

1 SB39
2 208225-6
3 By Senator Price
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 01/11/2021

1 SB39

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4 ENROLLED, An Act,

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

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 §13A-9-111.1.

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

23 (b) A person commits the offense of aggravated home
24 repair fraud when the person knowingly does any of the
25 following:

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

8 a. Knowingly misrepresents a material fact relating
9 to the terms of the contract or agreement or the preexisting
10 or existing condition of any portion of the property involved.

11 b. Knowingly creates or confirms another person's
12 impression which is false and which he or she does not believe
13 to be true.

14 c. Promises performance which he or she does not
15 intend to perform or knows will not be performed.

16 d. Knowingly uses or employs any deception, false
17 pretense, or false promises in order to induce, encourage, or
18 solicit another person to enter into any contract or
19 agreement.

20 e. Knowingly misrepresents or conceals either his or
21 her real name or the name of his or her business or business
22 address.

23 f. Knowingly uses deception, coercion, or force to
24 obtain another person's consent to modification of the terms
25 of the original contract or agreement.

1 g. After having previously been convicted of a
2 violation of Sections 34-14A-14, 34-31-32, 34-36-16, or
3 34-37-17 for noncompliance with a state occupational license
4 requirement, violates Sections 34-14A-14, 34-31-32, 34-36-16,
5 or 34-37-17.

6 h. Is in violation of Sections 34-14A-14, 34-31-32,
7 34-36-16, or 34-37-17 by knowingly misrepresenting or
8 concealing his or her noncompliance with a state occupational
9 license requirement.

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

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 another person to enter into a contract or agreement
21 for home repair of a residential structure that does not
22 belong to the offending person and that is damaged, destroyed,
23 or otherwise in need of repair or services as a result of an
24 event for which the Governor has declared a state of
25 emergency, as defined in Section 31-9-3.

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

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

5 "§13A-9-114.

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

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

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

13 "§34-14A-14.

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

24 "(b) Upon notice from the board, any person who
25 undertakes or attempts to undertake the business of

1 residential home building without holding a current and valid
2 residential home builders license, as required by the
3 provisions of this chapter, shall immediately cease. Such
4 notice shall be in writing and shall be given to the owner of
5 the property, or to his or her agent, or to the residential
6 home builder, or to the person doing the work, and shall state
7 the conditions under which work may be resumed.

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

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

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

7 "§34-31-32.

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

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

1 re-testing of any such person who applies for a new
2 certification.

3 "(c) The board may reprimand, in writing, any
4 certified contractor who provides substandard or dangerous
5 service, repair, or installation, or who otherwise violates
6 this chapter.

7 "(d) The board may levy and collect administrative
8 fines for serious violations of this chapter or the rules and
9 regulations of the board of not more than two thousand dollars
10 (\$2,000) for each violation.

11 "(e) In addition to or in lieu of the criminal
12 penalties and administrative sanctions provided in this
13 chapter, the board may issue an order to any person, firm, or
14 corporation engaged in any activity, conduct, or practice
15 constituting a violation of this chapter, directing the
16 person, firm, or corporation to forthwith cease and desist
17 from the activity, conduct, practice, or performance of any
18 work then being done or about to be commenced. The order shall
19 be issued in the name of the State of Alabama under the
20 authority of the board. If the person, firm, or corporation to
21 whom the board directs a cease and desist order does not cease
22 or desist the proscribed activity, conduct, practice, or
23 performance of work immediately, the board shall cause to
24 issue in any court of competent jurisdiction and proper venue,
25 a writ of injunction enjoining the person, firm, or

1 corporation from engaging in any activity, conduct, practice,
2 or performance of work prohibited by this chapter. Upon
3 showing by the board that the person, firm, or corporation has
4 engaged or is engaged in any activity, conduct, practice, or
5 performance of work prohibited by this chapter, the courts
6 shall issue a temporary restraining order restraining the
7 person, firm, or corporation from engaging in such unlawful
8 activity, conduct, practice, or performance of work pending
9 the hearing on a preliminary injunction, and in due course a
10 permanent injunction shall issue after the hearing, commanding
11 the cessation of the unlawful activity, conduct, practice, or
12 performance of work complained of, all without the necessity
13 of the board having to give bond. A temporary restraining
14 order, preliminary injunction, or permanent injunction issued
15 pursuant to this subsection shall not be subject to being
16 released on bond. In the suit for an injunction, the board may
17 demand of the defendant a fine of up to two thousand dollars
18 (\$2,000) plus costs for each offense. Anyone violating this
19 chapter who fails to cease work, after a hearing and
20 notification from the board, shall not be eligible to apply
21 for a certified contractor's license for a period not to
22 exceed one year from the date of official notification to
23 cease work. The board may withhold approval, for up to six
24 months, of any application from anyone who prior to the
25 application has been found in violation of this chapter.

1 "§34-36-16.

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

7 "(b) It shall be unlawful, except as otherwise
8 provided, on or after December 31, 2011, for a person not
9 licensed as an electrical contractor to solicit, represent,
10 seek to perform, or perform those tasks and functions that can
11 only be performed by a licensed electrical contractor in
12 accordance with this chapter.

13 "(c) Subsection (b) shall not apply to an electrical
14 contractor who has taken an examination offered by the board
15 within the preceding 12 months, who holds a license or permit
16 issued by a county or municipal government to perform the
17 tasks and functions that can only be performed by a licensed
18 electrical contractor, and who performs those tasks and
19 functions within the boundaries of the county or municipality
20 that issued the license or permit.

21 "§34-37-17.

22 "(a) The board shall have the administrative
23 authority to discipline or require a certificate holder to
24 attend training specific to violations. The board has the
25 authority to levy civil fines or penalties to any registered

1 apprentice, certificate holder, or legal entity registered by
2 the board for a violation of any provision of this chapter
3 regulating plumbers, gas fitters, or medical gas pipe fitters
4 up to two thousand dollars (\$2,000) per violation and actual
5 hearing cost.

6 "(b) In addition to or in lieu of the criminal
7 penalties and administrative sanctions provided in this
8 chapter, the board may issue an order to any person or legal
9 entity engaged in any activity, conduct, or practice
10 constituting a violation of this chapter, directing the person
11 or legal entity to forthwith cease and desist from the
12 activity, conduct, practice, or performance of any work then
13 being performed or about to be commenced.

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

20 Section 3. Although this bill would have as its
21 purpose or effect the requirement of a new or increased
22 expenditure of local funds, the bill is excluded from further
23 requirements and application under Amendment 621, now
24 appearing as Section 111.05 of the Official ReCompilation of
25 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB39
Senate 09-FEB-21
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 13-APR-21

By: Senator Price