

CHAPTER 326B

CONSTRUCTION CODES AND LICENSING

NOTE: Laws 2007, chapter 140, article 13, section 4, directs the revisor to renumber provisions relating to construction codes and licensing into this chapter in the 2008 edition of Minnesota Statutes. However, Laws 2007, chapter 140, contains amendments to cross-references based on the intended renumbering that appear in Minnesota Statutes 2007 Supplement. For the derivation of the cross-reference changes, see Laws 2007, chapter 140, articles 3, section 6; 4, section 61; 5, section 32; 6, section 15; 7, section 13; 8, section 30; 9, section 27; and 10, section 11.

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326B.01 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

Subd. 2. **ASME.** "ASME" means the American Society of Mechanical Engineers.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of labor and industry or a duly designated representative of the commissioner who is either an employee of the Department of Labor and Industry or a person working under contract with the department.

Subd. 4. **Department.** "Department" means the Department of Labor and Industry.

Subd. 5. **Day.** "Day" means calendar day unless otherwise provided.

Subd. 6. **Individual.** "Individual" means a human being.

Subd. 7. **Person.** "Person" means any individual, limited liability company, corporation, partnership, incorporated or unincorporated association, sole proprietorship, joint stock company, or any other legal or commercial entity.

History: 2007 c 140 art 2 s 2

326B.02 POWERS.

Subdivision 1. **Transfer of responsibilities.** The responsibilities of the commissioner of administration relating to the State Building Code, sections 16B.59 to 16B.76; construction of low-cost manufactured home park storm shelters, section 327.205; manufactured homes, sections 327.31 to 327.36 and 327B.01 to 327B.12; and statutory warranties in connection with the sale of dwellings and home improvement work, chapter 327A, are transferred under section 15.039 to the commissioner of labor and industry as amended and recodified in this chapter. The responsibilities of the commissioner of health relating to the State Plumbing Code and licensing, sections 16B.61, 144.99 to 144.993, and 326.37 to 326.45, and water conditioning contractors and installers, sections 326.57 to 326.65, are transferred under section 15.039 to the commissioner of labor and industry as amended and recodified in this chapter except for responsibilities transferred to the Plumbing Board as expressly provided in this chapter. The responsibilities of the commissioner of commerce relating to residential contractors, residential remodelers, residential roofers, manufactured home installers, and the contractor's recovery fund under sections 45.027 to 45.23 and 326.83 to 326.992 are transferred under section 15.039 to the commissioner of labor and industry as amended and recodified in this chapter. The responsibilities of the Board of Electricity relating to the State Electrical Code and licensing, sections 16B.61 and 326.241 to 326.248, are transferred under section 15.039 to the commissioner of labor and industry as amended and recodified in this chapter except for responsibilities transferred to the Board of Electricity as expressly provided in this chapter.

Subd. 2. **Transfer of Authority.** The commissioner of administration may not use the authority under section 16B.37 to modify the transfers of authority to the Plumbing Board, the Board of Electricity, or the Board of High Pressure Piping Systems under this chapter.

Subd. 3. **Definition of responsibilities.** For purposes of subdivision 1, responsibilities include powers, duties, rights, obligations, and other authority imposed by law.

Subd. 4. **State fire marshal cooperation.** The state fire marshal shall work with the commissioner to improve the delivery of services to the public through the coordination of services and utilization of technology.

Subd. 5. **General rulemaking authority.** The commissioner may, under the rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt, amend, suspend, and repeal rules relating to the commissioner's responsibilities under this chapter, except for rules for which the rulemaking authority is expressly transferred to the Plumbing Board, the Board of Electricity, or the Board of High Pressure Piping Systems.

History: 2007 c 140 art 2 s 3

326B.04 DEPOSIT OF MONEY.

Subdivision 1. **Construction code fund.** There is created in the state treasury a construction code fund as a special revenue fund for the purpose of administering this chapter, sections 327.31 to 327.36, and chapter 327B. All money collected under those sections, except penalties, is credited to the construction code fund unless otherwise specifically designated by law. Any interest or profit accruing from investment of these sums is credited to the construction code fund. All money collected in the construction code fund is appropriated to the commissioner of labor and industry to administer and enforce the provisions of the laws identified in this section.

Unless otherwise provided by law, all penalties assessed under this chapter, section 327.35, and chapter 327B are credited to the assigned risk safety account established by section 79.253.

