	<u>under \$1,000,000</u>
<u>\$150</u>	<u>\$1,000,000 to \$5,000,000</u>
<u>\$200</u>	<u>over \$5,000,000</u>

Any person who receives a new license shall pay a fee based on the same scale;

(2) the sole purpose of this fund is to compensate any aggrieved owner or

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lessee of residential property who obtains a final judgment in any court of competent jurisdiction against a licensee licensed under section 326.84, on grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance arising directly out of any transaction when the judgment debtor was licensed and performed any of the activities enumerated under section 326.83, subdivision 11, on the owner's residential property or on residential property rented by the lessee, or on new residential construction which was never occupied prior to purchase by the owner, or which was occupied by the licensee for less than one year prior to purchase by the owner, and which cause of action arose on or after March 31, 1994; and

(3) nothing may obligate the fund for more than \$50,000 per claimant, nor more than \$50,000 per licensee.

(b) Should the commissioner pay from the contractor's recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license shall be automatically suspended upon the effective date of an order by the court authorizing payment from the fund. No licensee shall be granted reinstatement until the licensee has repaid in full, plus interest at the rate of 12 percent a year, twice the amount paid from the fund on the licensee's account, and has obtained a surety bond issued by an insurer authorized to transact business in this state in the amount of at least \$40,000.

Subd. 2. ACCELERATED CLAIMS PAYMENT. Recovery fund claims that do not exceed the jurisdiction limits for conciliation court matters as specified in section 487.30 shall be paid on an accelerated basis if all of the following requirements have been satisfied:

(a) When any aggrieved person obtains a judgment in any court of competent jurisdiction, regardless of whether the judgment has been discharged by a bankruptcy court against a residential building contractor or residential remodeler on grounds specified in subdivision 1, paragraph (a), clause (2), the aggrieved person may file a verified application with the commissioner for payment out of the fund of the amount of actual and direct out-of-pocket loss in the transaction, but excluding any attorney fees, interest on the loss and on any judgment obtained as a result of the loss, up to the conciliation court jurisdiction limits, of the amount unpaid upon the judgment. For purposes of this section, persons who are joint tenants or tenants in common are deemed to be a single claimant.

(b) The commissioner has sent the licensee a copy of the verified application by first-class mail to the licensee's address as it appears in the records of the department of commerce with a notice that the claim will be paid 15 days from the date of the notice unless the licensee notifies the commissioner prior to that date of the commencement of an appeal of the judgment, if the time for appeal has not expired, and that payment of the claim will result in automatic suspension of the licensee's license.

(c) If the licensee does not notify the commissioner of the commencement of an appeal, the commissioner shall pay the claim at the end of the 15-day period.

New language is indicated by underline, deletions by ~~strikeout~~.

(d) If an appeal is commenced, the payment of the claim is stayed until the conclusion of the appeal.

(e) The commissioner may pay claims which total no more than \$15,000 against the licensee under this accelerated process. The commissioner may prorate the amount of claims paid under this subdivision if claims in excess of \$15,000 against the licensee are submitted. Any unpaid portions of such claims shall be satisfied in the manner set forth in subdivision 1.

Subd. 3. APPROPRIATION. Money in the contractor's recovery fund is appropriated to the commissioner for the purposes of this section.

Sec. 37. Minnesota Statutes 1992, section 326.99, is amended to read:

### 326.99 INITIAL TEMPORARY LICENSES.

Residential building contractors and residential remodelers must obtain a temporary license, which is effective as of January 1, 1992. The commissioner may stagger the temporary licenses so that approximately one-half of the licenses will expire on March 31, 1993, and the other one-half on March 31, 1994. For residential building contractors and remodelers whose initial temporary license expires March 31, 1993, the commissioner upon receipt of a written request and upon payment of the appropriate license renewal fee by the licensee shall extend the examination deadline until March 31, 1994. In 1994, in addition to the established examination sites, and at no additional costs to the examination candidate, the examination must be made available at least once at five additional sites throughout the state. The additional examination sites must be located whenever possible at public schools or technical colleges.

Sec. 38. Minnesota Statutes 1992, section 326.991, is amended to read:

### 326.991 EXEMPTION EXCEPTION.

Subdivision 1. The license requirement under section 326.84 does not apply to a residential building contractor, residential remodeler, or specialty contractor licensed by the city of St. Paul or the city of Minneapolis and who is performing work within the legal boundaries of one of those municipalities. The two cities shall adopt and administer the tests for the residential building contractors and remodelers established in section 326.89 within six months of the effective date of the rules establishing the examinations.

This subdivision expires March 31, 2000.

Subd. 2. The commissioner may by rule establish a procedure for contracting with the city of Minneapolis and the city of St. Paul to administer this licensing program on a contract basis.

### Sec. 39. MANUFACTURED HOME INSTALLERS.

Manufactured home installers as defined in Minnesota Statutes, section 326.83, subdivision 4b, are not subject to Minnesota Statutes, section 326.975.

## Sec. 40. REPEALER.

Minnesota Statutes 1992, section 326.84, subdivision 2, is repealed.

## Sec. 41. EFFECTIVE DATE.

Section 15 is effective August 1, 1993, but the certificate of exemption requirement for those persons claiming an exemption pursuant to clause (5) of section 15 shall not be effective until March 31, 1994.

Presented to the governor May 14, 1993

Signed by the governor May 17, 1993, 4:44 p.m.

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CHAPTER 246—S.F.No. 782

*An act relating to health; expanding medical assistance coverage to include nutritional supplementation products; amending Minnesota Statutes 1992, section 256B.0625, subdivision 13, and by adding a subdivision.*

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

Section 1. Minnesota Statutes 1992, section 256B.0625, subdivision 13, is amended to read:

Subd. 13. **DRUGS.** (a) Medical assistance covers drugs if prescribed by a licensed practitioner and dispensed by a licensed pharmacist, or by a physician enrolled in the medical assistance program as a dispensing physician. The commissioner, after receiving recommendations from the Minnesota Medical Association and the Minnesota Pharmacists Association, shall designate a formulary committee to advise the commissioner on the names of drugs for which payment is made, recommend a system for reimbursing providers on a set fee or charge basis rather than the present system, and develop methods encouraging use of generic drugs when they are less expensive and equally effective as trademark drugs. ~~The commissioner shall appoint the formulary committee members no later than 30 days following July 1, 1981.~~ The formulary committee shall consist of nine members, four of whom shall be physicians who are not employed by the department of human services, and a majority of whose practice is for persons paying privately or through health insurance, three of whom shall be pharmacists who are not employed by the department of human services, and a majority of whose practice is for persons paying privately or through health insurance, a consumer representative, and a nursing home representative. Committee members shall serve two-year terms and shall serve without compensation.

(b) The commissioner shall establish a drug formulary. Its establishment and publication shall not be subject to the requirements of the administrative procedure act, but the formulary committee shall review and comment on the

New language is indicated by underline, deletions by ~~strikeout~~.