

## CHAPTER 326

## EMPLOYMENTS LICENSED BY STATE

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**326.111 ISSUANCE, DENIAL, REVOCATION, AND SUSPENSION OF LICENSES; DISCIPLINE.**

Subdivision 1. **Generally.** (a) If the board, or the complaint committee if authorized by the board, has a reasonable basis to believe that a person has engaged in an act or practice constituting the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or a violation of a statute, rule, or order that the board has issued or is empowered to enforce, the board, or the complaint committee if authorized by the board, may proceed as described in subdivisions 2 and 3.

(b) The board shall establish a complaint committee to investigate, mediate, or initiate administrative or legal proceedings on behalf of the board with respect to complaints filed with or information received by the board alleging or indicating the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or a violation of statute, rule, or order that the board has issued or is empowered to enforce. The complaint committee shall consist of five members of the board, with no more than one from each of the professions licensed by the board, and no more than two public members.

(c) Except as otherwise described in this section, all hearings shall be conducted in accordance with chapter 14.

Subd. 2. **Legal action.** (a) When necessary to prevent the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or a violation of a statute, rule, or order that the board has issued or is empowered to enforce, the board, or the complaint committee if authorized by the board, may bring an action in the name of the state in the district court in Ramsey county or in any county in which jurisdiction is proper to enjoin the act, practice, or violation and to enforce compliance with the statute, rule, or order. Upon a showing that a person has engaged in an act or practice constituting the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or a violation of a statute, rule, or order that the board has issued or is empowered to enforce, a permanent or temporary injunction, restraining order, or other appropriate relief shall be granted.

(b) For purposes of injunctive relief under this subdivision, irreparable harm

exists when the board shows that a person has engaged in an act or practice constituting the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or a violation of a statute, rule, or order that the board has issued or is empowered to enforce.

(c) Injunctive relief granted under paragraph (a) does not relieve an enjoined person from criminal prosecution by a competent authority or from disciplinary action by the board with respect to the person's license, certificate, or application for examination, license, or renewal.

**Subd. 3. Cease and desist orders.** (a) The board, or the complaint committee if authorized by the board, may issue and have served upon a person an order requiring the person to cease and desist from the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or violation of the statute, rule, or order. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing and shall state the reasons for the entry of the order.

(b) Service of the order is effective if the order is served on the person or counsel of record personally or by certified mail to the most recent address provided to the board for the person or counsel of record.

(c) Unless otherwise agreed by the board, or the complaint committee if authorized by the board, and the person requesting the hearing, the hearing shall be held no later than 30 days after the request for the hearing is received by the board.

(d) The administrative law judge shall issue a report within 30 days of the close of the contested case hearing record, notwithstanding Minnesota Rules, part 1400.8100, subpart 3. Within 30 days after receiving the report and any exceptions to it, the board shall issue a further order vacating, modifying, or making permanent the cease and desist orders as the facts require.

(e) If no hearing is requested within 30 days of service of the order, the order becomes final and remains in effect until it is modified or vacated by the board.

(f) If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person is in default and the proceeding may be determined against that person upon consideration of the cease and desist order, the allegations of which may be considered to be true.

**Subd. 4. Actions against applicants and licensees.** (a) The board may, by order, deny, refuse to renew, suspend, temporarily suspend, or revoke the application, license, or certification of a person; censure or reprimand that person; condition or limit the person's practice; refuse to permit a person to sit for examination; or refuse to release the person's examination grades if the board finds that the order is in the public interest and the applicant, licensee, or certificate holder:

(1) has violated a statute, rule, or order that the board has issued or is empowered to enforce;

(2) has engaged in conduct or acts that are fraudulent, deceptive, or dishonest whether or not the conduct or acts relate to the practice of architecture, engineering, land surveying, landscape architecture, or certified interior design, providing that the fraudulent, deceptive, or dishonest conduct or acts reflect adversely on the person's ability or fitness to engage in the practice of architecture, engineering, land surveying, landscape architecture, or certified interior design;

(3) has engaged in conduct or acts that are negligent or otherwise in violation of the standards established by Minnesota Rules, parts 1100.1800 and 1100.1805, where the conduct or acts relate to the practice of architecture, engineering, land surveying, landscape architecture, or use of the title certified interior designer;

(4) has been convicted of or has pled guilty or nolo contendere to a felony, an element of which is dishonesty or fraud, whether or not the person admits guilt, or has been shown to have engaged in acts or practices tending to show that the applicant or licensee is incompetent or has engaged in conduct reflecting adversely on the person's ability or fitness to engage in the practice of architecture, engineering, land surveying, landscape architecture, or use of the title certified interior designer;

(5) employed fraud or deception in obtaining a certificate, license, renewal, or reinstatement or in passing all or a portion of the examination;

(6) has had the person's architecture, engineering, land surveying, landscape architecture, or interior design license, certificate, right to examine, or other similar authority revoked, suspended, canceled, limited, or not renewed for cause in any state, commonwealth, or territory of the United States, in the District of Columbia, or in any foreign country;

(7) has had the person's right to practice before any federal, state, or other government agency revoked, suspended, canceled, limited, or not renewed;

(8) failed to meet any requirement for the issuance or renewal of the person's license or certificate;

(9) has attached the person's seal or signature to a plan, specification, report, plat, or other architectural, engineering, land surveying, landscape architectural, or interior design document not prepared by the person sealing or signing it or under that person's direct supervision; or

(10) with respect to temporary suspension orders, has committed an act, engaged in conduct, or committed practices that may, or has in the opinion of the board, or the complaint committee if authorized by the board, resulted in an immediate threat to the public.

(b) In lieu of or in addition to any remedy provided in paragraph (a), the board may require, as a condition of continued licensure, possession of certificate, termination of suspension, reinstatement of license or certificate, examination, or release of examination grades, that the person:

(1) submit to a quality review of the person's ability, skills, or quality of work, conducted in such fashion and by such persons, entity, or entities as the board may require including, but not limited to, remedial education courses; and

(2) complete to the satisfaction of the board such continuing professional education courses as the board may specify by rule.

(c) Service of the order is effective if the order is served on the licensee, certificate holder, applicant, person, or counsel of record personally or by certified mail, to the most recent address provided to the board for the licensee, certificate holder, applicant, person, or counsel of record. The order shall state the reasons for the entry of the order.

(d) All hearings required by this section shall be conducted in accordance with chapter 14, except with respect to temporary suspension orders, as provided for in subdivision 5, paragraph (d).

**Subd. 5. Procedure for temporary suspension of license or certificate.** (a) When the board, or the complaint committee if authorized by the board, issues a temporary suspension order, the suspension is in effect upon service of a written order on the licensee or counsel of record, specifying the statute, rule, or order violated. The order remains in effect until the board issues a final order in the matter after a hearing or upon agreement between the board and the licensee.

(b) Service of the order is effective if the order is served on the licensee or counsel of record personally or by certified mail, to the most recent address provided to the board for the licensee or counsel of record.