Subd. 2. **Deposits.** All remaining balances as of June 30, 2007, in the state government special revenue fund and special revenue fund accounts maintained for the Building Codes and Standards Division, Board of Electricity, and plumbing and engineering unit are transferred to the construction code fund. Unless otherwise specifically designated by law: (1) all money collected under chapter 183 and sections 16B.59 to 16B.76; 144.122, paragraph (f); 181.723; 326.241 to 326.248; 326.37 to 326.521; 326.57 to 326.65; 326.83 to 326.992; 327.31 to 327.36; and 327B.01 to 327B.12, except penalties, is credited to the construction code fund; (2) all fees collected under section 45.23 in connection with continuing education for residential contractors, residential remodelers, and residential roofers are credited to the construction code fund; and (3) all penalties assessed under the sections set forth in clauses (1) and (2) and all penalties assessed under sections 144.99 to 144.993 in connection with any violation of sections 326.37 to 326.45 or 326.57 to 327.65 or the rules adopted under those sections are credited to the assigned risk safety account established by section 79.253.

History: 2007 c 135 art 3 s 28; 2007 c 140 art 2 s 4

326B.06 BONDS.

Bonds issued under this chapter are not state bonds or contracts for purposes of sections 8.05 and 16C.05, subdivision 2.

History: 2007 c 140 art 2 s 5

326B.075 COMMISSIONER NOT SUBJECT TO SUBPOENA.

The commissioner shall not be subject to subpoena for purposes of providing expert testimony, except in an enforcement proceeding brought by the commissioner.

History: 2007 c 140 art 2 s 6

326B.081 DEFINITIONS.

Subdivision 1. **Application.** For purposes of sections 326B.081 to 326B.085, the terms defined in this section have the meanings given them.

Subd. 2. **Administrative order.** “Administrative order” means an order issued under section 326B.082, subdivision 7.

Subd. 3. **Applicable law.** “Applicable law” means the provisions of sections 326B.084 to 326B.998 and 327.31 to 327.36 and chapter 327B, and all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted, issued, or enforced by the department under sections 326B.02 or 326B.084 to 326B.998 or 327.31 to 327.36 or chapter 327B.

Subd. 4. **Document or documents.** “Document” or “documents” includes papers; books; records; memoranda; data; contracts; drawings; graphs; charts; photographs; digital, video, and audio recordings; records; accounts; files; statements; letters; e-mails; invoices; bills; notes; and calendars maintained in any form or manner.

Subd. 5. **Final.** “Final” when used to describe any order issued under section 326B.082 means that:

(1) no request for hearing in connection with the order was filed in the manner and within the time provided by section 326B.082;

(2) all requests for hearing have been withdrawn;

(3) an agreement that resolves the order has been signed by all the parties; or

(4) after the filing of a request for hearing, an order has been issued by the commissioner, the Court of Appeals, or the Supreme Court, and all appeals have been pursued or forgone.

Subd. 6. **Licensing order.** “Licensing order” means an order issued under section 326B.082, subdivision 12, paragraph (a).

Subd. 7. **Minimum qualifications.** “Minimum qualifications” means the educational, experience, fee, examination, application, and other eligibility requirements that an applicant must meet in order to obtain a license, registration, certificate, or permit under the applicable law. For an applicant that is not an individual, the minimum qualifications include the requirement that an employee or other individual associated with the applicant hold a license.

Subd. 8. **Stop order.** “Stop order” means an order issued under section 326B.082, subdivision 10.

History: 2007 c 140 art 3 s 1

326B.082 ENFORCEMENT.

Subdivision 1. **Remedies available.** The commissioner may enforce all applicable law under this section. The commissioner may use any enforcement provision in this section, including the assessment of monetary penalties, against a person required to have a license, registration, certificate, or permit under the applicable law based on conduct that would provide grounds for action against a licensee, registrant, certificate holder, or permit holder under the applicable law. The use of an enforcement provision in this section shall not preclude the use of any other enforcement provision in this section or otherwise provided by law.

Subd. 2. **Access to information and property; subpoenas.** (a) In order to carry out the purposes of the applicable law, the commissioner may:

(1) administer oaths and affirmations, certify official acts, interview, question, take oral or written statements, and take depositions;

(2) request, examine, take possession of, test, sample, measure, photograph, record, and copy any documents, apparatus, devices, equipment, or materials;

(3) at a time and place indicated by the commissioner, request persons to appear before the commissioner to give testimony and produce documents, apparatus, devices, equipment, or materials;

(4) issue subpoenas to compel persons to appear before the commissioner to give testimony and produce documents, apparatus, devices, equipment, or materials; and

(5) with or without notice, enter without delay upon any property, public or private, for the purpose of taking any action authorized under this subdivision or the applicable law, in-

cluding obtaining information, remedying violations, or conducting surveys, inspections, or investigations.

