

1 HB194
2 206052-2
3 By Representatives Simpson, Marques, Brown (C) and Oliver
4 RFD: Judiciary
5 First Read: 06-FEB-20

1 ENGROSSED

2
3
4 A BILL
5 TO BE ENTITLED
6 AN ACT
7

8 Relating to consumer protection; to establish the
9 Alabama State of Emergency Consumer Protection Act; to add
10 Section 13A-9-111.1 to the Code of Alabama 1975, to provide
11 criminal penalties for home repair fraud committed under
12 certain conditions; to amend Sections 13A-9-114, 34-14A-14,
13 34-31-32, 34-36-16, and 34-37-17, Code of Alabama 1975, to
14 provide further for criminal penalties; and in connection
15 therewith would have as its purpose or effect the requirement
16 of a new or increased expenditure of local funds within the
17 meaning of Amendment 621 of the Constitution of Alabama of
18 1901, now appearing as Section 111.05 of the Official
19 Recompilation of the Constitution of Alabama of 1901, as
20 amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Section 13A-9-111.1 is added to the Code
23 of Alabama 1975, to read as follows:

24 §13A-9-111.1.

25 (a) This section shall be known and may be cited as
26 the Alabama State of Emergency Consumer Protection Act.

1 (b) A person commits the offense of aggravated home
2 repair fraud when the person intentionally and knowingly does
3 any of the following:

4 (1) Enters into an agreement or contract for
5 consideration, written or oral, with a person for home repair
6 of a residential structure that is damaged, destroyed, or
7 otherwise in need of repair or services as a result of an
8 event for which the Governor declares a state of emergency, as
9 defined in Section 31-9-3, and the offending person knowingly
10 engages in any one or more of the following deceptive
11 activities:

12 a. Misrepresents of a material fact relating to the
13 terms of the contract or agreement or the preexisting or
14 existing condition of any portion of the property involved, or
15 the creation or confirmation of another's impression which is
16 false and which the offending person does not believe to be
17 true, or promises performance which the offending person does
18 not intend to perform or knows will not be performed.

19 b. Uses or employs any deception, false pretense, or
20 false promises in order to induce, encourage, or solicit a
21 person to enter into any contract or agreement.

22 c. Misrepresents or conceals of either the offending
23 person's real name or the name of his or her business or
24 business address.

25 d. Uses deception, coercion, or force to obtain a
26 person's consent to modification of the terms of the original
27 contract or agreement.

1 e. Is in violation of Sections 34-14A-14, 34-31-32,
2 34-36-16, or 34-37-17 and has previously been convicted of a
3 violation of Sections 34-14A-14, 34-31-32, 34-36-16, or
4 34-37-17 for noncompliance with state occupational license
5 requirements in any of those sections.

6 f. Is in violation of Sections 34-14A-14, 34-31-32,
7 34-36-16, or 34-37-17 by having misrepresented or concealed
8 his or her noncompliance with state occupational license
9 requirements in any of those sections.

10 (2) Damages the property of a person with the intent
11 to enter into an agreement or contract for home repair of a
12 residential structure that is damaged, destroyed, or otherwise
13 in need of repair or services as a result of an event for
14 which the Governor declares a state of emergency, as defined
15 in Section 31-9-3, Code of Alabama 1975.

16 (3) Misrepresents himself or herself or another
17 person as being an employee or agent of any unit of federal,
18 state, or municipal government or any other governmental unit,
19 or an employee or agent of any public utility, with the intent
20 to cause a person to enter into a contract or agreement for
21 home repair of a residential structure that does not belong to
22 the person and that is damaged, destroyed, or otherwise in
23 need of repair or services as a result of an event for which
24 the Governor declares a state of emergency, as defined in
25 Section 31-9-3, Code of Alabama 1975.

26 (c) A violation of this section is a Class C felony.

1 Section 2. Sections 13A-9-114, 34-14A-14, 34-31-32,
2 34-36-16, and 34-37-17, Code of Alabama 1975, are amended to
3 read as follows:

4 "§13A-9-114.

5 "~~Violations~~ Except as provided in Section
6 13A-9-111.1, violations of this article shall be punished as
7 follows:

8 "(1) A first conviction shall be a Class A
9 misdemeanor.

