

1 SB268  
2 182254-5  
3 By Senators Livingston and McClendon  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 02-MAR-17

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8 SYNOPSIS: Under existing law, the Home Builders  
9 Licensure Board licenses and regulates persons who  
10 engage in home building and private residential  
11 construction when the costs of a project exceed  
12 \$10,000.

13 This bill would revise the minimum cost of a  
14 project that brings a homebuilder under the  
15 jurisdiction of the Home Builders Licensure Board  
16 from \$10,000 to \$1,000.

17 This bill would revise definitions.

18 This bill would authorize the board to  
19 collect costs relating to hearings for disciplinary  
20 actions.

21 This bill would increase administrative  
22 fines for a violation.

23 This bill would allow the cap on the payment  
24 amount to an aggrieved homeowner from the  
25 Homeowners' Recovery Fund when the homeowner is  
26 injured due to a violation committed by a licensee,  
27 to be set by rule.

1                   This bill would also authorize the board to  
2                   revoke the license or refuse to issue a new license  
3                   to the licensee and certain other license holders  
4                   when the licensee has not paid a judgment claim  
5                   under the Homeowners' Recovery Fund.

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7                   A BILL  
8                   TO BE ENTITLED  
9                   AN ACT

10  
11                   Relating to the Home Builders Licensure Board; to  
12                   amend Sections 34-14A-1 to 34-14A-8, inclusive, 34-14A-14, and  
13                   34-14A-15 of the Code of Alabama 1975; to revise the minimum  
14                   cost of a project that brings a homebuilder under the  
15                   jurisdiction of the Home Builders Licensure Board from \$10,000  
16                   to \$1,000; to revise definitions; to authorize the board to  
17                   collect costs relating to hearings for disciplinary actions;  
18                   to increase administrative fines for a violation; to allow the  
19                   cap on the payment amount to an aggrieved homeowner from the  
20                   Homeowners' Recovery Fund when the homeowner is injured due to  
21                   a violation committed by a licensee to be set by rule; and to  
22                   authorize the board to revoke the license or refuse to issue a  
23                   new license to the licensee and certain other license holders  
24                   when the licensee has not paid a judgment claim under the  
25                   Homeowners' Recovery Fund.

26                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. Sections 34-14A-1 to 34-14A-8, inclusive,  
2                   34-14A-14, and 34-14A-15, Code of Alabama 1975, are amended to  
3                   read as follows:

4                   "§34-14A-1.

5                   "In the interest of the public health, safety,  
6                   welfare, and consumer protection and to regulate the home  
7                   building and private ~~dwelling~~ residence construction industry,  
8                   the purpose of this chapter, and the intent of the Legislature  
9                   in passing it, is to provide for the licensure of those  
10                  persons who engage in home building, ~~and private dwelling~~  
11                  residence construction, and home improvement industries,  
12                  including remodeling, and to provide home building standards  
13                  in the State of Alabama. The Legislature recognizes that the  
14                  home building and home improvement construction industries are  
15                  significant industries. Home builders may pose significant  
16                  harm to the public when unqualified, incompetent, or dishonest  
17                  home ~~building contractors~~ builders and remodelers provide  
18                  inadequate, unsafe, or inferior building services. The  
19                  Legislature finds it necessary to regulate the residential  
20                  home building and ~~remodeling construction~~ home improvement  
21                  industries.

22                  "§34-14A-2.

23                  "As used in this chapter, the following terms shall  
24                  have the following meanings, respectively, unless the context  
25                  clearly indicates otherwise:

26                  "(1) BOARD. The Home Builders Licensure Board.

1           "~~(2) CONTRACTING. Except as exempted herein,~~  
2           ~~engaging in residential and private residence construction~~  
3           ~~business as a contractor.~~

4           "~~(3) HOME BUILDERS LICENSURE BOARD. The board~~  
5           ~~created herein to regulate the home building and residential~~  
6           ~~construction industry.~~

7           "(2) COST OF THE UNDERTAKING. The total cost of the  
8           materials, labor, supervision, overhead, and profit.

9           "~~(4)~~ (3) HOMEOWNER. One A person who owns and  
10          resides or intends to reside in a structure constructed or  
11          remodeled by a licensee of the board, or who contracts with a  
12          licensee for the purchase, construction, repair, improvement,  
13          or reimprovement of a structure to be used as a residence.

14          "(4) IMPROVEMENT. Any site-built addition or  
15          enhancement attached to or detached from a residence or  
16          structure for use and enjoyment by the homeowner.

