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2.1 (i) maintains a separate business with the individual's own office, equipment,
2.2 materials, and other facilities;

2.3 (ii) holds or has applied for a federal employer identification number or has filed
2.4 business or self-employment income tax returns with the federal Internal Revenue Service
2.5 if the person has performed services in the previous year for which the individual is
2.6 seeking the independent contractor exemption certificate;

2.7 (iii) operates under contracts to perform specific services for specific amounts of
2.8 money and under which the individual controls the means of performing the services;

2.9 (iv) incurs the main expenses related to the service that the individual performs
2.10 under contract;

2.11 (v) is responsible for the satisfactory completion of services that the individual
2.12 contracts to perform and is liable for a failure to complete the service;

2.13 (vi) receives compensation for service performed under a contract on a commission
2.14 or per-job or competitive bid basis and not on any other basis;

2.15 (vii) may realize a profit or suffer a loss under contracts to perform service;

2.16 (viii) has continuing or recurring business liabilities or obligations; and

2.17 (ix) the success or failure of the individual's business depends on the relationship of
2.18 business receipts to expenditures.

2.19 (b) Individuals who are applying for or renewing a residential building contractor or
2.20 residential remodeler license under sections 326B.197, 326B.802, 326B.805, 326B.81,
2.21 326B.815, 326B.821 to 326B.86, 326B.87 to 326B.885, and 327B.041, and any rules
2.22 promulgated pursuant thereto, may simultaneously apply for or renew an independent
2.23 contractor exemption certificate. The commissioner shall create an application form
2.24 that allows for the simultaneous application for both a residential building contractor
2.25 or residential remodeler license and an independent contractor exemption certificate.
2.26 If individuals simultaneously apply for or renew a residential building contractor or
2.27 residential remodeler license and an independent contractor exemption certificate using
2.28 the form created by the commissioner, individuals shall only be required to provide, in
2.29 addition to the information required by section 326B.83 and rules promulgated pursuant
2.30 thereto, the sworn statement required by paragraph (a), clause (8), and any additional
2.31 information required by this subdivision that is not also required by section 326B.83
2.32 and any rules promulgated thereto. ~~When individuals submit a simultaneous application~~
2.33 ~~on the form created by the commissioner for both a residential building contractor or~~
2.34 ~~residential remodeler license and an independent contractor exemption certificate, the~~
2.35 ~~application fee shall be \$150.~~ An independent contractor exemption certificate that is in

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3.1 effect before March 1, 2009, shall remain in effect until March 1, 2013, unless revoked by
3.2 the commissioner or canceled by the individual.

3.3 (c) Within 30 days of receiving a complete application and the certificate fee, the
3.4 commissioner must either grant or deny the application. The commissioner may deny
3.5 an application for an independent contractor exemption certificate if the individual has
3.6 not submitted a complete application and certificate fee or if the individual does not
3.7 meet all of the conditions for holding the independent contractor exemption certificate.
3.8 The commissioner may revoke an independent contractor exemption certificate if the
3.9 commissioner determines that the individual no longer meets all of the conditions for
3.10 holding the independent contractor exemption certificate, commits any of the actions
3.11 set out in subdivision 7, or fails to cooperate with a department investigation into the
3.12 continued validity of the individual's certificate. Once issued, an independent contractor
3.13 exemption certificate remains in effect for four years unless:

3.14 (1) revoked by the commissioner; or

3.15 (2) canceled by the individual.

3.16 (d) If the department denies an individual's original or renewal application for
3.17 an independent contractor exemption certificate or revokes an independent contractor
3.18 exemption certificate, the commissioner shall issue to the individual an order denying or
3.19 revoking the certificate. The commissioner may issue an administrative penalty order to
3.20 an individual or person who commits any of the actions set out in subdivision 7. The
3.21 commissioner may file and enforce the unpaid portion of a penalty as a judgment in
3.22 district court without further notice or additional proceedings.

3.23 (e) An individual or person to whom the commissioner issues an order under
3.24 paragraph (d) shall have 30 days after service of the order to request a hearing. The
3.25 request for hearing must be in writing and must be served on or faxed to the commissioner
3.26 at the address or facsimile number specified in the order by the 30th day after service of
3.27 the order. If the individual does not request a hearing or if the individual's request for a
3.28 hearing is not served on or faxed to the commissioner by the 30th day after service of the
3.29 order, the order shall become a final order of the commissioner and will not be subject to
3.30 review by any court or agency. The date on which a request for hearing is served by mail
3.31 shall be the postmark date on the envelope in which the request for hearing is mailed. If
3.32 the individual serves or faxes a timely request for hearing, the hearing shall be a contested
3.33 case hearing and shall be held in accordance with chapter 14.

3.34 Sec. 2. Minnesota Statutes 2010, section 182.6553, subdivision 6, is amended to read:

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4.1 Subd. 6. **Enforcement.** This section shall be enforced by the commissioner under
4.2 ~~section~~ sections 182.66 and 182.661. A violation of this section is subject to the penalties
4.3 provided under section 182.666.

4.4 Sec. 3. Minnesota Statutes 2010, section 326B.13, subdivision 8, is amended to read:

4.5 Subd. 8. **Effective date of rules.** A rule to adopt or amend the State Building Code
4.6 is effective 180 days after ~~the filing of the rule with the secretary of state under section~~
4.7 ~~14.16 or 14.26~~ publication of the rule's notice of adoption in the State Register. The rule
4.8 may provide for a later effective date. The rule may provide for an earlier effective date
4.9 if the commissioner or board proposing the rule finds that an earlier effective date is
4.10 necessary to protect public health and safety after considering, among other things, the
4.11 need for time for training of individuals to comply with and enforce the rule.

4.12 Sec. 4. Minnesota Statutes 2010, section 326B.89, subdivision 6, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

5.24 Sec. 5. Minnesota Statutes 2010, section 326B.89, subdivision 8, is amended to read:

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

5.34 At the hearing the owner or the lessee shall have the burden of proving by substantial
5.35 evidence under subdivision 6, clauses (1) to (8). Whenever an applicant's judgment

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6.1 is by default, stipulation, or consent, or whenever the action against the licensee was
6.2 defended by a trustee in bankruptcy, the applicant shall have the burden of proving the
6.3 cause of action for fraudulent, deceptive, or dishonest practices, conversion of funds, or
6.4 failure of performance. Otherwise, the judgment shall create a rebuttable presumption
6.5 of the fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of
6.6 performance. This presumption affects the burden of producing evidence.

6.7 The administrative law judge shall issue findings of fact, conclusions of law, and
6.8 order. If the administrative law judge finds that compensation should be paid to the owner
6.9 or the lessee, the administrative law judge shall order the commissioner to make payment
6.10 from the fund of the amount it finds to be payable pursuant to the provisions of and in
6.11 accordance with the limitations contained in this section. The order of the administrative
6.12 law judge shall constitute the final decision of the agency in the contested case. The
6.13 commissioner or the owner or lessee may seek judicial review of the administrative law
6.14 judge's findings of fact, conclusions of law, and order ~~shall be~~ in accordance with sections
6.15 14.63 to 14.69.