(b) Persons requested by the commissioner to give testimony or produce documents, apparatus, devices, equipment, or materials shall respond within the time and in the manner specified by the commissioner. If no time to respond is specified in the request, then a response shall be submitted within 30 days of the commissioner's service of the request.

(c) Upon the refusal or anticipated refusal of a property owner, lessee, property owner's representative, or lessee's representative to permit the commissioner's entry onto property as provided in paragraph (a), the commissioner may apply for an administrative inspection order in the Ramsey County District Court or, at the commissioner's discretion, in the district court in the county in which the property is located. The commissioner may anticipate that a property owner or lessee will refuse entry if the property owner, lessee, property owner's representative, or lessee's representative has refused to permit entry on a prior occasion or has informed the commissioner that entry will be refused. Upon showing of administrative probable cause by the commissioner, the district court shall issue an administrative inspection order that compels the property owner or lessee to permit the commissioner to enter the property for the purposes specified in paragraph (a).

(d) Upon the application of the commissioner, a district court shall treat the failure of any person to obey a subpoena lawfully issued by the commissioner under this subdivision as a contempt of court.

Subd. 3. Service. Unless otherwise specified, service of a document on a person under this section or section 326B.083 may be by mail, by personal service, or in accordance with any consent to service filed with the commissioner. Service by mail shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 2. Personal service shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 3.

Subd. 4. Fax transmission. When this section or section 326B.083 permits a request for reconsideration or request for hearing to be served by fax on the commissioner, the fax shall not exceed 15 pages in length. The request shall be considered timely served if the fax is received by the commissioner, at the fax number identified by the commissioner in the order or notice of violation, no later than 4:30 p.m. central time on the last day permitted for faxing the request. Where the quality or authenticity of the faxed request is at issue, the commissioner may require the original request to be filed. Where the commissioner has not identified quality or authenticity of the faxed request as an issue and the request has been faxed in accordance with this subdivision, the person faxing the request does not need to file the original request with the commissioner.

Subd. 5. Time computation. In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or legal holiday.

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

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

- (1) serving the notice of violation on the property owner or on the person who committed the violation; or
- (2) posting the notice of violation at the location where the violation occurred.

(c) If the person to whom the commissioner has issued the notice of violation believes the notice was issued in error, then the person may request reconsideration of the parts of the notice that the person believes are in error. The request for reconsideration must be in writing

and must be served on or faxed to the commissioner at the address or fax number specified in the notice of violation by the tenth day after the commissioner issued the notice of violation. The date on which a request for reconsideration is served by mail shall be the postmark date on the envelope in which the request for reconsideration is mailed. If the person does not serve or fax a written request for reconsideration or if the person's written request for reconsideration is not served on or faxed to the commissioner by the tenth day after the commissioner issued the notice of violation, the notice of violation shall become a final order of the commissioner and will not be subject to review by any court or agency. The request for reconsideration must:

- (1) specify which parts of the notice of violation the person believes are in error;
- (2) explain why the person believes the parts are in error; and
- (3) provide documentation to support the request for reconsideration.

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

Subd. 7. Administrative orders; correction; assessment of monetary penalties. (a) The commissioner may issue an administrative order to any person who the commissioner determines has committed a violation of the applicable law. The commissioner shall issue the administrative order by serving the administrative order on the person. The administrative order may require the person to correct the violation, may require the person to cease and desist from committing the violation, and may assess monetary penalties. The commissioner shall follow the procedures in section 326B.083 when issuing administrative orders. Except as provided in paragraph (b), the commissioner may issue to each person a monetary penalty of up to \$10,000 for each violation of applicable law committed by the person. The commissioner may order that part or all of the monetary penalty will be forgiven if the person to whom the order is issued demonstrates to the commissioner by the 31st day after the order is issued that the person has corrected the violation or has developed a correction plan acceptable to the commissioner.

(b) The commissioner may issue an administrative order for failure to correct a violation by the deadline stated in a final administrative order issued under paragraph (a). Each day after the deadline during which the violation remains uncorrected is a separate violation for purposes of calculating the maximum monetary penalty amount.

(c) Upon the application of the commissioner, a district court shall find the failure of any person to correct a violation as required by a final administrative order issued by the commissioner under this subdivision as a contempt of court.

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

days before the hearing. The expedited hearing must be held within 45 days after a request for hearing has been served on the commissioner unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The Office of Administrative Hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making findings of fact, conclusions of law, and a recommended order to the commissioner within 30 days following the close of the record.