17          "(5) INACTIVE LICENSE. A license issued at the  
18          request of a licensee, or a building official or a building  
19          inspector, ~~which~~ that is renewable, but ~~which~~ that is not  
20          currently valid.

21          "(6) LICENSE. ~~A new license or a renewal~~ Any license  
22          issued by the board pursuant to this chapter.

23          "(7) LICENSEE. A holder of ~~a certificate~~ any license  
24          issued pursuant to this chapter.

25          "(8) PERSON. Any natural person, limited or general  
26          partnership, corporation, association, limited liability  
27          company, or other legal entity, or any combination thereof.

1           "(9) QUALIFYING REPRESENTATIVE. The individual  
2 designated by a general partnership, limited partnership,  
3 corporation, limited liability company, or not-for-profit  
4 organization applying for a license who either holds a license  
5 individually or meets the experience and ability requirements  
6 for licensure, and who is one of the following:

7           "a. A general partner in the case of any  
8 partnership.

9           "b. An officer in the case of a corporation.

10          "c. A member in the case of a member-managed limited  
11 liability company.

12          "d. A manager in the case of a manager-managed  
13 limited liability company.

14          "~~(9)~~ (10) RESIDENCE. A single unit providing  
15 complete independent residential living facilities for one or  
16 more persons, including permanent provisions for living,  
17 sleeping, eating, cooking, and sanitation.

18          "~~(10)~~ (11) RESIDENTIAL HOME BUILDER. ~~One~~ A person  
19 who constructs a residence or structure for sale or who, for a  
20 fixed price, commission, fee, or wage, undertakes or offers to  
21 undertake the construction or superintending of the  
22 construction, or who manages, supervises, assists, or provides  
23 consultation to a homeowner regarding the construction or  
24 superintending of the construction, of any residence or  
25 structure ~~which~~ that is not over three floors in height and  
26 ~~which~~ that does not have more than four residential units, ~~in~~  
27 ~~an apartment complex,~~ or the repair, improvement, or

1 reimprovement thereof, to be used by another as a residence  
2 when the cost of the undertaking exceeds ~~ten~~ one thousand  
3 dollars ~~(\$10,000)~~ (\$1,000). Nothing herein shall prevent any  
4 person from performing these acts on his or her own residence  
5 or on his or her other real estate holdings. Anyone who  
6 engages or offers to engage in ~~such undertaking in this state~~  
7 any acts described in this subdivision, through advertising or  
8 otherwise, shall be deemed to have engaged in the business of  
9 residential home building.

10 "~~(11)~~ (12) STRUCTURE. A residence, including a  
11 site-built home, a condominium, a duplex or multi-unit  
12 residential building consisting of not more than four  
13 residential units or any improvement thereto.

14 "~~(12)~~ (13) TRANSACTION. The act of entering into a  
15 contract with a licensee ~~for the purchase, construction,~~  
16 ~~repair, improvement, or reimprovement of a structure to be~~  
17 ~~used as a residence~~ to engage in the business of residential  
18 home building.

19 "§34-14A-3.

20 "There is established the Home Builders Licensure  
21 Board to regulate the residential home building and  
22 residential construction industry. The board shall have nine  
23 members, at least one from each United States Congressional  
24 District in this state, who shall be appointed as follows:  
25 Three by the Governor, three by the Lieutenant Governor, and  
26 three by the Speaker of the House of Representatives, from a  
27 list of three qualified individuals for each position,

1 provided by the governing body of the Home Builders  
2 Association of Alabama. Seven of the members shall be  
3 residential home builders, as defined in this chapter, with at  
4 least five years' experience as a residential home builder and  
5 each shall be a bona fide resident of the State of Alabama.  
6 One member shall be a building official or inspector currently  
7 employed by a city, county, or state governmental entity and  
8 actively engaged in inspecting or regulating residential  
9 construction in this state. One shall be a consumer member of  
10 the general public not employed by or affiliated with a  
11 licensee hereunder, and who has no spouse or immediate family  
12 member employed by or affiliated with a licensee hereunder.  
13 Each member of the board shall be a citizen of this state, and  
14 the membership of the board shall be inclusive and reflect the  
15 racial, gender, geographic, urban/rural, and economic  
16 diversity of the state. Of the initial members of this board,  
17 the appointing authorities shall designate that each appointee  
18 shall serve for an initial term of one, two, or three years,  
19 their terms of office expiring on December 31, of the years.  
20 Subsequent terms shall be for a period of three years. This  
21 appointing authority shall make an appointment to fill a  
22 vacancy for the remainder of any unexpired term from a list of  
23 three qualified persons supplied by the governing body of the  
24 Home Builders Association of Alabama. Each board member shall  
25 hold over after the expiration of his or her term until his or  
26 her successor shall be duly appointed and qualified.