10 "(2) A second or subsequent conviction shall be a
11 Class C felony."

12 "§34-14A-14.

13 "(a) ~~Any~~ Except as provided in Section 13A-9-111.1,
14 any person who undertakes or attempts to undertake the
15 business of residential home building without holding a
16 current and valid residential home builders license, issued by
17 the Home Builders Licensure Board, as required by this
18 chapter, or who knowingly presents to, or files false
19 information with the board for the purpose of obtaining the
20 license or who violates any law or code adopted by a county
21 commission under this chapter shall be deemed guilty of a
22 Class A misdemeanor.

23 "(b) Upon notice from the board, any person who
24 undertakes or attempts to undertake the business of
25 residential home building without holding a current and valid
26 residential home builders license, as required by the
27 provisions of this chapter, shall immediately cease. Such

1 notice shall be in writing and shall be given to the owner of
2 the property, or to his or her agent, or to the residential
3 home builder, or to the person doing the work, and shall state
4 the conditions under which work may be resumed.

5 "(c) The board may invoke a complaint procedure
6 against any person who violates this chapter by undertaking or
7 attempting to undertake the business of home building without
8 holding a current and valid residential home builders license
9 issued by the board. Whenever it appears to the board that any
10 residential home builder has violated or is about to violate
11 this chapter, the board may resolve the violation by agreement
12 with the residential home builder, may initiate a complaint
13 against the residential home builder, and may levy and collect
14 administrative fines for violations of this chapter or the
15 rules of the board in an amount not to exceed five thousand
16 dollars (\$5,000) for each violation.

17 "(d) A residential home builder, who does not have
18 the license required, shall not bring or maintain any action
19 to enforce the provisions of any contract for residential home
20 building which he or she entered into in violation of this
21 chapter.

22 "(e) Whenever it appears to the board that any
23 residential home builder has violated or is about to violate
24 this chapter, the board may in its own name petition the
25 circuit court of the county where the violation occurred or is
26 about to occur to issue a temporary restraining order or other
27 appropriate injunctive relief enjoining the violation.

1 "§34-31-32.

2 "(a) ~~Any~~ Except as provided in Section 13A-9-111.1,
3 any person engaged in business as a certified contractor or
4 performing the functions of a certified contractor in
5 violation of this chapter shall be guilty of a Class A
6 misdemeanor, as defined by the state criminal code.

7 "(b) The board may, at its discretion, impose late
8 penalties on those certified contractors who fail to renew
9 certificates by December 31 of each year. The board may also
10 remove certification from any certified person who fails to
11 renew his or her certificate by the first day of March and
12 require the person to apply for a new certificate.
13 Furthermore, the board may at its discretion, remove, revoke,
14 or suspend the certification from any certified contractor who
15 provides substandard or dangerous service, repair, or
16 installation, or who otherwise violates this chapter, and may
17 require such person to apply for a new certification. The
18 board may, in its discretion, also require the successful
19 re-testing of any such person who applies for a new
20 certification.

21 "(c) The board may reprimand, in writing, any
22 certified contractor who provides substandard or dangerous
23 service, repair, or installation, or who otherwise violates
24 this chapter.

25 "(d) The board may levy and collect administrative
26 fines for serious violations of this chapter or the rules and

1 regulations of the board of not more than two thousand dollars
2 (\$2,000) for each violation.

3 "(e) In addition to or in lieu of the criminal
4 penalties and administrative sanctions provided in this
5 chapter, the board may issue an order to any person, firm, or
6 corporation engaged in any activity, conduct, or practice
7 constituting a violation of this chapter, directing the
8 person, firm, or corporation to forthwith cease and desist
9 from the activity, conduct, practice, or performance of any
10 work then being done or about to be commenced. The order shall
11 be issued in the name of the State of Alabama under the
12 authority of the board. If the person, firm, or corporation to
13 whom the board directs a cease and desist order does not cease
14 or desist the proscribed activity, conduct, practice, or
15 performance of work immediately, the board shall cause to
16 issue in any court of competent jurisdiction and proper venue,
17 a writ of injunction enjoining the person, firm, or
18 corporation from engaging in any activity, conduct, practice,
19 or performance of work prohibited by this chapter. Upon
20 showing by the board that the person, firm, or corporation has
21 engaged or is engaged in any activity, conduct, practice, or
22 performance of work prohibited by this chapter, the courts
23 shall issue a temporary restraining order restraining the
24 person, firm, or corporation from engaging in such unlawful
25 activity, conduct, practice, or performance of work pending
26 the hearing on a preliminary injunction, and in due course a
27 permanent injunction shall issue after the hearing, commanding