(c) The order shall set forth the rights to a hearing contained in this subdivision and shall state the reasons for the entry of the order.

(d) Within ten days after service of the order, the licensee may request a hearing in writing. The board shall hold a hearing before its own members within five working days of receipt of a request for hearing on the sole issue of whether there is a reasonable basis to continue, modify, or lift the temporary suspension. This hearing is not subject to chapter 14. Evidence presented by the board or the licensee shall be in affidavit form only. The licensee or counsel of record may appear for oral argument.

(e) Within five working days after the hearing, the board shall issue its order and, if the suspension is continued, schedule a contested case hearing within 30 days after

issuance of the order. The administrative law judge shall issue a report within 30 days after closing of the contested case hearing record, notwithstanding the provisions of Minnesota Rules, part 1400.8100, subpart 3. The board shall issue a final order within 30 days after receipt of that report and any exceptions to it.

**Subd. 6. Violations; penalties; costs of proceeding.** (a) The board may impose a civil penalty not to exceed \$2,000 per violation upon a person who commits an act or practice constituting the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or violates a statute, rule, or order that the board has issued or is empowered to enforce.

(b) The board may, in addition, impose a fee to reimburse the board for all or part of the cost of the proceedings resulting in disciplinary action authorized by this section, the imposition of civil penalties, or the issuance of a cease and desist order. The fee may be imposed when the board shows that the position of the person who commits an act or practice constituting the unauthorized practice of architecture, engineering, land surveying, landscape architecture, or the unauthorized use of the title certified interior designer, or violates a statute, rule, or order that the board has issued or is empowered to enforce is not substantially justified, unless special circumstances make an award unjust, notwithstanding the provisions of Minnesota Rules, part 1400.8401. The costs include, but are not limited to, the amount paid by the board for services from the office of administrative hearings, attorney fees, court reporters, witnesses, reproduction of records, board members' per diem compensation, board staff time, and expense incurred by board members and staff.

**Subd. 7. Reinstatement.** The board may reinstate a suspended, revoked, or surrendered certificate or license upon petition of the former or suspended certificate holder or licensee. The board may, in its sole discretion, place any other conditions, including reexamination in whole or in part, upon reinstatement of a suspended, revoked, or surrendered certificate or license that it finds appropriate and necessary to ensure that the purposes of sections 326.02 to 326.15 are met. No suspended certificate or license shall be reinstated until the former certificate holder or licensee has completed one-half of the suspension.

**History:** 1993 c 358 s 1

### 326.3361 TRAINING.

**Subdivision 1. Rules.** The board shall, by rule, prescribe the requirements, duration, contents, and standards for successful completion of certified training programs for license holders, qualified representatives, Minnesota managers, partners, and employees, including:

(1) first aid and firearms training required for armed employees, including training in the legal limitations on the justifiable use of force and deadly force as specified in sections 609.06 and 609.065;

(2) training in the use of weapons other than firearms, including bludgeons, nightsticks, batons, chemical weapons, and electronic incapacitation devices, and in the use of restraint or immobilization techniques, including the carotid neck restraint;

(3) training in alternatives to the use of force;

(4) standards for weapons and equipment issued to or carried or used by license holders, qualified representatives, Minnesota managers, partners, and employees;

(5) preassignment or on-the-job training, or its equivalent, required before applicants may be certified as having completed training; and

(6) continuing training for license holders, qualified representatives, Minnesota managers, partners, employees, and armed employees.

**Subd. 2. Required contents.** The rules adopted by the board must require:

(1) 12 hours of preassignment or on-the-job certified training within the first 21 days of employment, or evidence that the employee has successfully completed equivalent training before the start of employment;

(2) certification by the board of completion of certified training for a license holder, qualified representative, Minnesota manager, partner, and employee to carry or use a firearm, a weapon other than a firearm, or an immobilizing or restraint technique; and

(3) six hours a year of certified continuing training for all license holders, qualified representatives, Minnesota managers, partners, and employees, and an additional six hours a year for armed individuals, which must include annual certification of the armed individual.

An employee may not carry or use a weapon while undergoing on-the-job training under this subdivision.

**Subd. 3. Use of weapons; certified training required.** The rules must provide that no license holder, qualified representative, Minnesota manager, partner, or employee may carry or use a weapon or immobilizing or restraint technique without having successfully completed certified training as directed by the board.

*[For text of subd 4, see M.S.1992]*

**History:** 1993 c 168 s 1-3

### **326.37 PLUMBERS; SUPERVISION BY STATE COMMISSIONER OF HEALTH; RULES; VIOLATION; PENALTY.**

**Subdivision 1. Rules.** The state commissioner of health may, by rule, prescribe minimum standards which shall be uniform, and which standards shall thereafter be effective for all new plumbing installations, including additions, extensions, alterations, and replacements connected with any water or sewage disposal system owned or operated by or for any municipality, institution, factory, office building, hotel, apartment building, or any other place of business regardless of location or the population of the city or town in which located.

The commissioner shall administer the provisions of sections 326.37 to 326.45 and for such purposes may employ plumbing inspectors and other assistants.

*[For text of subd 2, see M.S.1992]*

**History:** 1993 c 206 s 20

### **326.41 ADVISORY COUNCIL.**

The state commissioner of health shall appoint seven persons to the advisory council on plumbing code and examinations, one of whom shall be a practical master plumber, one a practical journeyman plumber, and one a representative of the commissioner. The council shall expire and the terms, compensation and removal of members of the council shall be as provided in section 15.059, except that the council shall not expire before June 30, 1995.

**History:** 1993 c 132 s 6

### **326.43 [Repealed, 1993 c 206 s 25]**

### **326.44 FEES PAID TO STATE GOVERNMENT SPECIAL REVENUE FUND.**

All fees received under sections 326.37 to 326.45 shall be deposited by the state commissioner of health to the credit of the state government special revenue fund in the state treasury. The salaries of the necessary employees of the commissioner and the per diem of the inspectors and examiners hereinbefore provided, their expenses and all incidental expenses of the commissioner in carrying out the provisions of sections 326.37 to 326.45, shall be paid, from the appropriations made to the state commissioner of health, but no expense or claim shall be incurred or paid in excess of the amount received from the fees herein provided.

**History:** 1Sp1993 c 1 art 9 s 72

**326.53 VIOLATIONS; PENALTY PROVISIONS.***[For text of subd 1, see M.S.1992]*

Subd. 2. [Repealed, 1993 c 206 s 25]

**326.63** [Repealed, 1993 c 206 s 25]**326.71 DEFINITIONS.***[For text of subds 1 and 2, see M.S.1992]*

Subd. 3. **Asbestos-containing material.** "Asbestos-containing material" means material that contains more than one percent asbestos by microscopic visual estimation by area.

