

Chapter SPS 305

APPENDIX

This appendix contains materials of an advisory nature and provides additional information that is intended to help the reader understand the requirements or processes delineated in this chapter. The paragraph numbers correspond to the sections, subsections, paragraphs, subdivisions and subparagraphs of the chapter, and therefore, may not be consecutively numbered.

A305.003 (26) and (29). journeyman plumber–restricted and master plumber–restricted. Section 145.14, Stats., reads as follows:

145.14 Plumbers license (restricted). (1) *LIMITATIONS.* (a) *Persons licensed as master plumbers (restricted), journeyman plumbers (restricted) or registered learners shall be classified by the department under sub. (2) and shall be restricted to the type of work for which they have been classified and to the requirements indicated in this section.*

(b) *Persons licensed as journeyman plumbers (restricted) or registered learners shall work under the supervision of a master plumber or a master plumber (restricted). A master plumber (restricted) may also work as a journeyman plumber (restricted). No journeyman plumber (restricted) or registered learner shall contract for work, advertise or do anything which would lead others to believe him to be qualified as a master plumber (restricted) in his classification.*

(c) *All persons licensed as master plumbers (restricted), journeyman plumbers (restricted) or registered learners shall be subject to all laws and rules governing plumbers. If qualified, persons may be licensed under any number of classifications under sub. (2). Separate licenses shall be issued under sub. (2) (a) and (b), but licenses issued under sub. (2) (b) may extend to any number of items under that paragraph.*

(2) *CLASSIFICATIONS.* *The classifications which the department shall use are a sewer services classification and an “appliances, equipment and devices” classification. Persons so classified may engage in the following types of work:*

(a) *Systems or services.* *Persons classified under this paragraph may install septic tanks for private sewage systems, may install drain fields designed to serve such septic tanks, and may install sewer service from the septic tank or sewer extensions from mains to the immediate inside or proposed inside foundation wall of the building. Such persons may also install water services, stormwater use systems, and reclaimed water systems if the services or systems are to be located outside the foundation wall of the building.*

(b) *Appliances, equipment or devices.* *Under this paragraph persons installing a water treatment device, a water heater, or any other item in connection with a water distribution system, including a stormwater use or reclaimed water system, which does not require a direct connection to a drain system are limited to making connections to existing installations. There shall be no drilling, tapping, or direct connection made to any waste or drain pipe to serve items installed under this section. The maximum length of water piping permitted to be installed under this section shall be the minimum required to connect the item to the system.*

A305.03 Petitions for Variance. Under ch. SPS 303 the department considers and may grant a petition for variance upon receipt of a fee and completed petition for variance form, provided an equivalency is established in the petition which meets the intent of the rule being petitioned. In granting a petition for variance the department may impose specific conditions to promote the protection of the health, safety and welfare of the public or employ-

ees. A violation of any condition imposed by the department under which the variance is granted shall be considered a violation of the chapter. As indicated in ch. SPS 303, the department will review and make a determination on a petition within 30 business days of receipt of information, documents and fees required to complete the review, except for priority petitions. The department will process priority petitions for variance within 10 business days of receipt of the required information, documents and fees. The fees for priority petitions for variance are double the amounts for petitions processed within the standard processing time of 30 business days.

A305.12 Penalties. Section 101.02 (12), Stats., states that *[E]very day during which any person or corporation, or any officer, agent or employee of a person or corporation, fails to observe and comply with any order of the department or to perform any duty specified under this subchapter shall constitute a separate and distinct violation of the order or of the requirements of this subchapter, whichever is applicable.*

Section 101.02 (13) (a), Stats., states that *[I]f any employer, employee, owner, or other person violates this subchapter, or fails or refuses to perform any duty specified under this subchapter, within the time prescribed by the department, for which no penalty has been specifically provided, or fails, neglects or refuses to obey any lawful order given or made by the department, or any judgment or decree made by any court in connection with this subchapter, for each such violation, failure or refusal, such employer, employee, owner or other person shall forfeit and pay into the state treasury a sum not less than \$10 nor more than \$100 for each such offense.*