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

(e) If a hearing has been held, the commissioner shall not issue a final order until at least five days after the date of the administrative law judge's report. Any person aggrieved by the administrative law judge's report may, within those five days, serve written comments to the commissioner on the report and the commissioner shall consider the comments. The commissioner's final order may be appealed in the manner provided in sections 14.63 to 14.69.

Subd. 9. Injunctive relief. In addition to any other remedy provided by law, the commissioner may bring an action for injunctive relief in the Ramsey County District Court or, at the commissioner's discretion, in the district court in the county in which the commissioner has determined a violation of the applicable law has occurred or is about to occur to enjoin the violation. A temporary restraining order and other injunctive relief shall be granted by the district court if the court determines that a person has engaged in or is about to engage in an act, conduct, or practice constituting a violation of the applicable law. The commissioner shall not be required to show irreparable harm.

Subd. 10. Stop orders. (a) If the commissioner determines based on an inspection or investigation that a person has violated or is about to violate the applicable law, the commissioner may issue to the person a stop order requiring the person to cease and desist from committing the violation.

(b) If the commissioner determines that a condition exists on real property that violates the applicable law, the commissioner may issue a stop order to the owner or lessee of the real property to cease and desist from committing the violation and to correct the condition that is in violation.

(c) The commissioner shall issue the stop work order by:

(1) serving the order on the person who has committed or is about to commit the violation;

(2) posting the order at the location where the violation was committed or is about to be committed or at the location where the violating condition exists; or

(3) serving the order on any owner or lessee of the real property where the violating condition exists.

(d) A stop order shall:

(1) describe the act, conduct, or practice committed or about to be committed, or the condition, and include a reference to the applicable law that the act, conduct, practice, or condition violates or would violate; and

(2) provide notice that any person aggrieved by the stop order may request a hearing as provided in paragraph (e).

(e) Within 30 days after the commissioner issues a stop order, any person aggrieved by the order may request an expedited hearing to review the commissioner's action. The request for hearing must be made in writing and must be served on or faxed to the commissioner at the address or fax number specified in the order. If the person does not request a hearing or if the person's written request for hearing is not served on or faxed to the commissioner on or before the 30th day after the commissioner issued the stop order, the order will become a final

order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail is the postmark date on the envelope in which the request for hearing is mailed. The hearing request must specifically state the reasons for seeking review of the order. The person who requested the hearing and the commissioner are the parties to the expedited hearing. The hearing shall be commenced within ten days after the commissioner receives the request for hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The administrative law judge shall issue a report containing findings of fact, conclusions of law, and a recommended order within ten days after the conclusion of the hearing. Any party aggrieved by the administrative law judge's report shall have five days after the date of the administrative law judge's report to submit exceptions and argument to the commissioner. Within 15 days after receiving the administrative law judge's report, the commissioner shall issue an order vacating, modifying, or making permanent the stop order. The commissioner and the person requesting the hearing may by agreement lengthen any time periods described in this paragraph. The Office of Administrative Hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this subdivision.

(f) A stop order issued under this subdivision shall be in effect until it is modified or vacated by the commissioner or an appellate court. The administrative hearing provided by this subdivision and any appellate judicial review as provided in chapter 14 shall constitute the exclusive remedy for any person aggrieved by a stop order.

(g) Upon the application of the commissioner, a district court shall find the failure of any person to comply with a final stop order lawfully issued by the commissioner under this subdivision as a contempt of court.

Subd. 11. **Licensing orders; grounds; rcapplication.** (a) The commissioner may deny an application for a permit, license, registration, or certificate if the applicant does not meet or fails to maintain the minimum qualifications for holding the permit, license, registration, or certificate, or has any unresolved violations or unpaid fees or monetary penalties related to the activity for which the permit, license, registration, or certificate has been applied for or was issued.

(b) The commissioner may deny, suspend, limit, place conditions on, or revoke a person's permit, license, registration, or certificate, or censure the person holding the permit, license, registration, or certificate, if the commissioner finds that the person:

- (1) committed one or more violations of the applicable law;
- (2) submitted false or misleading information to the state in connection with activities for which the permit, license, registration, or certificate was issued, or in connection with the application for the permit, license, registration, or certificate;
- (3) allowed the alteration or use of the person's own permit, license, registration, or certificate by another person;
- (4) within the previous five years, was convicted of a crime in connection with activities for which the permit, license, registration, or certificate was issued;
- (5) violated a final administrative order issued under subdivision 7 or a final stop order issued under subdivision 10, or injunctive relief issued under subdivision 9;
- (6) failed to cooperate with a commissioner's request to give testimony, to produce documents, things, apparatus, devices, equipment, or materials, or to access property under subdivision 2;
- (7) retaliated in any manner against any employee or person who is questioned by, cooperates with, or provides information to the commissioner or an employee or agent authorized by the commissioner who seeks access to property or things under subdivision 2;
- (8) engaged in any fraudulent, deceptive, or dishonest act or practice; or
- (9) performed work in connection with the permit, license, registration, or certificate or conducted the person's affairs in a manner that demonstrates incompetence, untrustworthiness, or financial irresponsibility.