27 "§34-14A-4.



1           "(a) Members of the board shall select from its own  
2 membership a chair, who shall preside at all meetings of the  
3 board unless otherwise ordered, and he or she shall exercise  
4 and perform all duties and functions incident to the office of  
5 chair. The board may select from its own membership a  
6 vice-chair, a secretary, and a treasurer. The offices of  
7 secretary and treasurer may be held by the same person.

8           "(b) The board, at a minimum, shall meet on a  
9 quarterly basis and at such other times as the chair may  
10 designate; ~~provided, however, that the board shall meet within~~  
11 ~~30 days after appointment for the purpose of organizing and~~  
12 ~~transacting such~~ for the purpose of transacting business as  
13 may properly come before ~~it~~ the board. Four members shall  
14 constitute a quorum at all meetings. The secretary of the  
15 board shall keep such records of each meeting as shall be  
16 required by the board.

17           "(c) Members of the board may be compensated in an  
18 amount not to exceed three hundred fifty dollars (\$350) per  
19 day, not to exceed 15 days per year, for attending meetings of  
20 the board or its committees and, in addition, may be  
21 reimbursed for such necessary travel expenses as are paid to  
22 state employees.

23           "(d) The board may employ an executive director and  
24 shall have sole authority to set his or her salary. The  
25 executive director may hire staff to carry out this chapter.

26           "§34-14A-5.

1           "(a) All residential home builders shall be required  
2 to be licensed by the Home Builders Licensure Board annually.  
3 The board may issue more than one type of license.

4           "~~(b) Any person engaged in residential home building~~  
5 ~~in Washington County shall be duly licensed by the board,~~  
6 ~~without a written examination testing his or her experience~~  
7 ~~and ability, by meeting the licensing requirements of Section~~  
8 ~~34-14A-7, by paying the required annual license fee, and by~~  
9 ~~meeting any one of the following requirements by March 1,~~  
10 ~~2007:~~

11           "~~(1) The person submits to the board an affidavit~~  
12 ~~showing that the residential home builder has constructed a~~  
13 ~~minimum of one residence within the year prior to March 1,~~  
14 ~~2007, or five residences within the previous five years.~~

15           "~~(2) The person satisfies the board of his or her~~  
16 ~~building qualifications and experience.~~

17           "~~(3) The person is currently licensed as a~~  
18 ~~residential home builder by a jurisdiction in this state which~~  
19 ~~requires an examination for licensure.~~

20           "~~(4) The person is a currently licensed residential~~  
21 ~~remodeler by a jurisdiction in this state, who by his or her~~  
22 ~~personal affidavit can establish that his or her business did~~  
23 ~~a gross remodeling dollar volume in the previous calendar year~~  
24 ~~of two hundred fifty thousand dollars (\$250,000) or more.~~

25           "~~(c)~~ (b) (1) Except as provided in this chapter, all  
26 licenses shall be issued or renewed upon the payment to the  
27 board of the annual license fee. The annual license fee shall

1 be set by the board after it considers its cost of operation.  
2 The annual fee may be increased or decreased by the board but  
3 in no event shall the board set the annual fee at an amount  
4 which would not provide sufficient revenues to pay all the  
5 salaries, costs, and expenses incurred by the board in  
6 enforcing this chapter and promoting public health, safety,  
7 welfare, and consumer protection.

8 "(2) The board may also charge application  
9 processing fees, inactive license fees, late fees, and fees  
10 for education requirements. The inactive fees may be waived  
11 for building officials. The board may, upon request in  
12 writing, refund fees, except the application processing fee,  
13 paid by an applicant who is denied a license or who fails to  
14 complete the application process. No fees shall be refunded to  
15 a licensee as a result of a license revocation.

16 "(3) The annual license fee shall be for a period of  
17 12 months beginning January first of each year. All license  
18 fees collected by the board shall be paid into the State  
19 Treasury to the credit of the Home Builders Licensure Board  
20 Fund and its funds shall be subject to withdrawal only upon  
21 warrant of the state Comptroller to be issued upon  
22 certification of the secretary/treasurer of the board.