Section 145.12, Stats., states:

(1) *Any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a master plumber; as an automatic fire sprinkler contractor or as a business establishment holding an automatic fire sprinkler–maintenance only registration certificate without first having secured the required license or certificate, or who otherwise violates any provisions of this chapter, shall be fined not less than \$100 nor more than \$500 or imprisoned for 30 days or both. Each day such violation continues shall be a separate offense.*

(2) *Any person violating this chapter or failing to obey a lawful order of the department, or a judgment or decree of a court in connection with this chapter, may be imprisoned for not more than 3 months or fined not more than \$500.*

(3) *Any master plumber who shall employ an apprentice on plumbing representing the apprentice to be a journeyman, or who shall charge for an apprentice a journeyman’s wage, shall be punished by a fine of not more than \$25, or by imprisonment in the county jail for not more than 30 days. Each day of violation shall be a separate offense.*

(4) *Any person who violates any order under s. 145.02 (3) (f) or 145.20 (2) (f) or any rule or standard adopted under s. 145.13 shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of an order under s. 145.02 (3) (f) or 145.20 (2) (f) or a rule or standard under s. 145.13 constitutes a separate offense and each day of continued violation is a separate offense.*

(5) (a) *In lieu of any other penalty under this section, the department may directly assess a forfeiture by issuing an order against any person who violates s. 145.06 or 145.20 (6). The*

department may not assess a forfeiture exceeding \$2,000 for each violation.

(b) The department shall promulgate rules specifying the procedures governing the assessment of forfeitures under this subsection including the following:

1. The procedure for issuing an order for an alleged violation.
2. The amount of a forfeiture that the department may assess for an alleged violation, subject to the limit under par. (a).
3. The procedure for contesting an order issued for an alleged violation.
4. The procedure for contesting the assessment of a forfeiture for an alleged violation.

(c) The department shall remit all forfeitures paid under this subsection to the secretary of administration for deposit in the school fund.

(d) All forfeitures that are not paid as required under this subsection shall accrue interest at the rate of 12 percent per year.

(e) The attorney general may bring an action in the name of the state to collect any forfeiture imposed, or interest accrued, under this subsection if the forfeiture or interest has not been paid after the exhaustion of all administrative and judicial reviews.

Section 145.20 (6), Stats., states:

(6) RESTRICTIONS ON REVIEWERS AND INSPECTORS. (a) Except as provided in par. (b), a governmental unit employee who has responsibilities related to any of the activities under sub. (2) (a) to (i) may not do any of the following in the county in which the employee is employed or in an adjacent county:

1. Conduct any activities for which certification is required under s. 145.045 (1), except that the employee may review and verify soil tester reports as provided in sub. (2) (a).

2. Install, design, maintain, repair, or sell a private sewage system, component of a private sewage system, drain field designed to serve a private sewage system, or pipe from a private sewage system to the immediate inside of the existing or proposed foundation wall of the building served by the private sewage system.

(b) Paragraph (a) does not apply to activities performed by an employee on property owned by the employee that is outside of the governmental unit for which the employee works.

A305.31 Dwelling contractor financial responsibility certification. Section 101.654 (2), (2m) and (4) of the statutes reads:

(2) An applicant for a certificate of financial responsibility shall provide to the satisfaction of the department proof of all of the following:

(a) That the applicant has in force one of the following:

1. A bond endorsed by a surety company authorized to do business in this state of not less than \$5,000, conditioned upon the applicant complying with all applicable provisions of the one- and 2- family dwelling code and any ordinance enacted under s. 101.65 (1) (a).

2. A policy of general liability insurance issued by an insurer authorized to do business in this state insuring the applicant in the amount of at least \$250,000 per occurrence because of bodily injury to or death of others or because of damage to the property of others.