(c) If the commissioner revokes a person's permit, license, registration, or certificate under paragraph (b), the person is prohibited from reapplying for the same type of permit, license, registration, or certificate for at least two years after the effective date of the revocation. The commissioner may, as a condition of reapplication, require the person to obtain a bond or comply with additional reasonable conditions the commissioner considers necessary to protect the public.

(d) If a permit, license, registration, or certificate expires, or is surrendered, withdrawn, or terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the permit, license, registration, or certificate was last effective and enter a revocation or suspension order as of the last date on which the permit, license, registration, or certificate was in effect.

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

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

(c) The permit holder, licensee, registrant, certificate holder, or applicant to whom the commissioner issues an order under paragraph (a) shall have 30 days after service of the order to request a hearing. The request for hearing must be in writing and must be served on or faxed to the commissioner at the address or fax number specified in the order by the 30th day after service of the order. If the person does not request a hearing or if the person's written request for hearing is not served on or faxed to the commissioner by the 30th day after service of the order, the order shall become a final order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. If the person submits to the commissioner a timely request for hearing, a contested case hearing shall be held in accordance with chapter 14.

(d) Paragraph (c) does not apply to summary suspension under subdivision 13.

Subd. 13. Summary suspension. In any case where the commissioner has issued an order to revoke or suspend a license, registration, certificate, or permit under subdivision 12, the commissioner may summarily suspend the person's permit, license, registration, or certificate before the order becomes final. The commissioner shall issue a summary suspension order when the safety of life or property is threatened or to prevent the commission of fraudulent, deceptive, untrustworthy, or dishonest acts against the public. The summary suspension shall not affect the deadline for submitting a request for hearing under subdivision 12. If the commissioner summarily suspends a person's permit, license, registration, or certificate, a timely request for hearing submitted under subdivision 12 shall also be considered a timely request for hearing on continuation of the summary suspension. If the commissioner summarily suspends a person's permit, license, registration, or certificate under this subdivision and the person submits a timely request for a hearing, then a hearing on continuation of the summary suspension must be held within ten days after the commissioner receives the request for hearing unless the parties agree to a later date.

Subd. 14. Plan for assessing penalties. The commissioner may prepare a plan for assessing penalties in orders issued under subdivision 7 or 12. The commissioner shall provide a 30-day period for public comment on any such plan. Penalties assessed by the commissioner in accordance with the plan shall be presumed reasonable.

Subd. 15. **Effect on other laws.** Nothing in this section shall be construed to limit the application of other state or federal laws, including specifically but not exclusively section 270C.72, that require suspension of, revocation of, denial of, or refusal to renew a permit, license, registration, or certificate issued by the commissioner.

Subd. 16. **Misdemeanor penalties.** Except as otherwise provided by law, a person who violates an applicable law is guilty of a misdemeanor.

Subd. 17. **Revocation and suspension of license.** If a person fails to pay a penalty owed under this section or section 326B.083, the commissioner may revoke, suspend, or deny any or all licenses, permits, certificates, and registrations issued by the department.

History: 2007 c 140 art 3 s 2

326B.083 AMOUNT OF PENALTY; CONTENTS OF ADMINISTRATIVE AND LICENSING ORDERS.

Subdivision 1. **Amount of penalty; considerations.** In determining the amount of a penalty assessed under section 326B.082, subdivision 7 or 12, the commissioner shall consider the factors described in section 14.045, subdivision 3.

Subd. 2. **Contents of administrative order and licensing order.** (a) An administrative order and a licensing order must include:

- (1) a summary of the facts that constitute the violation or violations;
- (2) a reference to the applicable law that has been violated; and
- (3) a statement of the person's right to request a hearing.

(b) An administrative order may include a requirement that the violation be corrected. If the order includes a requirement that the violation be corrected, then the order must include, in addition to any statements required under paragraphs (a) and (c), the deadline by which the violation must be corrected.

