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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2313

03/11/2019 Authored by Mahoney and Stephenson
The bill was read for the first time and referred to the Committee on Labor
03/21/2019 Adoption of Report: Re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to labor and industry; making housekeeping changes; amending Minnesota
1.3 Statutes 2018, sections 326B.082, subdivisions 6, 8, 12; 326B.103, subdivision
1.4 11; 326B.46, by adding a subdivision; 326B.475, subdivision 4; 326B.84; repealing
1.5 Minnesota Statutes 2018, section 325F.75.

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

1.7 Section 1. Minnesota Statutes 2018, section 326B.082, subdivision 6, is amended to read:

1.8 Subd. 6. Notices of violation. (a) The commissioner may issue a notice of violation to
1.9 any person who the commissioner determines has committed a violation of the applicable
1.10 law. The notice of violation must state a summary of the facts that constitute the violation
1.11 and the applicable law violated. The notice of violation may require the person to correct
1.12 the violation. If correction is required, the notice of violation must state the deadline by
1.13 which the violation must be corrected.

1.14 (b) The commissioner shall issue the notice of violation by:

1.15 (1) serving the notice of violation on the property owner or on the person who committed
1.16 the violation; or

1.17 (2) posting the notice of violation at the location where the violation occurred.

1.18 (c) If the person to whom the commissioner has issued the notice of violation believes
1.19 the notice was issued in error, then the person may request reconsideration of the parts of
1.20 the notice that the person believes are in error. The request for reconsideration must be in
1.21 writing and must be served on ~~or~~2, faxed, or e-mailed to the commissioner at the address ~~or~~2
1.22 fax number, or e-mail address specified in the notice of violation by the tenth day after the
1.23 commissioner issued the notice of violation. The date on which a request for reconsideration

2.1 is served by mail shall be the postmark date on the envelope in which the request for
2.2 reconsideration is mailed. If the person does not serve ~~or~~₂ fax, or e-mail a written request
2.3 for reconsideration or if the person's written request for reconsideration is not served on or
2.4 faxed to the commissioner by the tenth day after the commissioner issued the notice of
2.5 violation, the notice of violation shall become a final order of the commissioner and will
2.6 not be subject to review by any court or agency. The request for reconsideration must:

2.7 (1) specify which parts of the notice of violation the person believes are in error;

2.8 (2) explain why the person believes the parts are in error; and

2.9 (3) provide documentation to support the request for reconsideration.

2.10 The commissioner shall respond in writing to requests for reconsideration made under
2.11 this paragraph within 15 days after receiving the request. A request for reconsideration does
2.12 not stay a requirement to correct a violation as set forth in the notice of violation. After
2.13 reviewing the request for reconsideration, the commissioner may affirm, modify, or rescind
2.14 the notice of violation. The commissioner's response to a request for reconsideration is final
2.15 and shall not be reviewed by any court or agency.

2.16 Sec. 2. Minnesota Statutes 2018, section 326B.082, subdivision 8, is amended to read:

2.17 Subd. 8. **Hearings related to administrative orders.** (a) Within 30 days after the
2.18 commissioner issues an administrative order or within 20 days after the commissioner issues
2.19 the notice under section 326B.083, subdivision 3, paragraph (b), clause (3), the person to
2.20 whom the administrative order or notice is issued may request an expedited hearing to
2.21 review the commissioner's order or notice. The request for hearing must be in writing and
2.22 must be served on ~~or~~₂ faxed, or e-mailed to the commissioner at the address ~~or~~₂ fax number,
2.23 or e-mail address specified in the order or notice. If the person does not request a hearing
2.24 or if the person's written request for hearing is not served on ~~or~~₂ faxed, or e-mailed to the
2.25 commissioner by the 30th day after the commissioner issues the administrative order or the
2.26 20th day after the commissioner issues the notice under section 326B.083, subdivision 3,
2.27 paragraph (b), clause (3), the order will become a final order of the commissioner and will
2.28 not be subject to review by any court or agency. The date on which a request for hearing is
2.29 served by mail shall be the postmark date on the envelope in which the request for hearing
2.30 is mailed. The hearing request must specifically state the reasons for seeking review of the
2.31 order or notice. The person to whom the order or notice is issued and the commissioner are
2.32 the parties to the expedited hearing. The commissioner must notify the person to whom the
2.33 order or notice is issued of the time and place of the hearing at least 15 days before the

3.1 hearing. The expedited hearing must be held within 45 days after a request for hearing has
3.2 been received by the commissioner unless the parties agree to a later date.