Subd. 4. **Asbestos-related work.** "Asbestos-related work" means the enclosure, repair, removal, or encapsulation of asbestos-containing material in a quantity that meets or exceeds 260 lineal feet of friable asbestos-containing material on pipes, 160 square feet of friable asbestos-containing material on other facility components, or a total of 35 cubic feet of friable asbestos-containing material on or off all facility components in one facility. In the case of single or multifamily residences, "asbestos-related work" also means the enclosure, repair, removal, or encapsulation of greater than ten but less than 260 lineal feet of friable asbestos-containing material on pipes or ducts or greater than six but less than 160 square feet of friable asbestos-containing material on other facility components. This provision excludes asbestos-containing vinyl floor tiles and sheeting under 160 square feet. Asbestos-related work includes asbestos abatement area preparation; enclosure, removal, encapsulation, or repair operations; and an air quality monitoring specified in rule to assure that the abatement and adjacent areas are not contaminated with asbestos fibers during the project and after completion.

Subd. 4a. **Asbestos inspector.** "Asbestos inspector" means an individual who inspects a site for the presence and condition of asbestos-containing material, or who reinspects a site to assess the condition of previously identified asbestos-containing material or the presence of other asbestos-containing material.

Subd. 4b. **Asbestos management activity.** "Asbestos management activity" means the performance of periodic inspections to determine the existence and condition of asbestos-containing material, the development of site specific written programs for the maintenance of asbestos-containing material in a condition which prevents the release of asbestos fibers, the development of site specific written programs governing response procedures in the event of an asbestos fiber release episode, and the development of project specifications for asbestos-related work projects.

Subd. 4c. **Asbestos management planner.** "Asbestos management planner" means an individual who develops a written site specific asbestos-containing material maintenance plan and a written site specific asbestos fiber release episode response plan addressing asbestos-containing material at the site.

Subd. 4d. **Asbestos project designer.** "Asbestos project designer" means an individual who designs the asbestos-related work project specifications.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 6. **Contracting entity.** "Contracting entity" means a public or private body, board, natural person, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity that contracts with a person to do asbestos-related work for the benefit of the contracting entity.

Subd. 7. [Repealed, 1993 c 303 s 21]

Subd. 8. **Person.** "Person" means an individual, body, board, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity. This term also applies to the state, its political subdivisions, and any boards, commissions, schools, institutions, or authorities created or recognized by them.

**History:** 1993 c 303 s 1-9

**326.72 ASBESTOS LICENSE.**

Subdivision 1. **When license required.** A person within the state intending to directly perform or cause to be performed through subcontracting or similar delegation any asbestos-related work either for financial gain or with respect to the person's own property shall first apply for and obtain a license from the commissioner. The license shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and give the name and address of the person to whom it is issued.

The domiciled owner of a single family residence is not required to hold a license or pay a project permit fee to conduct asbestos-related work in the domiciled residence.

Subd. 2. **Display of license.** Licensees shall post a project permit, obtained from the commissioner after compliance with the provisions of section 326.74 and rules promulgated under section 326.78, in a conspicuous place outside of the asbestos abatement work area. The actual license or a copy shall be readily available at the work site for inspection by the commissioner, other public officials charged with the health, safety, and welfare of the state's citizens, and the contracting entity.

**History:** 1993 c 303 s 10

**326.73 ASBESTOS CERTIFICATIONS.**

Subdivision 1. **Asbestos-related work certification.** Before an individual performs asbestos-related work, the individual shall first obtain a certificate from the commissioner certifying that the individual is qualified to perform the work. No certificate shall be issued unless the individual has shown evidence of training or experience in the general commercial construction trades, has taken a course of training in asbestos control and removal, passed an examination in those subjects, and demonstrated to the commissioner the ability to perform asbestos-related work safely in accordance with the current state-of-the-art technology. The commissioner shall specify the course of training necessary. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the individual to whom it is issued. The certificate shall be carried by the individual and be readily available for inspection by the commissioner, other public officials charged with the health, safety, and welfare of the state's citizens, and the contracting entity.

Subd. 2. **Asbestos inspector certification.** Before an individual performs an asbestos inspection, the individual shall first obtain a certificate from the commissioner. The commissioner shall issue an asbestos inspector certificate to an individual who has shown evidence of completion of training on asbestos inspection specified by the commissioner in rule, passed an examination in that subject, and has shown evidence of experience as required by rule. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the individual to whom it is issued.

Subd. 3. **Asbestos management planner certification.** Before an individual develops an asbestos management plan, the individual shall first obtain a certificate from the commissioner. The commissioner shall issue an asbestos management planner certificate to an individual who has shown evidence of completion of training on asbestos management plan development specified by the commissioner in rule, passed an examination in that subject, and has shown evidence of experience as required by rule. The certificate issued by the commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the individual to whom it is issued.

Subd. 4. **Asbestos project designer certification.** Before an individual designs an asbestos-related work project, the individual shall first obtain a certificate from the commissioner. The commissioner shall issue an asbestos project designer certificate to an individual who has shown evidence of completion of training on asbestos project design specified by the commissioner in rule, passed an examination in that subject, and has shown evidence of experience as required by rule. The certificate issued by the

commissioner shall be in writing, be dated when issued, contain an expiration date, be signed by the commissioner, and contain the name and address of the individual to whom it is issued.

**History:** 1993 c 303 s 11

### **326.74 REPORTING ASBESTOS WORK.**

At least five calendar days before beginning any asbestos-related work, written notice shall be given to the commissioner of the project by the person holding the license issued under section 326.72, subdivision 1. The notice shall contain the following information:

- (1) a brief description of the work to be performed;
- (2) the name of the contracting entity;
- (3) the location and address of the project work site;
- (4) the approximate duration of the project;
- (5) the approximate amount of the asbestos involved in the project;
- (6) the name of any project manager; and
- (7) other information required by the commissioner.

**History:** 1993 c 303 s 12

### **326.75 FEES.**

**Subdivision 1. Licensing fee.** A person required to be licensed under section 326.72 shall, before receipt of the license and before causing asbestos-related work to be performed, pay the commissioner an annual license fee of \$100.

**Subd. 2. Certification fee.** An individual required to be certified under section 326.73, subdivision 1, shall pay the commissioner a certification fee of \$50 before the issuance of the certificate. The commissioner may establish by rule fees required before the issuance of asbestos inspector, asbestos management planner, and asbestos project designer certificates required under section 326.73, subdivisions 2, 3, and 4.

**Subd. 3. Permit fee.** One calendar day before beginning asbestos-related work, a person shall pay a project permit fee to the commissioner equal to one percent of the total costs of the asbestos-related work. For asbestos-related work performed in single or multifamily residences, of greater than ten but less than 260 linear feet of asbestos-containing material on pipes, or greater than six but less than 160 square feet of asbestos-containing material on other facility components, a person shall pay a project permit fee of \$35 to the commissioner.

**Subd. 3a. Asbestos-related training course fee.** The commissioner shall establish by rule a fee to be paid by a training course provider upon application for approval or renewal of approval of each asbestos-related training course required for certification or registration.