(c) An administrative order or a licensing order may assess monetary penalties. If the order assesses monetary penalties, then the order must include, in addition to any statements required under paragraphs (a) and (b):

- (1) a statement of the amount of the monetary penalty imposed;

(2) a statement that, when the order becomes final, the commissioner may file and enforce the unpaid portion of a penalty as a judgment in district court without further notice or additional proceedings; and

(3) if the order is an administrative order, a statement of the amount of the penalty, if any, that will be forgiven if the person who is subject to the order demonstrates to the commissioner by the 31st day after the order is served that the person has corrected the violation or has developed a correction plan acceptable to the commissioner.

Subd. 3. **Penalty.** (a) If an administrative order includes a penalty assessment, then the penalty is due and payable on the date the administrative order becomes final unless some or all of the penalty is forgivable. If a licensing order includes a penalty assessment, then the penalty is due and payable on the date the licensing order becomes final.

(b) This paragraph applies if an administrative order includes a penalty assessment and all or a portion of the penalty is forgivable.

(1) If any portion of the penalty is not forgivable, that portion of the penalty is due and payable ten days after the date the administrative order becomes final.

(2) The commissioner shall forgive the forgivable portion of the penalty if the commissioner determines that the violation has been corrected within the time set by the order or the person to whom the order was issued has developed a correction plan acceptable to the commissioner within the time set by the order.

(3) If the commissioner determines that the person to whom the order was issued has failed to correct the violation within the time set by the order or has failed to develop a correction plan acceptable to the commissioner within the time set by the order, then the forgivable portion of the penalty is due and payable ten days after the commissioner serves notice of the

determination on the person or on the date the administrative order becomes final, whichever is later.

(c) This paragraph applies if an administrative order or a licensing order includes a penalty assessment and if the person subject to the order has requested a hearing. The administrative law judge may not recommend a change in the amount of the penalty if the penalty was assessed in accordance with a plan prepared under section 326B.082, subdivision 14. If the commissioner has not prepared a plan under section 326B.082, subdivision 14, then the administrative law judge may not recommend a change in the amount of the penalty unless the administrative law judge determines that, based on the factors in section 14.045, subdivision 3, the amount of the penalty is unreasonable.

(d) The assessment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation for which the penalty was assessed.

History: 2007 c 140 art 3 s 3

326B.084 FALSE INFORMATION.

A person subject to any of the requirements in the applicable law may not make a false material statement, representation, or certification in; omit material information from; or alter, conceal, or fail to file or maintain a notice, application, record, report, plan, or other document required under the applicable law.

History: 2007 c 140 art 3 s 4

326B.085 RECOVERY OF LITIGATION COSTS AND EXPENSES.

In any action brought by the commissioner for enforcement of an order issued under section 326B.082 for injunctive relief, or to compel performance pursuant to the applicable law, if the state finally prevails, the state, in addition to other penalties provided by law, may be allowed an amount determined by the court to be the reasonable value of all or part of the litigation expenses incurred by the state. In determining the amount of the litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

History: 2007 c 140 art 3 s 5

326B.31 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of sections 326B.31 to 326B.399, the terms defined in this section have the meanings given them.

Subd. 2. **Class A electrical contractor.** “Class A electrical contractor” means a licensed contractor whose responsible licensed individual is a licensed Class A master electrician.

Subd. 3. **Class B electrical contractor.** “Class B electrical contractor” means a licensed contractor whose responsible licensed individual is a licensed Class B master electrician.

Subd. 4. **Personal license.** “Personal license” means any license issued by the commissioner under section 326B.33 or the rules adopted under section 326B.33, except a contractor’s license.

Subd. 5. **Responsible licensed individual.** A contractor’s “responsible licensed individual” means the licensed Class A master electrician, Class B master electrician, master elevator constructor, or power limited technician designated in writing by the contractor in the contractor’s license application, or in another manner acceptable to the commissioner, as the individual responsible for the contractor’s compliance with sections 326B.31 to 326B.399 and all rules and orders adopted or issued under these sections. The terms “licensed responsible individual” and “licensed responsible master electrician or power limited technician” are synonymous.

Subd. 6. **Technology system contractor.** “Technology system contractor” means a licensed contractor whose responsible licensed individual is a licensed power limited technician.

History: 2007 c 140 art 5 s 31

326B.41 PURPOSE.

The purpose of sections 326B.41 to 326B.49 is to promote the public health and safety through properly designed, acceptably installed, and adequately maintained plumbing systems.

History: 2007 c 140 art 6 s 13

326B.42 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** For purposes of sections 326B.41 to 326B.49, the terms defined in this section have the meanings given to them.