3.3 (b) Parties may submit written arguments if permitted by the administrative law judge.
3.4 All written arguments must be submitted within ten days following the completion of the
3.5 hearing or the receipt of any late-filed exhibits that the parties and the administrative law
3.6 judge have agreed should be received into the record, whichever is later. The hearing shall
3.7 be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this
3.8 subdivision. The Office of Administrative Hearings may, in consultation with the agency,
3.9 adopt rules specifically applicable to cases under this section.

3.10 (c) The administrative law judge shall issue a report making findings of fact, conclusions
3.11 of law, and a recommended order to the commissioner within 30 days following the
3.12 completion of the hearing, the receipt of late-filed exhibits, or the submission of written
3.13 arguments, whichever is later.

3.14 (d) If the administrative law judge makes a finding that the hearing was requested solely
3.15 for purposes of delay or that the hearing request was frivolous, the commissioner may add
3.16 to the amount of the penalty the costs charged to the department by the Office of
3.17 Administrative Hearings for the hearing.

3.18 (e) If a hearing has been held, the commissioner shall not issue a final order until at least
3.19 five days after the date of the administrative law judge's report. Any person aggrieved by
3.20 the administrative law judge's report may, within those five days, serve written comments
3.21 to the commissioner on the report and the commissioner shall consider and enter the
3.22 comments in the record. The commissioner's final order shall comply with sections 14.61,
3.23 subdivision 2, and 14.62, subdivisions 1 and 2a, and may be appealed in the manner provided
3.24 in sections 14.63 to 14.69.

3.25 Sec. 3. Minnesota Statutes 2018, section 326B.082, subdivision 12, is amended to read:

3.26 Subd. 12. **Issuance of licensing orders; hearings related to licensing orders.** (a) If
3.27 the commissioner determines that a permit, license, registration, or certificate should be
3.28 conditioned, limited, suspended, revoked, or denied under subdivision 11, or that the permit
3.29 holder, licensee, registrant, or certificate holder should be censured under subdivision 11,
3.30 then the commissioner shall issue to the person an order denying, conditioning, limiting,
3.31 suspending, or revoking the person's permit, license, registration, or certificate, or censuring
3.32 the permit holder, licensee, registrant, or certificate holder.

4.1 (b) Any order issued under paragraph (a) may include an assessment of monetary penalties
 4.2 and may require the person to cease and desist from committing the violation or committing
 4.3 the act, conduct, or practice set out in subdivision 11, paragraph (b). The monetary penalty
 4.4 may be up to \$10,000 for each violation or act, conduct, or practice committed by the person.
 4.5 The procedures in section 326B.083 must be followed when issuing orders under paragraph
 4.6 (a).

4.7 (c) The permit holder, licensee, registrant, certificate holder, or applicant to whom the
 4.8 commissioner issues an order under paragraph (a) shall have 30 days after issuance of the
 4.9 order to request a hearing. The request for hearing must be in writing and must be served
 4.10 on ~~or~~, faxed, or e-mailed to the commissioner at the address ~~or~~, fax number, or e-mail address
 4.11 specified in the order by the 30th day after issuance of the order. If the person does not
 4.12 request a hearing or if the person's written request for hearing is not served on ~~or~~, faxed, or
 4.13 e-mailed to the commissioner by the 30th day after issuance of the order, the order shall
 4.14 become a final order of the commissioner and will not be subject to review by any court or
 4.15 agency. The date on which a request for hearing is served by mail shall be the postmark
 4.16 date on the envelope in which the request for hearing is mailed. If the person submits to the
 4.17 commissioner a timely request for hearing, the order is stayed unless the commissioner
 4.18 summarily suspends the license, registration, certificate, or permit under subdivision 13,
 4.19 and a contested case hearing shall be held in accordance with chapter 14.

4.20 Sec. 4. Minnesota Statutes 2018, section 326B.103, subdivision 11, is amended to read:

4.21 Subd. 11. **Public building.** "Public building" means a building and its grounds the cost
 4.22 of which is paid for by the state or a state agency regardless of its cost, and a ~~school district~~
 4.23 building project for a school district or charter school ~~building project~~ the cost of which is
 4.24 \$100,000 or more.

4.25 Sec. 5. Minnesota Statutes 2018, section 326B.46, is amended by adding a subdivision to
 4.26 read:

4.27 Subd. 7. **License number to be displayed.** Any vehicle used by a plumbing contractor
 4.28 or restricted plumbing contractor while performing plumbing work for which a contractor's
 4.29 license is required shall have the contractor's name and license number as it appears on the
 4.30 contractor's license in contrasting color with characters at least three inches high and one-half
 4.31 inch in width affixed to each side of the vehicle.

