

2015 Minnesota Statutes

326B.081 DEFINITIONS.

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

Subd. 2. **Administrative order.** "Administrative order" means an order issued under section [326B.082, subdivision 7](#).

Subd. 3. **Applicable law.** "Applicable law" means the provisions of sections [181.723](#), [325E.66](#), [327.31](#) to [327.36](#), this chapter, and chapter 341, and all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted, issued, or enforced by the department under sections [181.723](#), [325E.66](#), [327.31](#) to [327.36](#), this chapter, or chapter 341.

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

Subd. 5. **Final.** "Final" when used to describe any order issued under section [326B.082](#) means that:

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

(2) all requests for hearing have been withdrawn;

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

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

Subd. 6. **Licensing order.** "Licensing order" means an order issued under section [326B.082, subdivision 12](#), paragraph (a).

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

Subd. 8. **Stop order.** "Stop order" means an order issued under section [326B.082](#), subdivision 10.

326B.082 ENFORCEMENT.

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

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

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

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

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

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

(5) with or without notice, enter without delay upon any property, public or private, for the purpose of taking any action authorized under this subdivision or the applicable law, including obtaining information, remedying violations, or conducting surveys, inspections, or investigations.

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

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

has informed the commissioner that entry will be refused. Upon showing of administrative probable cause by the commissioner, the district court shall issue an administrative inspection order that compels the property owner or lessee to permit the commissioner to enter the property for the purposes specified in paragraph (a).

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

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

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

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

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

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

(1) serving the notice of violation on the property owner or on the person who committed the violation; or

(2) posting the notice of violation at the location where the violation occurred.

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

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

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

Subd. 7. Administrative orders; correction; assessment of monetary penalties.

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

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

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

Subd. 8. Hearings related to administrative orders. (a) Within 30 days after the commissioner issues an administrative order or within 20 days after the commissioner issues the notice under section [326B.083, subdivision 3](#), paragraph (b), clause (3), the person to whom the administrative order or notice is issued may request an expedited hearing to review the commissioner's order or notice. The request for hearing must be in writing and must be served on or faxed to the commissioner at the address or fax number specified in the order or notice. If the person does not request a hearing or if the person's written request for hearing is not served on or faxed to the commissioner by the 30th day after the commissioner issues the administrative order or the 20th day after the commissioner issues the notice under section [326B.083, subdivision 3](#), paragraph (b), clause (3), the order will become a final order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. The hearing request must specifically state the reasons for seeking review of the order or notice. The person to whom the order or notice is issued and the commissioner are the parties to the expedited hearing. The commissioner must notify the person to whom the order or notice is issued of the time and place of the hearing at least 15 days before the hearing. The expedited hearing must be held within 45 days after a request for hearing has been received by the commissioner unless the parties agree to a later date.

(b) Parties may submit written arguments if permitted by the administrative law judge. All written arguments must be submitted within ten days following the completion of the hearing or the receipt of any late-filed exhibits that the parties and the administrative law judge have agreed should be received into the record, whichever is later. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The Office of Administrative Hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making findings of fact, conclusions of law, and a recommended order to the commissioner within 30 days following the completion of the hearing, the receipt of late-filed exhibits, or the submission of written arguments, whichever is later.

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

(e) If a hearing has been held, the commissioner shall not issue a final order until at least five days after the date of the administrative law judge's report. Any person aggrieved by the administrative law judge's report may, within those five days, serve written comments to the commissioner on the report and the commissioner shall consider and enter the comments in the record. The commissioner's final order shall comply with sections [14.61, subdivision 2](#),

and [14.62, subdivisions 1](#) and 2a, and may be appealed in the manner provided in sections [14.63](#) to [14.69](#).

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

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

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

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

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

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

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

(d) A stop order shall:

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

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

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

date on which a request for hearing is served by mail is the postmark date on the envelope in which the request for hearing is mailed. The hearing request must specifically state the reasons for seeking review of the order. The person who requested the hearing and the commissioner are the parties to the expedited hearing. The hearing shall be commenced within ten days after the commissioner receives the request for hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The administrative law judge shall issue a report containing findings of fact, conclusions of law, and a recommended order within ten days after the completion of the hearing, the receipt of late-filed exhibits, or the submission of written arguments, whichever is later. Any party aggrieved by the administrative law judge's report shall have five days after the date of the administrative law judge's report to submit written exceptions and argument to the commissioner that the commissioner shall consider and enter in the record. Within 15 days after receiving the administrative law judge's report, the commissioner shall issue an order vacating, modifying, or making permanent the stop order. The commissioner and the person requesting the hearing may by agreement lengthen any time periods described in this paragraph. The Office of Administrative Hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this subdivision.