**Subd. 4. Deposit of fees.** Fees collected under this section shall be deposited in the state government special revenue fund.

**History:** 1993 c 303 s 13; 1Sp1993 c 1 art 9 s 73

### **326.76 DUTIES OF CONTRACTING ENTITIES.**

A contracting entity intending to have asbestos-related work or asbestos management activity performed for its benefit shall include in the specifications and contracts for the work a requirement that the work be performed by contractors and subcontractors licensed or certified by the commissioner under sections 326.70 to 326.81 and in accordance with rules prescribed by the commissioner related to asbestos abatement and asbestos management activity. No contracting entity shall allow asbestos-related work or asbestos management activity to be performed for its benefit unless it has seen that the person has a valid license or certificate. A contracting entity's failure to comply with this section does not relieve a person from any responsibilities under sections 326.70 to 326.81.

**History:** 1993 c 303 s 14

**326.78 DUTIES OF THE COMMISSIONER.**

Subdivision 1. **Rulemaking.** The commissioner shall adopt and begin enforcement of rules necessary to implement sections 326.70 to 326.81. The rules adopted shall not be duplicative of rules adopted by the commissioner of the department of labor and industry. The rules shall include rules in the following areas:

- (1) application, enclosure, removal, and encapsulation procedures;
- (2) license and certificate qualification requirements;
- (3) examinations for obtaining a license and certificate;
- (4) training necessary for individual certification;
- (5) qualifications for managers of asbestos abatement projects;
- (6) abatement and asbestos management activity specifications;
- (7) any contractor bonding and insurance requirements deemed necessary by the commissioner;
- (8) license and certificate issuance and revocation procedures;
- (9) suspension or revocation of licenses or certificates;
- (10) license and certificate suspension and revocation criteria;
- (11) cleanup standards;
- (12) continuing education requirements; and
- (13) other rules necessary to implement sections 326.70 to 326.81.

Subd. 2. **Issuance of licenses and certificates.** The commissioner may issue licenses to persons and certificates to individuals who meet the criteria in sections 326.70 to 326.82 and the commissioner's rules. Licenses and certificates shall be valid for at least 12 months, except that the initial certificate will be issued to expire one year after the completion date on the approved training course diploma.

Subd. 3. **Delegation.** The commissioner may, in writing, delegate the inspection and enforcement authority granted in sections 326.70 to 326.82 to other state agencies regulating asbestos.

Subd. 4. [Repealed, 1993 c 206 s 25]

Subd. 5. **Subpoenas.** In matters under investigation by or pending before the commissioner under sections 326.70 to 326.82, the commissioner may issue subpoenas and compel the attendance of witnesses and the production of papers, books, records, documents, and other relevant evidentiary material. A person failing or refusing to comply with the subpoena or order may, upon application by the commissioner to the district court in any district, be ordered by the court to comply with the order or subpoena. The commissioner may also administer oaths and affirmations to witnesses. Depositions may be taken within or without the state in the manner provided by law for the taking of depositions in civil actions. A subpoena or other process or paper may be served upon any person anywhere within the state by an officer authorized to serve subpoenas in civil actions, with the same fees and mileage costs paid, and in the manner as prescribed by law, for process of the state district courts. Fees and mileage and other costs of persons subpoenaed by the commissioner shall be paid in the manner prescribed for proceedings in district court.

Subd. 6. [Repealed, 1993 c 206 s 25]

Subd. 7. [Repealed, 1993 c 206 s 25]

Subd. 8. [Repealed, 1993 c 206 s 25]

Subd. 9. **Penalties.** (a) A person who violates any of the requirements of sections 326.70 to 326.81 or any requirement, rule, or order issued under those sections is subject to a civil penalty of not more than \$10,000 per day of violation. Penalties may be recovered in a civil action in the name of the state brought by the attorney general.

(b) The commissioner may issue an order assessing a penalty of not more than \$10,000 per violation to any person who violates any of the requirements of sections 326.70 to 326.81 or any requirement, rule, or order issued under those sections. A person subject to an administrative penalty order may request a contested case hearing

under chapter 14 within 20 days from date of receipt of the penalty order. If the penalty order is not contested within 20 days of receipt, it becomes final and may not be contested.

(c) The amount of the penalty shall be based on the past history of same or similar violations, the severity of violation, the culpability of the person, and other relevant factors. The history of past violations shall include previous violations received by the person licensed as a different entity.

(d) Penalties assessed under sections 326.70 to 326.81 shall be paid to the commissioner for deposit in the state government special revenue fund. Unpaid penalties shall be increased to 125 percent of the original assessed amount if not paid within 60 days after the penalty order becomes final. After 60 days, interest shall accrue on the unpaid penalty balance at the rate established in section 549.09.

**History:** 1993 c 303 s 15

**NOTE:** Subdivisions 4, 6, 7, and 8, were also amended by Laws 1993, chapter 303, section 15, to read as follows:

"Subd. 4. **Access to information and property.** (a) Any person who the commissioner has reason to believe is engaged in asbestos-related work or asbestos management activity, or who is the owner of real property where the asbestos-related work or asbestos management activity is being undertaken, when requested by the commissioner, or any member, employee, or agent thereof who is authorized by the commissioner, shall furnish the commissioner any information that the person may have or may reasonably obtain that is relevant to the asbestos-related work or asbestos management activity within five working days of the request.

(b) The commissioner or any person authorized by the commissioner, upon presentation of credentials, and with reason to believe that violation of sections 326.70 to 326.82 may be occurring, may:

(1) examine and copy any books, papers, records, memoranda, or data related to the asbestos-related project of any person who has a duty to provide information to the commissioner under paragraph (a); and

(2) enter upon any public or private property to take action authorized by this section including obtaining information from any person who has a duty to provide the information under paragraph (a), and conducting surveys or investigations.

Subd. 6. **Cease and desist order.** (a) The commissioner may issue an order requiring a person to cease asbestos-related work or asbestos management activity if the commissioner determines that a condition exists that poses an immediate danger to the public health. For purposes of this subdivision, an immediate danger to the public health exists if the commissioner determines that:

(1) air quality standards are being exceeded;

(2) asbestos-related work or asbestos management activity is being undertaken in a manner violative of applicable state or federal law;

(3) the person or an individual working at the project site is not licensed or certified, or in possession of a current license or certificate, as the case may be; or

(4) asbestos-related work has not been reported to the commissioner as required under section 326.74 and rules prescribed by the commissioner.

(b) The order is effective for a maximum of 60 days. Following issuance of the order, the commissioner shall provide the contractor or individual with an opportunity for a hearing under the contested case provisions of chapter 14. At the hearing, the commissioner shall decide whether to rescind, modify, or reissue the previously made order. A modified or reissued order is effective for a maximum of 60 days from the date of modification or reissuance.

Subd. 7. **Order for corrective action.** (a) Commissioner may issue an order requiring anyone violating sections 326.70 to 326.82 or a rule of the commissioner to take corrective action as the commissioner determines will accomplish the purpose of the project and prevent future violation. The order for corrective action shall state the conditions that constitute the violation, the specific law or rule violated, and the time by which the violation must be corrected.