5.1 Sec. 6. Minnesota Statutes 2018, section 326B.475, subdivision 4, is amended to read:

5.2 Subd. 4. **Renewal; use period for license.** (a) A restricted master plumber and restricted
5.3 journeyworker plumber license must be renewed for as long as that licensee engages in the
5.4 plumbing trade. Notwithstanding section 326B.094, failure to renew a restricted master
5.5 plumber and restricted journeyworker plumber license within 12 months after the expiration
5.6 date will result in permanent forfeiture of the restricted master plumber and restricted
5.7 journeyworker plumber license.

5.8 ~~(b) The commissioner shall in a manner determined by the commissioner, without the~~
5.9 ~~need for any rulemaking under chapter 14, phase in the renewal of restricted master plumber~~
5.10 ~~and restricted journeyworker plumber licenses from one year to two years. By June 30,~~
5.11 ~~2011, all restricted master plumber and restricted journeyworker plumber licenses shall be~~
5.12 ~~two-year licenses.~~

5.13 Sec. 7. Minnesota Statutes 2018, section 326B.84, is amended to read:

5.14 **326B.84 GROUNDS FOR SANCTIONS.**

5.15 The commissioner may use any enforcement provision in section 326B.082 against an
5.16 applicant for, qualifying person of, or holder of a license or certificate of exemption, or any
5.17 individual or entity who is required by law to hold a license or certificate of exemption, if
5.18 the individual, entity, applicant, licensee, certificate of exemption holder, qualifying person,
5.19 or owner, officer, member, managing employee, or affiliate of the applicant, licensee, or
5.20 certificate of exemption holder:

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

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

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

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

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

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

6.5 (7) has failed to use the proceeds of any payment made to the licensee for the construction
6.6 of, or any improvement to, residential real estate, as defined in section 326B.802, subdivision
6.7 13, for the payment of labor, skill, material, and machinery contributed to the construction
6.8 or improvement, knowing that the cost of any labor performed, or skill, material, or
6.9 machinery furnished for the improvement remains unpaid;

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

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

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

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

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

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

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

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

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

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

7.5 (16) has failed to comply with requests for information, documents, or other requests
7.6 from the department within the time specified in the request or, if no time is specified, within
7.7 30 days of the mailing of the request by the department.

7.8 Sec. 8. **REPEALER.**

7.9 Minnesota Statutes 2018, section 325F.75, is repealed.

325F.75 ADVERTISING RESTRICTIONS; SCOPE; PENALTIES.

Subdivision 1. **Restrictions.** Except as provided in this section, where a plumbing license is required under section 326B.46, no person offering plumbing services may do any of the following unless the person employs a licensed master plumber or the person is a licensed master or journeyman plumber:

- (1) advertise as a plumbing contractor, master plumber, journeyman plumber, or plumber;
- (2) append the person's name to, or in connection with, the title "plumbing contractor," "master plumber," "journeyman plumber," or "plumber";
- (3) append the person's name to any other words that tend to represent the person as a plumbing contractor, master plumber, journeyman plumber, or plumber.

A person who advertises as a master plumber shall include in the advertisement the number of the person's license as a master plumber. A person who advertises as a journeyman plumber must include in the advertisement the person's master or journeyman plumber license number. A person who advertises as a plumbing contractor shall include in the advertisement the license number of the master plumber employed by the plumbing contractor.

A vehicle used to conduct plumbing business must prominently display on its exterior the license number of the master plumber or journeyman plumber performing plumbing services.

Subd. 2. **Scope.** (a) This section applies to a person advertising plumbing services if that person engages in or works at the business of plumbing or offers plumbing services in a city of 5,000 or more population.

(b) This section also applies to a person advertising plumbing services who engages in or works at the business of plumbing or offers plumbing services in a city of less than 5,000 in population that by ordinance requires licensing to do business as a master or journeyman plumber.

Subd. 3. **Penalties.** (a) A person who is found guilty of violating subdivision 1 is subject to a fine not to exceed \$200 for the first offense.

(b) A person who is found guilty of violating subdivision 1 is subject to a fine not to exceed \$1,000 for the second offense.

(c) A person who is found guilty of violating subdivision 1 is subject to a fine not to exceed \$1,000 or imprisonment not to exceed 30 days, or both, for the third and subsequent offenses.