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

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

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

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

(1) committed one or more violations of the applicable law;

(2) submitted false or misleading information to the state in connection with activities for which the permit, license, registration, or certificate was issued, or in connection with the application for the permit, license, registration, or certificate;

(3) allowed the alteration or use of the person's own permit, license, registration, or certificate by another person;

(4) within the previous five years, was convicted of a crime in connection with activities for which the permit, license, registration, or certificate was issued;

(5) violated: (i) a final administrative order issued under subdivision 7, (ii) a final stop order issued under subdivision 10, (iii) injunctive relief issued under subdivision 9, or (iv) a consent order or final order of the commissioner;

(6) failed to cooperate with a commissioner's request to give testimony, to produce documents, things, apparatus, devices, equipment, or materials, or to access property under subdivision 2;

(7) retaliated in any manner against any employee or person who is questioned by, cooperates with, or provides information to the commissioner or an employee or agent authorized by the commissioner who seeks access to property or things under subdivision 2;

(8) engaged in any fraudulent, deceptive, or dishonest act or practice; or

(9) performed work in connection with the permit, license, registration, or certificate or conducted the person's affairs in a manner that demonstrates incompetence, untrustworthiness, or financial irresponsibility.

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

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

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

(b) Any order issued under paragraph (a) may include an assessment of monetary penalties and may require the person to cease and desist from committing the violation or committing the act, conduct, or practice set out in subdivision 11, paragraph (b). The

monetary penalty may be up to \$10,000 for each violation or act, conduct, or practice committed by the person. The procedures in section [326B.083](#) must be followed when issuing orders under paragraph (a).

(c) The permit holder, licensee, registrant, certificate holder, or applicant to whom the commissioner issues an order under paragraph (a) shall have 30 days after issuance of the order to request a hearing. The request for hearing must be in writing and must be served on or faxed to the commissioner at the address or fax number specified in the order by the 30th day after issuance of the order. If the person does not request a hearing or if the person's written request for hearing is not served on or faxed to the commissioner by the 30th day after issuance of the order, the order shall become a final order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. If the person submits to the commissioner a timely request for hearing, the order is stayed unless the commissioner summarily suspends the license, registration, certificate, or permit under subdivision 13, and a contested case hearing shall be held in accordance with chapter 14.

Subd. 13. Summary suspension. In any case where the commissioner has issued an order to revoke, suspend, or deny a license, registration, certificate, or permit under subdivisions 11, paragraph (b), and 12, the commissioner may summarily suspend the person's permit, license, registration, or certificate before the order becomes final. The commissioner shall issue a summary suspension order when the safety of life or property is threatened or to prevent the commission of fraudulent, deceptive, untrustworthy, or dishonest acts against the public. The summary suspension shall not affect the deadline for submitting a request for hearing under subdivision 12. If the commissioner summarily suspends a person's permit, license, registration, or certificate, a timely request for hearing submitted under subdivision 12 shall also be considered a timely request for hearing on continuation of the summary suspension. If the commissioner summarily suspends a person's permit, license, registration, or certificate under this subdivision and the person submits a timely request for a hearing, then a hearing on continuation of the summary suspension must be held within ten days after the commissioner receives the request for hearing unless the parties agree to a later date.

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

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

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

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

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

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

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

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

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

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

- (1) a statement of the amount of the monetary penalty imposed;
- (2) a statement that, when the order becomes final, the commissioner may file and enforce the unpaid portion of a penalty as a judgment in district court without further notice or additional proceedings; and
- (3) if the order is an administrative order, a statement of the amount of the penalty, if any, that will be forgiven if the person who is subject to the order demonstrates to the commissioner by the 31st day after the order is served that the person has corrected the violation or has developed a correction plan acceptable to the commissioner.

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

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

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

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

(3) If the commissioner determines that the person to whom the order was issued has failed to correct the violation within the time set by the order or has failed to develop a correction plan acceptable to the commissioner within the time set by the order, then the forgivable portion of the penalty is due and payable 20 days after the commissioner serves notice of the determination on the person or on the date the administrative order becomes final, whichever is later.

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

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

326B.084 FALSE INFORMATION; UNLICENSED ADVERTISING.

Subdivision 1. False information. A person subject to any of the requirements in the applicable law may not make a false material statement, representation, or certification in; omit material information from; or alter, conceal, or fail to file or maintain a notice, application, record, report, plan, or other document required under the applicable law.

Subd. 2. Unlicensed advertising. No person shall offer to perform services for which a license issued by the commissioner is required unless the person holds an active license to perform those services. Nothing in this subdivision prohibits an offer to sell, repair, or perform services provided those services are performed by a licensed person.