(b) If the applicant is required under s. 102.28 (2) (a) to have in force a policy of worker's compensation insurance or if the applicant is self-insured in accordance with s. 102.28 (2) (b), that the applicant has in force a policy of worker's compensation insurance issued by an insurer authorized to do business in this state or is self-insured in accordance with s. 102.28 (2) (b).

(c) If the applicant is required to make state unemployment insurance contributions under ch. 108 or is required to pay federal unemployment compensation taxes under 26 USC 3301 to

3311, that the applicant is making those contributions or paying those taxes as required.

(2m) If an applicant wishes to use a bond under sub. (2) (a) 1. of less than \$25,000 to comply with sub. (2) (a), the applicant shall agree not to perform any work on a dwelling for which the estimated cost of completion is greater than the amount of the bond. The department shall indicate any restriction under this subsection on the certificate of financial responsibility issued under sub. (3).

(4) (a) A bond or insurance policy required under sub. (2) may not be canceled by the person insured under the bond or policy or by the surety company or insurer except on 30 days' prior written notice served on the department in person or by 1st class mail or, if the cancellation is for nonpayment of premiums to the insurer, on 10 days' prior written notice served on the department in person or by 1st class mail. The person insured under the bond or policy shall file with the department proof to the satisfaction of the department of a replacement bond or replacement insurance within the 30-day notice period or 10-day notice period, whichever is applicable, and before the expiration of the bond or policy. The department shall suspend without prior notice or hearing the certificate of financial responsibility of a person who does not file satisfactory proof of a replacement bond or replacement insurance as required by this subsection.

(b) A bond under sub. (2) (a) 1. shall be executed in the name of the state for the benefit of any person who sustains a loss as a result of the person insured under the bond not complying with an applicable provision of the one- and 2- family dwelling code or any ordinance enacted under s. 101.65 (1) (a), except that the aggregate liability of the surety to all persons may not exceed the amount of the bond.

A305.32, A305.323 and A305.325 Manufactured home manufacturers, Manufactured home dealers and Manufactured home salespersons. Section 101.953 of the statutes reads:

101.953 Warranty and disclosure. (1) A one-year written warranty is required for every new manufactured home sold, or leased to another, by a manufactured home manufacturer, manufactured home dealer or manufactured home salesperson in this state, and for every new manufactured home sold by any person who induces a resident of the state to enter into the transaction by personal solicitation in this state or by mail or telephone solicitation directed to the particular consumer in this state. The warranty shall contain all of the following:

(a) A statement that the manufactured home meets those standards prescribed by law or administrative rule of the department of administration or of the department of safety and professional services that are in effect at the time of the manufacture of the manufactured home.

(b) A statement that the manufactured home is free from defects in material and workmanship and is reasonably fit for human habitation if it receives reasonable care and maintenance as defined by rule of the department.

(c) 1. A statement that the manufactured home manufacturer and manufactured home dealer shall take corrective action for defects that become evident within one year from the delivery date and as to which the manufactured home owner has given notice to the manufacturer or dealer not later than one year and 10 days after the delivery date and at the address set forth in the warranty; and that the manufactured home manufacturer and manufactured home dealer shall make the appropriate adjustments and repairs, within 30 days after notification of the defect, at the site of the manufactured home without charge to the manufactured home owner. If the manufactured home dealer makes the adjustment, the manufactured home manufacturer shall fully reimburse the dealer.

2. If a repair, replacement, substitution or alteration is made under the warranty and it is discovered, before or after expiration of the warranty period, a statement that the repair, replacement, substitution or alteration has not restored the manufactured home to the condition in which it was warranted except for reasonable wear and tear, such failure shall be considered a violation of the warranty and the manufactured home shall be restored to the condition in which it was warranted to be at the time of the sale except for reasonable wear and tear, at no cost to the purchaser or the purchaser's assignee notwithstanding that the additional repair may occur after the expiration of the warranty period.