Subd. 2. **Direct supervision.** The term “direct supervision,” with respect to direct supervision of a plumber’s apprentice by a master, restricted master, journeyman, or restricted journeyman plumber, means that:

(1) at all times while the plumber’s apprentice is performing plumbing work, the supervising plumber is present at the location where the plumber’s apprentice is working;

(2) the supervising plumber is physically present and immediately available to the plumber’s apprentice at all times for assistance and direction;

(3) any form of electronic supervision does not meet the requirement of physically present;

(4) the supervising plumber actually reviews the plumbing work performed by the plumber’s apprentice before the plumbing is operated; and

(5) the supervising plumber is able to and does determine that all plumbing work performed by the plumber’s apprentice is performed in compliance with the plumbing code.

Subd. 3. **Municipality.** The term “municipality” shall have the meaning given to it in section 16B.60, subdivision 3.

Subd. 4. **Plumbing code.** “Plumbing code” means Minnesota Rules, chapter 4715.

History: 2007 c 140 art 6 s 14

326B.50 DEFINITIONS.

For the purposes of sections 326B.50 to 326B.59, the terms defined in this section have the meanings given them.

History: 2007 c 140 art 7 s 12

326B.801 SCOPE.

Except as otherwise provided by law, the provisions of sections 326B.801 to 326B.825 apply to residential contractors, residential remodelers, residential roofers, and manufactured home installers.

History: 2007 c 140 art 8 s 24

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:

(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) 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 and mechanic's lien waivers.

History: 2007 c 140 art 8 s 25

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.

History: 2007 c 140 art 8 s 26

326B.82 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** For the purposes of section 326.87, the terms defined in this section have the meanings given them, unless the context clearly indicates otherwise.

Subd. 2. **Appropriate and related knowledge.** "Appropriate and related knowledge" means facts, information, or principles that are clearly relevant to the licensee in performing responsibilities under a license issued by the commissioner. These facts, information, or principles must convey substantive and procedural knowledge as it relates to postlicensing issues and must be relevant to the technical aspects of a particular area of continuing education.

Subd. 3. **Classroom hour.** "Classroom hour" means a 50-minute hour.

Subd. 4. **Coordinator.** "Coordinator" means an individual who is responsible for monitoring approved educational offerings.

Subd. 5. **Instructor.** "Instructor" means an individual lecturing in an approved educational offering.

Subd. 6. **Licensee.** "Licensee" means a person licensed by the Minnesota Department of Labor and Industry for whom an examination is required before licensure.

Subd. 7. **Medical hardship.** "Medical hardship" includes a documented physical disability or medical condition.

Subd. 8. **Overpayment.** "Overpayment" means any payment of money in excess of a statutory fee.

Subd. 9. **Regulated industries.** "Regulated industries" means residential contracting, residential remodeling, or residential roofing. Each of these is a regulated industry.

Subd. 10. **Sponsor.** "Sponsor" means any person or entity offering or providing approved continuing education.

History: 2007 c 140 art 8 s 27

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.

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

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 326.83 to 326.98 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
\$160	under \$1,000,000
\$210	\$1,000,000 to \$5,000,000
\$260	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;
- (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.** Except as otherwise provided in this section, the commissioner shall not pay compensation from the fund to an owner or a lessee in an amount greater than \$75,000. Except as otherwise provided in this section, the commissioner shall not pay compensation from the fund to owners and lessees in an amount that totals more than \$150,000 per licensee. The commissioner shall not pay compensation from the fund for a final judgment based on a cause of action that arose before the commissioner's receipt of the licensee's fee required by subdivision 3.

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.803;
- (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 transaction that occurred when the licensee was licensed and performing any of the special skills enumerated under section 326B.802, subdivision 19;
- (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; and
- (8) that the verified application is being served within two years after the judgment became final.

The owner's and the lessee's actual and direct out-of-pocket loss shall not include attorney fees, interest on the loss, and interest on the final judgment obtained as a result of the 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 verified application:

- (1) enter into an agreement with an owner or a lessee that resolves the verified application for compensation from the fund; or
- (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 30 days after the service of the request for hearing upon the commissioner. 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). 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. Judicial review of the administrative law judge's findings of fact, conclusions of law, and order shall be 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. 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 and the owner or the lessee shall assign to the commissioner all rights, title, and interest in the final judgment in the amount of compensation paid. The commissioner shall deposit in the fund money recovered under this subdivision.

