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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **3753**

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to commerce; enhancing protection of subcontractors' right to payment
1.3 for work performed on real property owned by the general contractor; requiring
1.4 developers and general contractors to maintain a trust account and lot-specific
1.5 accounting to protect subcontractors; amending Minnesota Statutes 2006,
1.6 section 514.02, subdivision 1, by adding a subdivision; Minnesota Statutes 2007
1.7 Supplement, section 326.91, subdivision 1.

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

1.9 Section 1. Minnesota Statutes 2007 Supplement, section 326.91, subdivision 1, is
1.10 amended to read:

1.11 Subdivision 1. **Grounds.** In addition to the grounds set forth in section 326B.082,
1.12 subdivision 11, the commissioner may deny, suspend, limit, place conditions on, or revoke
1.13 a license or certificate of exemption, or may censure the person holding the license
1.14 or certificate of exemption, if the applicant, licensee, certificate of exemption holder,
1.15 qualifying person, or affiliate of an applicant, licensee, or certificate of exemption holder,
1.16 or other agent owner:

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

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

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

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

2.4 (5) has violated or failed to comply with any provision of sections 326.83 to 326.98,
2.5 any rule or order under sections 326.83 to 326.98, or any other law, rule, or order related
2.6 to the duties and responsibilities entrusted to the commissioner;

2.7 (6) has been convicted of a violation of the State Building Code or has refused to
2.8 comply with a notice of violation or stop order issued by a certified building official, or in
2.9 local jurisdictions that have not adopted the State Building Code has refused to correct a
2.10 violation of the State Building Code when the violation has been documented or a notice
2.11 of violation or stop order issued by a certified building official has been received;

2.12 (7) has failed to use the proceeds of any payment made to the licensee for the
2.13 construction of, or any improvement to, residential real estate, as defined in section 326.83,
2.14 subdivision 17, for the payment of labor, skill, material, and machinery contributed to the
2.15 construction or improvement, knowing that the cost of any labor performed, or skill,
2.16 material, or machinery furnished for the improvement remains unpaid. For purposes
2.17 of this clause, "payment" includes the meaning given in section 514.02, subdivision 1,
2.18 paragraph (g);

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

2.23 (9) has engaged in an act or practice that results in compensation to an aggrieved
2.24 owner or lessee from the contractor recovery fund pursuant to section 36B.825, unless:

2.25 (i) the applicant or licensee has repaid the fund twice the amount paid from the fund,
2.26 plus interest at the rate of 12 percent per year; and

2.27 (ii) the applicant or licensee has obtained a surety bond in the amount of at least
2.28 \$40,000, issued by an insurer authorized to transact business in this state;

2.29 (10) has engaged in bad faith, unreasonable delays, or frivolous claims in defense
2.30 of a civil lawsuit or arbitration arising out of their activities as a licensee or certificate
2.31 of exemption holder under this chapter;

2.32 (11) has had a judgment entered against them for failure to make payments to
2.33 employees, subcontractors, or suppliers, that the licensee has failed to satisfy and all
2.34 appeals of the judgment have been exhausted or the period for appeal has expired;

2.35 (12) if unlicensed, has obtained a building permit by the fraudulent use of a fictitious
2.36 license number or the license number of another, or, if licensed, has knowingly allowed

3.1 an unlicensed person to use the licensee's license number for the purpose of fraudulently
3.2 obtaining a building permit; or has applied for or obtained a building permit for an
3.3 unlicensed person;

3.4 (13) has made use of a forged mechanic's lien waiver under chapter 514;

3.5 (14) has provided false, misleading, or incomplete information to the commissioner
3.6 or has refused to allow a reasonable inspection of records or premises;

3.7 (15) has engaged in an act or practice whether or not the act or practice directly
3.8 involves the business for which the person is licensed, that demonstrates that the applicant
3.9 or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or
3.10 unqualified to act under the license granted by the commissioner; or

3.11 (16) has failed to comply with requests for information, documents, or other requests
3.12 from the department within the time specified in the request or, if no time is specified,
3.13 within 30 days of the mailing of the request by the department.

3.14 **EFFECTIVE DATE.** This section is effective August 1, 2008.

3.15 Sec. 2. Minnesota Statutes 2006, section 514.02, subdivision 1, is amended to read:

3.16 Subdivision 1. **Proceeds of payments; acts constituting theft.** (a) Proceeds of
3.17 payments received by a person contributing to an improvement to real estate within the
3.18 meaning of section 514.01 or by a developer, as defined in paragraph (h), shall be held
3.19 in trust by that person for the benefit of those persons who furnished the labor, skill,
3.20 material, or machinery contributing to the improvement. Proceeds of the payment are
3.21 not subject to garnishment, execution, levy, or attachment. The person must promptly
3.22 deposit the proceeds of the payment into a trust account at a financial institution and must
3.23 not commingle these proceeds with other money of the person who received payment.
3.24 The person must maintain separate accounting records for each project and for each lot
3.25 of a multi-lot project, showing receipts and disbursements attributable to each lot. The
3.26 balance for each lot must never be below zero. This paragraph does not prohibit loans
3.27 or other payments from the person's own assets into the trust account so long as the
3.28 loan or other transaction is promptly and accurately recorded in the person's accounting
3.29 records. Nothing contained in this subdivision shall require money to be placed in a
3.30 separate account and not commingled with other money of the person receiving payment
3.31 or create a ~~fiduciary liability~~ or tort liability on the part of any person receiving payment
3.32 or entitle any person to an award of punitive damages among persons contributing to an
3.33 improvement to real estate under section 514.01 for a violation of this subdivision.