(b) If the person believes that the information contained in the commissioner's order for corrective action is in error, the person may ask the commissioner to reconsider the parts of the order that are alleged to be in error. The request must be in writing, delivered to the commissioner by certified mail within seven calendar days of receipt of the order and:

(1) specify which parts of the order for corrective action are alleged to be in error;

(2) explain why they are in error; and

(3) provide documentation to support the allegation of error.

The commissioner shall respond to requests made under this provision within 15 calendar days after receipt of the request. A request for reconsideration does not stay the order for corrective action. After reviewing the request for reconsideration, the commissioner may provide additional time to comply with the order if necessary. The commissioner's disposition of a request for reconsideration is final.

Subd. 8. **Injunctive relief.** In addition to any other remedy provided by law, the commissioner may bring an action for injunctive relief in the district court in Ramsey county or, at the commissioner's discretion, in the district court in the county in which asbestos-related work or asbestos management activity is being undertaken to halt the work or an activity connected with it. A temporary restraining order or other injunctive relief may be granted by the court in the proceeding if continuation of the work or an activity connected with it would result in an imminent risk of harm to any person."

### 326.785 ASBESTOS CONTAINMENT BARRIERS.

Notwithstanding Minnesota Rules, part 4620.3500, subpart 4, item B, subitem (5),

containment barriers, in the case of tunnel abatement enclosures, are limited to double critical barriers.

**History:** 1993 c 303 s 16

### 326.79 [Repealed, 1993 c 206 s 25]

**NOTE:** This section was also amended by Laws 1993, chapter 303, section 17, to read as follows:

**"326.79 Misdemeanor penalty.**

A person who:

(1) hinders or delays the commissioner or the commissioner's authorized representative in the performance of the duty to enforce sections 326.70 to 326.81;

(2) undertakes asbestos-related work without a license or with a revoked, expired, or suspended license;

(3) refuses to make a license or certificate accessible to either the commissioner or the commissioner's authorized representative;

(4) uses an employee who does not have a certificate to do asbestos-related work;

(5) fails to report asbestos-related work as required by section 326.74;

(6) undertakes asbestos-related work or asbestos management activity for which the person is not qualified under rules prescribed by the commissioner; or

(7) makes a material false statement related to a license, certificate, report, or other document required under sections 326.70 to 326.81

is guilty of a misdemeanor and may be sentenced to payment of a fine of not more than \$700, imprisonment for not more than 30 days, or both, for each violation."

### 326.80 [Repealed, 1993 c 206 s 25]

**NOTE:** This section was also amended by Laws 1993, chapter 303, section 18, to read as follows:

**"326.80 Suspensions; revocations; denials.**

As an alternative, or in addition to, the criminal or any other penalties provided in sections 326.70 to 326.81, the commissioner or the commissioner's designee may refuse to grant an initial license or certificate, or may suspend or revoke a license or certificate for repeated or serious violations of sections 326.70 to 326.81; violations of any requirement, rule, or order issued under those sections; violations of state or federal laws or regulations related to enclosure, repair, removal, encapsulation, or disposal of asbestos or asbestos management activity; violations of other Minnesota laws that indicate that the person is not fit to conduct asbestos-related work or asbestos management activity; where final agency action has been taken against a person in connection with asbestos-related work or asbestos management activity in another state or jurisdiction; or where the person has been convicted of a criminal violation in connection with asbestos-related work or asbestos management activity in another state or jurisdiction. Any proceeding conducted under this section must be in accordance with procedures adopted by rule by the commissioner and the contested case procedures of chapter 14."

### 326.81 DISCRIMINATION; SANCTIONS.

A person who discriminates against or otherwise sanctions an employee who complains to or cooperates with the commissioner in administering sections 326.70 to 326.81 is guilty of a misdemeanor.

**History:** 1993 c 303 s 19

### 326.83 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 326.83 to 326.98.

Subd. 2. **MS 1992** [Renumbered subd 3]

Subd. 2. **Affiliate.** An "affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Subd. 3. **MS 1992** [Renumbered subd 4]

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 4. **MS 1992** [Renumbered subd 7]

Subd. 4. **Council.** "Council" means the builders state advisory council.

Subd. 5. **MS 1992** [Renumbered subd 10]

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

Subd. 6. **MS 1992** [Renumbered subd 13]

Subd. 6. **Lessee.** "Lessee" means one who rents residential real estate pursuant to a written lease agreement of at least one year's duration.

Subd. 7. MS 1992 [Renumbered subd 16]

Subd. 7. **Licensee.** "Licensee" means a residential building contractor, residential remodeler, manufactured home installer, or roofer licensed under sections 326.83 to 326.991.

Subd. 8. MS 1992 [Renumbered subd 15]

Subd. 8. **Manufactured home.** "Manufactured home" has the meaning given it in section 327.31, subdivision 6.

Subd. 9. MS 1992 [Renumbered subd 17]

Subd. 9. **Manufactured home installer.** "Manufactured home installer" has the meaning given it in section 327.31, subdivision 11.

Subd. 10. MS 1992 [Renumbered subd 20]

Subd. 10. **Mechanical contractor.** "Mechanical contractor" means a person, sole proprietor, partnership, joint venture, corporation, or other organization which is in the business of erection, installation, alteration, repair, relocation, replacement, addition to, use, or maintenance of any heating, ventilating, cooling, process piping, plumbing, fire protection, or refrigeration systems, incinerators, or other miscellaneous heat-producing appliance, piping, or equipment or appliances associated with those systems.

Subd. 11. **Owner.** Except in section 326.91, subdivision 1, "owner" means a person who has any legal or equitable interest in real property. For purposes of sections 326.83 to 326.991, "owner" does not include a residential building contractor or residential remodeler who constructs or improves its own property for purposes of speculation. A residential building contractor or residential remodeler will be presumed to be building or improving for purposes of speculation if it constructs or improves more than one property within any 12-month period.

Subd. 12. **Person.** "Person" means a natural person, firm, partnership, limited liability company, corporation, or association, and the officers, directors, employees, or agents of that person.

Subd. 13. **Public member.** "Public member" means a person who is not, and never was, a residential building contractor, residential remodeler, residential roofer, or specialty contractor or the spouse of such person, or a person who has no, or never has had a, material financial interest in acting as a residential building contractor, residential remodeler, or specialty contractor or a directly related activity.

Subd. 14. **Qualifying person.** "Qualifying person" means the individual who fulfills the examination and education requirements for licensure on behalf of the licensee.

Subd. 15. **Residential building contractor.** "Residential building contractor" means a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills as defined in this section. A residential building contractor may also contract or offer to contract with an owner to improve existing residential real estate.

Subd. 16. **Residential remodeler.** "Residential remodeler" means a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills as defined in this section.

