

CHAPTER 169—H.F.No. 536

An act relating to commerce; residential building contractors; regulating licensees; providing a clarification; amending Minnesota Statutes 1994, sections 326.83, subdivision 5, and by adding a subdivision; 326.84, subdivision 3; 326.91, subdivision 1; 326.95, subdivision 2; and 326.975, subdivision 1.

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

Section 1. Minnesota Statutes 1994, section 326.83, subdivision 5, is amended to read:

Subd. 5. **GROSS ANNUAL RECEIPTS.** "Gross annual receipts" means the total amount derived from residential contracting or remodeling activities, regardless of where the activities are performed, and must not be reduced by cost of goods sold, expenses, losses, or any other amount.

Sec. 2. Minnesota Statutes 1994, section 326.83, is amended by adding a subdivision to read:

Subd. 21. GARAGE. "Garage" means a structure attached to or in reasonable proximity to a dwelling, which is used or intended to be used primarily for the protection or storage of automobiles or other personal vehicles owned or driven by the occupants of the dwelling.

Sec. 3. Minnesota Statutes 1994, section 326.84, subdivision 3, is amended to read:

Subd. 3. **EXEMPTIONS.** The license requirement does not apply to:

- (1) an employee of a licensee performing work for the licensee;
- (2) a material person, manufacturer, or retailer furnishing finished products, materials, or articles of merchandise who does not install or attach the items;
- (3) an owner or owners of residential real estate who build or improve residential real estate and who do the work themselves or jointly with the owner's own bona fide employees or agents. This exemption does not apply to a person who engages in a pattern of building or improving real estate for purposes of resale. Such a pattern is presumed to exist if the person ~~sells more than one property so built or improved~~ constructs or improves more than one property within any 12-month period;
- (4) an architect or engineer engaging in professional practice as defined in this chapter;
- (5) a person whose total gross annual receipts from projects regulated under this section do not exceed \$15,000;
- (6) a mechanical contractor;

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(7) a plumber, electrician, or other person whose profession is otherwise subject to statewide licensing, when engaged in the activity which is the subject of licensure;

(8) specialty contractors who provide only one special skill as defined in section 326.83;

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

(10) manufactured housing installers; and

(11) Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf.

To qualify for the exemption in clause (5), a person must obtain a certificate of exemption from licensing from the commissioner.

A certificate of exemption will be issued upon the applicant's filing with the commissioner, an affidavit stating that the applicant does not expect to exceed \$15,000 in gross annual receipts derived from contracting activities during the calendar year for which the exemption is requested.

To renew the exemption in clause (5), the applicant must file an affidavit stating that the applicant did not exceed \$15,000 in gross annual receipts during the past calendar year, and the applicant does not expect to exceed \$15,000 in gross annual receipts during the calendar year for which the exemption is requested.

If a person, operating under the exemption in clause (5), exceeds \$15,000 in gross receipts during any calendar year, the person must immediately surrender the exemption certificate and apply for the appropriate license. The person must remain licensed until such time as the person's gross annual receipts during a calendar year fall below \$15,000. The person may then apply for this exemption for the next calendar year.

Sec. 4. Minnesota Statutes 1994, section 326.91, subdivision 1, is amended to read:

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

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

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

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

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

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

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

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

(8) has failed to use the proceeds of any payment made to the licensee for the construction of, or any improvement to, residential real estate, as defined in section 326.83, subdivision 17, for the payment of labor, skill, material, and machinery contributed to the construction or improvement, knowing that the cost of any labor performed, or skill, material, or machinery furnished for the improvement remains unpaid;

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

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

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

(12) has had a judgment entered against them for failure to make payments to employees or subcontractors, and all appeals of the judgment have been exhausted or the period for appeal has expired;

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

(14) has made use of forged mechanics' lien waivers under chapter 514.

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Sec. 5. Minnesota Statutes 1994, section 326.95, subdivision 2, is amended to read:

Subd. 2. **ADVERTISING.** The license number of a licensee must appear in any ~~display~~ advertising by that licensee including but not limited to signs, vehicles, business cards, published display ads, flyers, and brochures.

Sec. 6. Minnesota Statutes 1994, section 326.975, subdivision 1, is amended to read:

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

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

Fee	Gross Receipts
\$100	under \$1,000,000
\$150	\$1,000,000 to \$5,000,000
\$200	over \$5,000,000

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

(2) the sole purpose of this fund is to compensate any aggrieved owner or lessee of residential property who obtains a final judgment in any court of competent jurisdiction against a licensee licensed under section 326.84, on grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance arising directly out of any transaction when the judgment debtor was licensed and performed any of the activities enumerated under section 326.83, subdivision 19, on the owner's residential property or on residential property rented by the lessee, or on new residential construction which was never occupied prior to purchase by the owner, or which was occupied by the licensee for less than one year prior to purchase by the owner, and which cause of action arose on or after April 1, 1994; ~~and~~

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

(4) nothing may obligate the fund for claims based on a cause of action that arose before the licensee paid the recovery fund fee set in paragraph (a), clause (1), or as provided in section 326.945, subdivision 3.

(b) Should the commissioner pay from the contractor's recovery fund any

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

Sec. 7. INTENT TO CLARIFY.

By making the amendment in section 6, the legislature is clarifying the original intent of the contractor's recovery fund law, Laws 1993, chapter 245, section 36, when it was enacted. The contractor's recovery fund replaces an earlier bonding requirement set forth in Minnesota Statutes, sections 326.84 and 326.945. Approximately one-half of the residential building contractor licensees paid into the contractor's recovery fund on March 31, 1994. The remaining one-half are, pursuant to Minnesota Statutes, section 326.945, still subject to the bonding requirement until March 31, 1995, with an option to pay into the contractor's recovery fund earlier.

It was intended that the contractor's recovery fund be available to pay claims against only those licensees who had paid into the contractor's recovery fund, and not against those still subject to the bonding requirement.

Sec. 8. EFFECTIVE DATE.

Sections 1, 3, 4, and 7, are effective the day following final enactment.

Section 6 is effective retroactive to April 1, 1994.

Presented to the governor May 15, 1995

Signed by the governor May 17, 1995, 1:54 p.m.

CHAPTER 170—H.F.No. 1159

An act relating to real property; authorizing municipalities to establish trust or escrow accounts for proceeds from losses arising from fire or explosion of certain insured real property; authorizing municipalities to utilize escrowed funds to secure, repair, or demolish damaged or destroyed structures; proposing coding for new law in Minnesota Statutes, chapter 65A.

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

Section 1. [65A.50] TRUST OR ESCROW ACCOUNTS; INSURED REAL PROPERTY FIRE OR EXPLOSION LOSS PROCEEDS.

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