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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2467

03/13/2019 Authored by Sundin, Claflin, Dehn, Davids, Nelson and others
The bill was read for the first time and referred to the Committee on Labor

1.1 A bill for an act
1.2 relating to construction codes; modifying the contractor recovery fund to include
1.3 claims against solar installers; amending Minnesota Statutes 2018, section 326B.89,
1.4 subdivisions 1, 6.

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

1.6 Section 1. Minnesota Statutes 2018, section 326B.89, subdivision 1, is amended to read:

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

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

1.12 (c) "Licensee" means a solar installer or a person licensed as a residential contractor or
1.13 residential remodeler.

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

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

1.18 (f) "Owner" when used in connection with real property, means a person who has any
1.19 legal or equitable interest in real property and includes a condominium or townhome
1.20 association that owns common property located in a condominium building or townhome
1.21 building or an associated detached garage. Owner does not include any real estate developer

2.1 or any owner using, or intending to use, the property for a business purpose and not as
2.2 owner-occupied residential real estate.

2.3 (g) "Solar installer" means a person that has, since January 1, 2016, contracted with
2.4 owners of residential real estate to install solar photovoltaic systems, whether or not the
2.5 person is or has been licensed as a residential building contractor or residential remodeler.

2.6 Sec. 2. Minnesota Statutes 2018, section 326B.89, subdivision 6, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

3.18 Sec. 3. **EFFECTIVE DATE.**

3.19 Sections 1 and 2 are effective retroactively from January 1, 2016.