Subd. 17. **Residential real estate.** "Residential real estate" means a new or existing building constructed for habitation by one to four families, and includes detached garages.

Subd. 18. **Roofer.** "Roofer" means a person engaged in the business of doing work on residential real estate in roof coverings, roof sheathing, roof weatherproofing and insulation, and repair of roof systems, but not construction of new roof systems.

Subd. 19. **Special skill.** "Special skill" means one of the following eight categories:

(a) **Excavation.** Excavation includes work in any of the following areas:

(1) excavation;

- (2) trenching;
- (3) grading; and
- (4) site grading.

(b) **Masonry and concrete.** Masonry and concrete includes work in any of the following areas:

- (1) drain systems;
- (2) poured walls;
- (3) slabs and poured-in-place footings;
- (4) masonry walls;
- (5) masonry fireplaces;
- (6) masonry veneer; and
- (7) water resistance and waterproofing.

(c) **Carpentry.** Carpentry includes work in any of the following areas:

- (1) rough framing;
- (2) finish carpentry;
- (3) siding;
- (4) doors, windows, and skylights;
- (5) exterior covering;
- (6) porches and decks;
- (7) wood foundations;
- (8) insulation and vapor barrier;
- (9) drywall installation, excluding taping and finishing;
- (10) cabinet and counter top installation;
- (11) wood floors;
- (12) installation of roofing materials, excluding roofing; and
- (13) soffit, fascia, and trim.

(d) **Interior finishing.** Interior finishing includes work in any of the following areas:

- (1) floor covering;
- (2) wood floors;
- (3) cabinet and counter top installation;
- (4) insulation and vapor barriers;
- (5) interior or exterior painting;
- (6) ceramic, marble, and quarry tile;
- (7) ornamental guardrail and installation of prefabricated stairs; and
- (8) wallpapering.

(e) **Exterior finishing.** Exterior finishing includes work in any of the following areas:

- (1) siding;
- (2) doors, skylights, and windows;
- (3) soffit, fascia, and trim;
- (4) exterior plaster and stucco;
- (5) painting; and
- (6) rain carrying systems, including gutters and down spouts.

(f) **Drywall and plaster.** Drywall and plaster includes work in any of the following areas:

- (1) installation;
- (2) taping;
- (3) finishing;
- (4) interior plaster;

(5) painting; and

(6) wallpapering.

(g) **Roofing.** Roofing includes work in any of the following areas:

(1) roof coverings;

(2) roof sheathing;

(3) roof weatherproofing and insulation; and

(4) repair of roof support system, but not construction of new roof support system.

(h) **General installation specialties.** Installation includes work in any of the following areas:

(1) garage doors and openers;

(2) pools, spas, and hot tubs;

(3) fireplaces and wood stoves;

(4) asphalt paving and seal coating;

(5) exterior plaster and stucco; and

(6) ornamental guardrail and prefabricated stairs.

Subd. 20. **Specialty contractor.** "Specialty contractor" means a person in the business of contracting or offering to contract to build or improve residential real estate by providing one special skill as defined in this section.

**History:** 1993 c 9 s 1-3; 1993 c 145 s 2-4; 1993 c 245 s 2-13; 1993 c 366 s 18

### 326.84 LICENSING REQUIREMENTS.

Subdivision 1. **Persons required to be licensed.** A person who meets the definition of a residential remodeler as defined in section 326.83, subdivision 16, or a residential building contractor as defined in section 326.83, subdivision 15, must be licensed as a residential building contractor or residential remodeler.

Subd. 1a. **Persons who may be licensed.** A person who meets the definition of a specialty contractor as defined in section 326.83, subdivision 20, may be licensed as a residential building contractor or residential remodeler unless required to be licensed by the state as a specialty contractor.

Subd. 1b. **Prohibition.** Except as provided in subdivision 3, no persons required to be licensed by subdivision 1 may act or hold themselves out as residential building contractors or residential remodelers for compensation without a valid license issued by the commissioner.

Subd. 1c. **Licensing criteria.** The examination and education requirements for licensure under sections 326.84 to 326.991 must be fulfilled by a qualifying person designated by the potential licensee. If the qualifying person is a managing employee, the qualifying person must be an employee who is regularly employed by the licensee and is actively engaged in the business of residential contracting or residential remodeling on behalf of the licensee. For a sole proprietorship, the qualifying person must be the proprietor or managing employee. For a partnership, the qualifying person must be a general partner or managing employee. For a limited liability company, the qualifying person must be a chief manager or managing employee. For a corporation, the qualifying person must be a chief executive officer or managing employee. A qualifying person for a corporation may act as a qualifying person for one additional corporation if one of the following conditions exists:

(1) there is a common ownership of at least 25 percent of each licensed corporation for which the person acts in a qualifying capacity; or

(2) one corporation is a subsidiary of another corporation for which the same person acts in a qualifying capacity. "Subsidiary," as used in this section, means a corporation of which at least 25 percent is owned by the parent corporation.

Subd. 2. [Repealed, 1993 c 245 s 40]

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 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 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;
- (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.

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.

**History:** 1993 c 245 s 14, 15

**NOTE:** The amendments to subdivision 3 by Laws 1993, chapter 245, section 15, are effective August 1, 1993, but the certificate of exemption requirement for persons claiming an exemption pursuant to clause (5) is not effective until March 31, 1994. See Laws 1993, chapter 245, section 41.

### **326.841 MANUFACTURED HOME INSTALLERS.**

Manufactured home installers are subject to all of the requirements of sections 326.83 to 326.98, except for the following:

- (1) manufactured home installers are not members of the advisory council under section 326.85;
- (2) manufactured home installers are not subject to the continuing education requirements of section 326.87;
- (3) the examination requirement of section 326.89, subdivision 3, for manufactured home installers shall be satisfied by successful completion of a written examination designed specifically for manufactured home installers. The examination must be designed by the commissioner in conjunction with the state building code division. The commissioner and state building code division shall seek advice on the grading, monitoring, and updating of examinations from the Minnesota manufactured housing association;

(4) the amount of the bond required by section 326.94 shall be \$2,500 for manufactured home installers;

(5) a local government unit may not place a surcharge on a license fee, and may not charge a separate fee to installers; and

(6) a dealer or distributor who does not install or repair manufactured homes is exempt from licensure under sections 326.83 to 326.98.

**History:** 1993 c 9 s 4

### **326.842 ROOFERS.**

Roofers are subject to all of the requirements of sections 326.83 to 326.98 and 326.991, except the recovery fund in section 326.975.

**History:** 1993 c 145 s 5; 1993 c 366 s 19

### **326.85 ADVISORY COUNCIL.**

Subdivision 1. **Builders advisory council.** The commissioner shall appoint eight persons to the builders advisory council. At least three members of the council must reside in greater Minnesota, as defined in section 116O.02, subdivision 5. At least one member of the council must be a residential building contractor, one a residential remodeler, one a specialty contractor, one a representative of the commissioner, one a local building official, one a public member, and one a representative of organized labor designated by the AFL-CIO, this member shall not be subject to the membership term limits under section 15.059.