23 "~~(d)~~ (c) Any funds remaining in the State Treasury to  
24 the credit of the Home Builders Licensure Board Fund at the  
25 end of each year shall be paid into the General Fund of the  
26 state on or before January 15, and in each succeeding year,  
27 except that should the board exercise its authority to

1 establish the ~~Homeowner's~~ Homeowners' Recovery Fund or the  
2 Home Builders Property Acquisition Fund, or both, as provided  
3 in this chapter, any funds remaining in the State Treasury to  
4 the credit of the Home Builders Licensure Board Fund shall be  
5 paid into the ~~Homeowner's~~ Homeowners' Recovery Fund or the  
6 Home Builders Property Acquisition Fund, or both, of the  
7 board. The board is authorized to maintain sufficient funds to  
8 carry out the purposes of the ~~Homeowner's~~ Homeowners' Recovery  
9 Fund and the Home Builders Property Acquisition Fund, as set  
10 forth in Sections 34-14A-15 and 34-14A-18, including, but not  
11 limited to, the transfer of funds between the ~~Homeowner's~~  
12 Homeowners' Recovery Fund and the Home Builders Property  
13 Acquisition Fund. The board is authorized, at all times, to  
14 retain a sum ~~not in excess of two hundred fifty thousand~~  
15 ~~dollars (\$250,000)~~ sufficient to meet any emergency that may  
16 arise which may affect its efficient operation.

17 ~~"(e)~~ (d) No funds shall be withdrawn or expended  
18 except as budgeted and allocated according to Sections 41-4-80  
19 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and  
20 only in amounts as stipulated in the general appropriations  
21 bill or other appropriations bills.

22 "§34-14A-6.

23 "This chapter does not apply to:

24 "(1) Any employee of a licensee who does not hold  
25 himself or herself out for hire or engage in ~~contracting~~  
26 residential home building, except as such employee of a  
27 licensee.

1           "(2) An authorized employee of the United States,  
2 the State of Alabama, or any municipality, county, or other  
3 political subdivision, if the employee does not hold himself  
4 or herself out for hire or otherwise engage in ~~contracting~~  
5 residential home building except in accordance with his or her  
6 employment.

7           "(3) General contractors holding a current and valid  
8 license, issued prior to January 1, 1992, under ~~Sections~~  
9 ~~34-8-1 through 34-8-27~~ Chapter 8 of this title.

10           "(4) Licensed real estate agents, licensed  
11 engineers, and licensed architects operating within the scope  
12 of their respective licenses on behalf of clients.

13           "(5) a. Owners of property when acting as their own  
14 contractor and providing all material supervision themselves,  
15 when building or improving one-family or two-family residences  
16 on such property for the occupancy or use of such owners and  
17 not offered for sale.

18           "b. In any action brought under this chapter, proof  
19 of the sale or offering for sale of such structure by the  
20 owners of property, as provided in this subdivision, within  
21 one year after completion of same is presumptive evidence that  
22 the construction was undertaken for the purpose of sale.

23           "(6) ~~This chapter does not apply to mobile~~ Mobile  
24 homes or ~~to~~ any structure that is installed, inspected, or  
25 regulated by the Alabama Manufactured Housing Commission or  
26 the repair, improvement, or reimprovement of any such  
27 structure, and shall not in any way change or interfere with

1 the duties, responsibilities, and operations of the Alabama  
2 Manufactured Housing Commission as defined in Sections 24-4A-1  
3 through 24-6-4.

4 "(7) Agricultural buildings, except for any  
5 residence contained therein.

6 "§34-14A-7.

7 "(a) Any residential home builder who desires to  
8 receive a new or renewal license under this chapter shall make  
9 and file with the board 30 days prior to the next meeting of  
10 the board a written application on a form prescribed by the  
11 board. Each applicant shall be a citizen of the United States  
12 or, if not a citizen of the United States, a person who is  
13 legally present in the United States with appropriate  
14 documentation from the federal government. Such application  
15 shall be accompanied by the payment of the annual license fee  
16 required by the board. After the board accepts the application  
17 the applicant may be examined by the board at its next  
18 meeting. The board in examining the applicant shall consider  
19 the following qualifications of the applicant:

20 "(1) Experience.

21 "(2) Ability.

22 "(3) Character.

23 "(4) Business-related financial condition.

24 "a. The board may require a financial statement on a  
25 form prescribed by the board and a public records search  
26 directly from a credit reporting agency.

1            "b. The board may require a positive net worth or  
2 other evidence of business-related financial condition  
3 sufficient to reasonably satisfy the board of the applicant's  
4 financial responsibility.

5            "c. The board may require that business-related  
6 judgments, judgment liens, and other perfected liens, must be  
7 satisfied and released.

8            "d. Any information obtained by the board pursuant  
9 to this subsection relating to the financial condition of an  
10 applicant shall not be public information.