(d) A statement that if during any period of time after notification of a defect the manufactured home is uninhabitable, as defined by rule of the department, that period of time shall not be considered part of the one-year warranty period.

(e) A list of all parts and equipment not covered by the warranty.

(2) Action by a lessee to enforce the lessee's rights under this subchapter shall not be grounds for termination of the rental agreement.

(3) The warranty required under this section shall apply to the manufacturer of the manufactured home as well as to the manufactured home dealer who sells or leases the manufactured home to the consumer, and shall be in addition to any other rights and privileges that the consumer may have under any instrument or law. The waiver of any remedies under any law and the waiver, exclusion, modification or limitation of any warranty, express or implied, including the implied warranty of merchantability and fitness for a particular purpose, is expressly prohibited. Any such waiver is void.

(4) The transfer of a manufactured home from one manufactured home owner to another during the effective period of the warranty does not terminate the warranty, and subsequent manufactured home owners shall be entitled to the full protection of the warranty for the duration of the warranty period as if the original manufactured home owner had not transferred the manufactured home.

A305.327 Manufactured home installers. Section 101.96 of the statutes reads:

101.96 Manufactured home installation regulated. (1) **INSTALLATION STANDARDS.** (a) *Promulgation of standards.* The department shall, by rule, establish installation standards for the safe installation of manufactured homes in this state. In promulgating rules under this paragraph, the department shall consider the recommendations of the manufactured housing code council under s. 101.933.

(b) *Enforcement of standards.* The department shall, by rule, establish a method for ensuring compliance with the rules promulgated under par. (a). The department shall require inspections of manufactured home installations by 3rd-party inspectors licensed by the department. The department shall, by rule, establish criteria for the licensure of 3rd-party inspectors that include a requirement that an individual may not serve as a 3rd-party

inspector if the individual is, is employed by, or is an independent contractor of any of the following:

1. A manufactured home manufacturer who was directly involved in the sale of the particular manufactured home.

2. A manufactured home salesperson who was directly involved in the sale of the particular manufactured home.

3. An installer who was directly involved in the sale of the particular manufactured home.

(2) **MANUFACTURED HOME INSTALLERS.** (a) *License required; exceptions; liability.* Except as otherwise provided in this paragraph, beginning on January 1, 2007, no person may act as an installer in this state unless the person is a licensed installer or employs one or more licensed installers to generally supervise each of the person's installations of manufactured homes in this state. This requirement does not apply to an individual who installs a manufactured home on his or her own property for his or her personal use or to an individual who installs a manufactured home under the general supervision of a licensed installer. A licensed installer is liable for all acts and omissions related to the installation of each individual who performs an installation under the licensed installer's general supervision.

(b) *License eligibility.* The department may issue an installer's license only to an individual to whom all of the following apply:

1. The individual is at least 18 years old.

2. The individual files with the department a license application on a form prescribed by the department.

3. The individual completes, to the satisfaction of the department, an examination approved by the department that tests the skills necessary to properly install manufactured homes and knowledge of the laws applicable to manufactured home installation.

4. The individual has not been found responsible in any judicial or administrative forum for any violation of this section during the 2 years before the date on which the individual's license application is submitted.

5. The individual has not been found responsible in any judicial or administrative forum during the 2 years before the date on which the individual's license application is submitted for any failure to perform an installation of a manufactured home as required under contract or for defrauding any person with regard to the provision of installation services.

6. The individual meets the standards of financial responsibility established by rule of the department.

(br) *Examination waiver.* The department shall, by rule, establish a procedure under which it may waive the examination requirement under par. (b) 3. for individuals that demonstrate sufficient experience installing manufactured homes including active participation in the installation of at least 10 manufactured homes. This paragraph does not apply after June 1, 2007.

(c) *License term and fee.* The department, by rule shall establish the term of installers' licenses and the conditions under which the department may revoke or suspend installers' licenses. The department shall establish an initial installer's license fee and license renewal fee by rule under s. 101.19.