3.34 (b) If a person fails to use the proceeds of a payment made to that person for the
3.35 improvement, for the payment for labor, skill, material, and machinery contributed to

4.1 the improvement, knowing that the cost of the labor performed, or skill, material, or
4.2 machinery furnished remains unpaid, and who has not furnished the person making such
4.3 payment either a valid lien waiver under section 514.07, or a payment bond in the basic
4.4 amount of the contract price for the improvement, conditioned for the prompt payment
4.5 to any person entitled thereto for the performance of labor or the furnishing of skill,
4.6 material, or machinery for the improvement, shall be guilty of theft of the proceeds of
4.7 the payment and is punishable under section 609.52. For an improvement to residential
4.8 real estate made by a person licensed, or who should be licensed, under section 326.84, a
4.9 shareholder, officer, director, or agent of a corporation who is responsible for the theft
4.10 shall be guilty of theft of the proceeds.

4.11 (c) The penalties and remedies provided in this section do not apply to a third party
4.12 who receives a payment in the ordinary course of business.

4.13 (d) For purposes of this section, "residential real estate" has the meaning given
4.14 in section 326.83.

4.15 (e) For purposes of this section, "general contractor-owner" means an owner of
4.16 real property who acts as a general contractor in contracting with a person to perform,
4.17 provide, or contribute to an improvement to that real property, but does not include an
4.18 owner who does not engage in general contracting as a business or who resides or intends
4.19 to reside on the real property.

4.20 (f) For purposes of this section, "subcontractor" includes a person who contracts
4.21 with a general contractor-owner to perform, provide, or contribute to an improvement
4.22 upon real property owned by the general contractor-owner.

4.23 (g) For purposes of this section, "payment" includes receipt by a general
4.24 contractor-owner or developer of a draw, advance of funds, or other disbursement by a
4.25 lender of a loan to the general contractor-owner or developer secured in whole or in part
4.26 by the real property upon which the improvement was performed, provided, or contributed
4.27 to, if the loan was made in whole or in part for the purpose of providing construction
4.28 financing for the improvement.

4.29 (h) For purposes of this section, "developer" means a person who owns two or
4.30 more lots in a subdivision that contain real property upon which the improvement was
4.31 performed, provided, or contributed to, and who contracts with a general contractor for the
4.32 general contractor to provide the improvements primarily for the purpose of sale.

4.33 **EFFECTIVE DATE.** This section is effective August 1, 2008.

4.34 Sec. 3. Minnesota Statutes 2006, section 514.02, is amended by adding a subdivision
4.35 to read:

5.1 Subd. 2a. **Notice to lender of nonpayment.** (a) Notice of nonpayment described in
5.2 subdivision 2 may also be given in writing by a subcontractor to a lender that is providing
5.3 construction financing to a general contractor-owner, if the construction financing is
5.4 secured in whole or in part by the real property upon which the subcontractor performed,
5.5 provided, or contributed to an improvement.

5.6 (b) The notice may, but need not, be made on a form provided by the commissioner
5.7 of labor and industry under paragraph (g). The notice must reasonably identify the
5.8 general contractor-owner; the subcontractor; the real property; the nature and dates of the
5.9 work performed, provided, or contributed to by the subcontractor; the amount due to the
5.10 subcontractor; and the date upon which payment to the subcontractor was due. A legal
5.11 description of the real property is not required.

5.12 (c) The notice to the lender is for the lender's information, and this subdivision does
5.13 not require the lender to take any action in response to the notice. A lender is not liable
5.14 under this section for any action taken or not taken as a result of receiving the notice.

5.15 (d) Every subcontracting agreement with a general contractor-owner must include
5.16 the name, mailing address, and telephone number of the lender, if any, that is providing
5.17 construction financing to the general contractor-owner. If there is no construction
5.18 financing, the agreement must so state.

5.19 (e) A general contractor-owner must not require or request a subcontractor to waive
5.20 the rights provided in this subdivision, and any such waiver provision in an agreement is
5.21 void and unenforceable.

5.22 (f) A general contractor-owner shall not retaliate against a subcontractor that
5.23 provides to a lender a notice permitted by this subdivision, and a general contractor-owner
5.24 that does so is liable to the subcontractor for damages incurred as a result of the retaliation.

5.25 (g) The commissioner of labor and industry shall prepare, maintain, update, and
5.26 make available a form, together with instructions for filling out and using the form, for use
5.27 by subcontractors in notifying lenders under this subdivision.

5.28 **EFFECTIVE DATE.** This section is effective August 1, 2008.