*[For text of subds 2 and 3, see M.S.1992]*

**History:** 1993 c 245 s 16

### **326.86 FEES.**

Subdivision 1. **Licensing fee.** The licensing fee for persons licensed pursuant to sections 326.83 to 326.991 is \$75 per year. The commissioner may adjust the fees under section 16A.128 to recover the costs of administration and enforcement. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury and credited to the general fund. A fee of \$25 will be charged for a duplicate license or an amended license reflecting a change of business name, address, or qualifying person.

Subd. 2. **Local surcharge.** A local government unit may place a surcharge in an amount no greater than \$5 on each building permit that requires a licensed residential building contractor, residential remodeler, or specialty contractor for the purpose of license verification. The local government may verify a license by telephone or facsimile machine.

**History:** 1993 c 245 s 17

### **326.87 CONTINUING EDUCATION.**

*[For text of subd 1, see M.S.1992]*

Subd. 2. **Hours.** A qualifying person of a licensee must provide proof of completion of seven hours of continuing education per year. To the extent the commissioner considers it appropriate, courses or parts of courses may be considered to satisfy both continuing education requirements under this section and continuing real estate education requirements.

*[For text of subd 3, see M.S.1992]*

**History:** 1993 c 245 s 18

**326.875 NOTICE OF CHANGE.**

Written notice must be given to the commissioner by each licensee of any change in personal name, trade name, qualifying person, address, or business location not later than 15 business days after the change. The commissioner shall issue an amended license, if required, for the unexpired period.

**History:** 1993 c 245 s 19

**326.88 LOSS OF QUALIFYING PERSON.**

Upon the departure or disqualification of a licensee's qualifying person because of death, disability, retirement, position change, or other reason, the licensee must notify the commissioner within 15 business days. The licensee shall have 120 days from the departure of the qualifying person to obtain a new qualifying person. Failure to secure a new qualifying person within 120 days will result in the automatic termination of the license.

**History:** 1993 c 245 s 20

**326.89 APPLICATION AND EXAMINATION.**

*[For text of subd 1, see M.S.1992]*

**Subd. 2. Contents.** The application must include the following information regarding the applicant:

- (1) Minnesota workers' compensation insurance certificate;
- (2) employment insurance account number;
- (3) certificate of liability insurance;
- (4) type of license requested;
- (5) name and address of the applicant;
- (i) name and address of the applicant's qualifying person, if other than applicant; and
- (ii) if the applicant is a sole proprietorship, the name and address of the sole proprietor; if the applicant is a partnership, the name and address of each partner; if the applicant is a limited liability company, the name and address of each governor and manager; if the applicant is a corporation, the name and address of each of the corporate officers, directors, and all shareholders holding more than ten percent of the outstanding stock in the corporation;
- (6) whether the applicant, any employee, or qualifying person has ever been licensed in this or any other state and has had a professional or vocational license refused, suspended, or revoked, or has been the subject of any administrative action;
- (7) whether the applicant, qualifying person, or any of the applicant's corporate or partnership directors, limited liability company governors, officers, limited or general partners, managers, all shareholders holding more than ten percent of the share of the corporation that have been issued, or all members holding more than ten percent of the voting power of the membership interests that have been issued, has been convicted of a crime that either related directly to the business for which the license is sought or involved fraud, misrepresentation, or misuse of funds; has suffered a judgment in a civil action involving fraud, misrepresentation, negligence, or breach of contract, or conversion within the ten years prior to the submission of the application; or has had any government license or permit suspended or revoked as a result of an action brought by a federal, state, or local governmental unit or agency in this or any other state;
- (8) the applicant's and qualifying person's business history for the past five years and whether the applicant, any employee, or qualifying person has ever filed for bankruptcy or protection from creditors or has any unsatisfied judgments against the applicant, employee, or qualifying person;
- (9) where the applicant is a firm, partnership, sole proprietorship, limited liability

company, corporation, or association, whether there has been a sale or transfer of the business or other change in ownership, control, or name in the last five years and the details thereof, and the names and addresses of all prior, predecessor, subsidiary, affiliated, parent, or related entities, and whether each such entity, or its owners, officers, directors, members or shareholders holding more than ten percent of the stock, or an employee has ever taken or been subject to an action that is subject to clause (6), (7), or (8) in the last ten years; and

(10) whether the qualifying person is the qualifying person for more than one licensee.

For purposes of this subdivision, "applicant" includes employees who exercise management or policy control over the residential contracting and remodeling activities in the state of Minnesota, including affiliates, partners, directors, governors, officers, limited or general partners, managers, all shareholders holding more than ten percent of the shares that have been issued, a shareholder holding more than ten percent of the voting power of the shares that have been issued, or all members holding more than ten percent of the membership interests that have been issued or more than ten percent of the voting power of the membership interests that have been issued.

The commissioner may require further information as the commissioner deems appropriate to administer the provisions and further the purposes of this chapter.

**Subd. 3. Examination.** Each qualifying person must satisfactorily complete a written examination for the type of license requested. The commissioner may establish the examination qualifications, including related education experience and education, the examination procedure, and the examination for each licensing group. The examination must include at a minimum the following areas:

(1) appropriate knowledge of technical terms commonly used and the knowledge of reference materials and code books to be used for technical information; and

(2) understanding of the general principles of business management and other pertinent state laws.

Each examination must be designed for the specified type of license requested. The council shall advise the commissioner on the grading, monitoring, and updating of examinations.

**Subd. 3a. Eligibility.** Any person may take the license examination. After satisfactorily completing the examination, an individual may be designated as the qualifying person for a licensee at any time, if the individual has also fulfilled the continuing education requirements set forth in section 326.87 in the manner required for the qualifying person of a licensee.

*[For text of subds 4 and 5, see M.S.1992]*

**Subd. 6. Additional licensing requirements.** As an alternative to denying an application for licensure pursuant to section 326.91, subdivision 1, the commissioner may, as a condition of licensure and based upon information received pursuant to section 326.89, subdivision 2, clauses (6) to (8), or a finding pursuant to section 326.91, subdivision 1, clauses (1) to (9), impose additional insurance, bonding, reporting, record keeping, and other requirements on the applicant as are reasonable to protect the public.

**History:** 1993 c 245 s 21-24

### **326.90 LOCAL LICENSES.**

**Subdivision 1. Local license prohibited.** Except as provided in sections 326.991 and 326.90, subdivision 2, a political subdivision may not require a person licensed under sections 326.83 to 326.991 to also be licensed under any ordinance, law, rule, or regulation of the political subdivision. This section does not prohibit charges for building permits or other charges not directly related to licensure.

**Subd. 2. Exception.** This section does not prohibit a political subdivision from requiring licensure or certification under any ordinance, law, rule, or regulation of the

political subdivision for persons who engage in the installation of an on-site sewage treatment system.