1 the cessation of the unlawful activity, conduct, practice, or
2 performance of work complained of, all without the necessity
3 of the board having to give bond. A temporary restraining
4 order, preliminary injunction, or permanent injunction issued
5 pursuant to this subsection shall not be subject to being
6 released on bond. In the suit for an injunction, the board may
7 demand of the defendant a fine of up to two thousand dollars
8 (\$2,000) plus costs for each offense. Anyone violating this
9 chapter who fails to cease work, after a hearing and
10 notification from the board, shall not be eligible to apply
11 for a certified contractor's license for a period not to
12 exceed one year from the date of official notification to
13 cease work. The board may withhold approval, for up to six
14 months, of any application from anyone who prior to the
15 application has been found in violation of this chapter.

16 "§34-36-16.

17 "(a) ~~It~~ Except as provided in Section 13A-9-111.1,
18 it shall be unlawful for any person to violate any provision
19 of this chapter regulating electrical contracting, and any
20 person convicted of such violation shall be punished as
21 prescribed for a Class A misdemeanor.

22 "(b) It shall be unlawful, except as otherwise
23 provided, on or after December 31, 2011, for a person not
24 licensed as an electrical contractor to solicit, represent,
25 seek to perform, or perform those tasks and functions that can
26 only be performed by a licensed electrical contractor in
27 accordance with this chapter.

1 "(c) Subsection (b) shall not apply to an electrical
2 contractor who has taken an examination offered by the board
3 within the preceding 12 months, who holds a license or permit
4 issued by a county or municipal government to perform the
5 tasks and functions that can only be performed by a licensed
6 electrical contractor, and who performs those tasks and
7 functions within the boundaries of the county or municipality
8 that issued the license or permit.

9 "§34-37-17.

10 "(a) The board shall have the administrative
11 authority to discipline or require a certificate holder to
12 attend training specific to violations. The board has the
13 authority to levy civil fines or penalties to any registered
14 apprentice, certificate holder, or legal entity registered by
15 the board for a violation of any provision of this chapter
16 regulating plumbers, gas fitters, or medical gas pipe fitters
17 up to two thousand dollars (\$2,000) per violation and actual
18 hearing cost.

19 "(b) In addition to or in lieu of the criminal
20 penalties and administrative sanctions provided in this
21 chapter, the board may issue an order to any person or legal
22 entity engaged in any activity, conduct, or practice
23 constituting a violation of this chapter, directing the person
24 or legal entity to forthwith cease and desist from the
25 activity, conduct, practice, or performance of any work then
26 being performed or about to be commenced.

1 "(c) ~~It~~ Except as provided in Section 13A-9-111.1,
2 it shall be unlawful for any person or legal entity to violate
3 any provision of this chapter regulating plumbers, gas
4 fitters, or medical gas piping fitters. Any person convicted
5 of such violation shall be punished as prescribed for a Class
6 A misdemeanor."

7 Section 3. Although this bill would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds, the bill is excluded from further
10 requirements and application under Amendment 621, now
11 appearing as Section 111.05 of the Official Recompilation of
12 the Constitution of Alabama of 1901, as amended, because the
13 bill defines a new crime or amends the definition of an
14 existing crime.

15 Section 4. This act shall become effective on the
16 first day of the third month following its passage and
17 approval by the Governor, or its otherwise becoming law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 06-FEB-20

Read for the second time and placed
on the calendar..... 20-FEB-20

Read for the third time and passed
as amended..... 05-MAR-20

Yeas 97, Nays 2, Abstains 5

Jeff Woodard
Clerk