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. Nothing may obligate the fund to compensate:

- (1) insurers or sureties under subrogation or similar theories; or
- (2) an owner of residential property for final judgments against a prior owner of the residential property 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. For purposes of this section, the owner or the lessee of a condominium or townhouse is considered an owner or a lessee of residential property regardless of the number of residential units per building.

Subd. 14. Accelerated compensation. (a) Payments made from the fund to compensate owners and lessees that do not exceed the jurisdiction limits for conciliation court matters as specified in section 491A.01 may be paid on an accelerated basis if all of the following requirements in paragraphs (b) and (c) have been satisfied.

(b) The owner or the lessee has served upon the commissioner a verified application for compensation that complies with the requirements set out in subdivision 6 and the commissioner determines based on review of the application that compensation should be paid from the fund. The commissioner shall calculate the actual and direct out-of-pocket loss in the transaction, minus attorney fees, interest on the loss and on the judgment obtained as a result of the loss, and any satisfaction of the judgment, and make payment to the owner or the lessee up to the conciliation court jurisdiction limits within 15 days after the owner or lessee serves the verified application.

(c) The commissioner may pay compensation to owners or lessees that totals not more than \$50,000 per licensee per fiscal year under this accelerated process. The commissioner may prorate the amount of compensation paid to owners or lessees under this subdivision if applications submitted by owners and lessees seek compensation in excess of \$50,000 against a licensee. Any unpaid portion of a verified application that has been prorated under this subdivision shall be satisfied in the manner set forth in subdivision 9.

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 \$100. 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.

History: 2007 c 135 art 3 s 29; 2007 c 140 art 8 s 28

326B.93 INSPECTION PERSONNEL.

Subdivision 1. **Inspectors.** The department may employ such inspectors and other persons as are necessary to efficiently perform the duties and exercise the powers imposed upon the department.

Subd. 2. **Chief boiler inspector.** The commissioner shall appoint a chief boiler inspector who, under the direction and supervision of the commissioner, shall administer this chapter and the rules adopted under this chapter. The chief boiler inspector must:

(1) be licensed as a chief Grade A engineer; and

(2) possess a current commission issued by the National Board of Boiler and Pressure Vessel Inspectors.

The chief boiler inspector shall be the state of Minnesota representative on the National Board of Boiler and Pressure Vessel Inspectors, shall be the final interpretative authority of the rules adopted under this chapter, and shall perform other duties in administering this chapter and the rules adopted under this chapter as assigned by the commissioner. Any person aggrieved by a ruling of the chief boiler inspector may appeal the ruling in accordance with chapter 14.

History: 2007 c 140 art 9 s 25

326B.94 BOATS; MASTERS.

Subdivision 1. **Boat.** "Boat" means any vessel navigating inland waters of the state that is propelled by machinery or sails, is carrying passengers for hire, and is 21 feet or more in length.

Subd. 2. **Number of passengers.** The department shall designate the number of passengers that each boat may safely carry, and no such boat shall carry a greater number than is allowed by the inspector's certificate.

Subd. 3. **Annual permit.** The commissioner shall issue an annual permit to a boat for the purpose of carrying passengers for hire on the inland waters of the state provided the boat satisfies the inspection requirements of this section. A boat subject to inspection under this chapter shall be registered with the department and shall be inspected before a permit may be issued. No person shall operate a boat or cause a boat to be operated for the purpose of carrying passengers for hire on the inland waters of the state without a valid annual permit issued under this section.

Subd. 4. **Examinations, licensing.** The commissioner shall develop and administer an examination for all masters of boats carrying passengers for hire on the inland waters of the state as to their qualifications and fitness. If found qualified and competent to perform their duties as a master of a boat carrying passengers for hire, they shall be issued a license authorizing them to act as such on the inland waters of the state. The license shall be renewed annually. Fees for the original issue and renewal of the license authorized under this section shall be pursuant to section 183.545, subdivision 2.

Subd. 5. **Rules.** (a) The department shall prescribe rules for the inspection of the hulls, machinery, boilers, steam connections, firefighting apparatus, lifesaving appliances, and lifesaving equipment of all power boats navigating the inland waters of the state, which shall conform to the requirements and specifications of the United States Coast Guard in similar cases as provided in Code of Federal Regulations, title 46, as applicable inland waters; these rules shall have the force of law.

(b) The commissioner shall make such rules for inspection and operation of boats subject to inspection under this chapter, the licensing of masters, and the navigation of any such boat as will require its operation without danger to life or property.

Subd. 6. **Drugs, alcohol.** No master shall be under the influence of illegal drugs or alcohol when on duty.

History: 2007 c 140 art 9 s 26