**History:** 1993 c 245 s 25

### 326.91 DENIAL, SUSPENSION, OR REVOCATION OF LICENSES.

**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;

(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.

**Subd. 2. Administrative action.** Section 45.027 applies to any action taken by the commissioner in connection with the administration of sections 326.83 to 326.991.

Nothing in this section prevents the commissioner from denying, suspending, revoking, or restricting a license, or from censuring a licensee based on acts or omissions not specifically enumerated in this subdivision.

**History:** 1993 c 245 s 26, 27

### 326.92 PENALTIES.

**Subdivision 1. Misdemeanor.** A person required to be licensed under sections 326.83 to 326.991 who performs unlicensed work is guilty of a misdemeanor.

*[For text of subd 2, see M.S.1992]*

Subd. 3. **Commissioner action.** The commissioner may bring actions, including cease and desist actions, against any person licensed or required to be licensed under sections 326.83 to 326.991 to protect the public health, safety, and welfare.

**History:** 1993 c 245 s 28,29

### **326.921 BUILDING PERMIT CONDITIONED ON LICENSURE.**

A political subdivision shall not issue a building permit to an unlicensed person who is required to be licensed under sections 326.83 to 326.991. The political subdivision shall report the person applying for a building permit to the commissioner who may bring an action against the person.

**History:** 1993 c 245 s 30

### **326.93 SERVICE OF PROCESS; NONRESIDENT LICENSING.**

Subdivision 1. **License.** A nonresident of Minnesota may be licensed as a residential building contractor or residential remodeler upon compliance with all the provisions of sections 326.83 to 326.991.

*[For text of subd 2, see M.S.1992]*

**History:** 1993 c 245 s 31

### **326.94 BOND; INSURANCE.**

Subdivision 1. **Bond.** (a) Licensed manufactured home installers and licensed roofers must post a license bond with the commissioner, conditioned that the applicant shall faithfully perform the duties and in all things comply with all laws, ordinances, and rules pertaining to the license or permit applied for and all contracts entered into. The annual bond must be continuous and maintained for so long as the licensee remains licensed. The aggregate liability of the surety on the bond to any and all persons, regardless of the number of claims made against the bond, may not exceed the amount of the bond. The bond may be canceled as to future liability by the surety upon 30 days written notice mailed to the commissioner by regular mail.

(b) A licensed roofer must post a bond of at least \$5,000.

Subd. 2. **Insurance.** Licensees must have public liability insurance with limits of at least \$100,000 per occurrence, which must include at least \$10,000 property damage coverage. The commissioner may increase the minimum amount of insurance required for any licensee or class of licensees if the commissioner considers it to be in the public interest and necessary to protect the interests of Minnesota consumers.

**History:** 1993 c 245 s 32

### **326.951 DISCLOSURES.**

If a licensee sells or offers to sell residential property, constructed by the licensee, which is or has been occupied by the licensee, the licensee must, prior to entering into a binding purchase agreement, provide to the buyer a written disclosure which states that any claims that arise as a result of the licensee's construction of the property: (1) will not be covered under the statutory warranty established by chapter 327A, and (2) if the licensee has occupied the residential property for one year or more, will not be eligible for reimbursement from the contractor's recovery fund.

**History:** 1993 c 245 s 33

### **326.97 LICENSE RENEWAL.**

Subdivision 1. **Renewal.** Licensees whose applications have been properly and timely filed and who have not received notice of denial of renewal are considered to have been approved for renewal and may continue to transact business whether or not the renewed license has been received. Applications are timely if received or postmarked by March 1 of the renewal year. Applications must be made on a form approved by the commissioner.

Subd. 1a. **Annual renewal.** Any license issued or renewed after August 1, 1993, must be renewed annually.

*[For text of subds 2 and 3, see M.S.1992]*

**History:** 1993 c 245 s 34,35

### 326.975 CONTRACTOR'S RECOVERY FUND.

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 March 31, 1994; and

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

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

Subd. 2. **Accelerated claims payment.** Recovery fund claims that do not exceed the jurisdiction limits for conciliation court matters as specified in section 487.30 shall be paid on an accelerated basis if all of the following requirements have been satisfied:

(a) When any aggrieved person obtains a judgment in any court of competent jurisdiction, regardless of whether the judgment has been discharged by a bankruptcy court against a residential building contractor or residential remodeler on grounds specified in subdivision 1, paragraph (a), clause (2), the aggrieved person may file a verified application with the commissioner for payment out of the fund of the amount of actual and direct out-of-pocket loss in the transaction, but excluding any attorney fees, interest on the loss and on any judgment obtained as a result of the loss, up to the conciliation court jurisdiction limits, of the amount unpaid upon the judgment. For purposes of this section, persons who are joint tenants or tenants in common are deemed to be a single claimant.

(b) The commissioner has sent the licensee a copy of the verified application by

first-class mail to the licensee's address as it appears in the records of the department of commerce with a notice that the claim will be paid 15 days from the date of the notice unless the licensee notifies the commissioner prior to that date of the commencement of an appeal of the judgment, if the time for appeal has not expired, and that payment of the claim will result in automatic suspension of the licensee's license.

(c) If the licensee does not notify the commissioner of the commencement of an appeal, the commissioner shall pay the claim at the end of the 15-day period.

(d) If an appeal is commenced, the payment of the claim is stayed until the conclusion of the appeal.

(e) The commissioner may pay claims which total no more than \$15,000 against the licensee under this accelerated process. The commissioner may prorate the amount of claims paid under this subdivision if claims in excess of \$15,000 against the licensee are submitted. Any unpaid portions of such claims shall be satisfied in the manner set forth in subdivision 1.

Subd. 3. **Appropriation.** Money in the contractor's recovery fund is appropriated to the commissioner for the purposes of this section.

**History:** 1993 c 245 s 36

### 326.99 INITIAL TEMPORARY LICENSES.

Residential building contractors and residential remodelers must obtain a temporary license, which is effective as of January 1, 1992. The commissioner may stagger the temporary licenses so that approximately one-half of the licenses will expire on March 31, 1993, and the other one-half on March 31, 1994. For residential building contractors and remodelers whose initial temporary license expires March 31, 1993, the commissioner upon receipt of a written request and upon payment of the appropriate license renewal fee by the licensee shall extend the examination deadline until March 31, 1994. In 1994, in addition to the established examination sites, and at no additional costs to the examination candidate, the examination must be made available at least once at five additional sites throughout the state. The additional examination sites must be located whenever possible at public schools or technical colleges.

**History:** 1993 c 245 s 37

### 326.991 EXCEPTION.

Subdivision 1. The license requirement under section 326.84 does not apply to a residential building contractor, residential remodeler, or specialty contractor licensed by the city of St. Paul or the city of Minneapolis and who is performing work within the legal boundaries of one of those municipalities.

This subdivision expires March 31, 2000.

Subd. 2. The commissioner may contract with the city of Minneapolis and the city of St. Paul to administer this licensing program.

**History:** 1993 c 245 s 38