11            "(5) Ability and willingness to serve the public and  
12 conserve the public health and safety.

13            "(6) Any other pertinent information the board may  
14 require.

15            "(b) (1) If the board finds the applicant qualified  
16 to engage in residential home building in Alabama, the  
17 applicant shall be issued a license. An applicant rejected by  
18 the board shall be given an opportunity to be reexamined after  
19 a new application has been filed and an additional application  
20 fee paid.

21            "(2) A record shall be made and preserved by the  
22 board of each examination and the findings of the board  
23 pertaining to the examination. A copy of the record shall be  
24 made available to any applicant requesting it upon the payment  
25 of a reasonable fee for same to the board.

26            "(c) The board, by rule, may require proof of and  
27 maintenance of insurance as a qualification for licensure.

1           ~~"(b) (d)~~ The board is authorized to, by rule, may  
2 establish or adopt, or both, education requirements and may  
3 approve, ~~or~~ administer, or ~~both,~~ financially support the  
4 program or programs providing residential construction  
5 education ~~to fulfill the requirements.~~

6           ~~"(c) (e) (1)~~ Each licensee shall notify the board  
7 within 10 days after notice of the institution of any felony  
8 criminal prosecution against him or her. ~~, or of a civil~~  
9 ~~complaint against him or her, if the subject matter of the~~  
10 ~~civil complaint involves a residential home building~~  
11 ~~transaction or involves the goodwill of an existing home~~  
12 ~~building business or licensee.~~ The notification shall be in  
13 writing, by certified mail, and shall include a copy of ~~the~~  
14 ~~complaint or, if a criminal charge,~~ the specific charge made  
15 together with a copy of any the indictment or information the  
16 complaint, affidavit, and warrant making the charges.

17           ~~"(d) (2)~~ Each licensee shall notify the board in  
18 writing by certified mail within 10 days after he or she  
19 receives the notice that any criminal verdict has been  
20 rendered against him or her, or that a criminal action pending  
21 against him or her has been dismissed, ~~or that a civil action~~  
22 ~~in which he or she was a defendant and which involved a home~~  
23 ~~building transaction or the goodwill of a home building~~  
24 ~~business has resulted in a judgment or has been dismissed.~~ The  
25 notification shall be in writing and shall include a copy of  
26 ~~the court order or other document giving the licensee such~~  
27 notice.



1           "~~(e)~~ (f) Each licensee shall utilize a valid written  
2 contract when engaging in the business of residential home  
3 building.

4           "(g) When any residential home building to be  
5 performed will comply with a program designed to enhance the  
6 resiliency of the structure beyond the requirements of the  
7 applicable building codes, the licensee shall disclose this  
8 compliance to the homeowner prior to the commencement of the  
9 residential home building.

10           "~~(f)~~ ~~(1)~~ a. (h) (1) Any licensee who desires to receive  
11 an inactive license shall make and file with the board a  
12 written application for an inactive license on a form  
13 prescribed by the board prior to the expiration of his or her  
14 current license. The application shall be accompanied by the  
15 payment of the annual inactive license fee required by the  
16 board. No act for which a license is required may be performed  
17 under an inactive license. In the event a person holding a  
18 current inactive license applies for a license, he or she may  
19 rely upon his or her inactive license as evidence of the  
20 experience and ability requirements for licensure under  
21 subdivisions (1) and (2) of subsection (a).

22           "~~b. (2)~~ A person holding an expired license who seeks  
23 to reactivate his or her license within three years of the  
24 date of expiration shall be deemed to have satisfied the  
25 experience and ability requirements for licensure if  
26 application is made within the three-year time period and all

1 other licensing requirements pursuant to subsection (a) have  
2 been met.

3 ~~"(2)~~ (3) Any building official or building inspector  
4 who desires to receive an inactive license shall make and file  
5 with the board 30 days prior to the next meeting of the board  
6 a written application for an inactive license on a form  
7 prescribed by the board. After the board accepts the  
8 application, the applicant may be examined by the board at its  
9 next board meeting. The board, in examining the applicant,  
10 shall consider the following qualifications of the applicant  
11 as satisfying the experience and ability requirements for  
12 licensure:

13 "a. That the building inspector is an employee of  
14 the United States, the State of Alabama, or any municipality,  
15 county, or other political subdivision and, by virtue of that  
16 employment, is exempted or prohibited by law from holding a  
17 license; and

18 "b. That the building inspector does any of the  
19 following:

20 "1. Maintains current certification from the  
21 Southern Building Code Congress International as one of the  
22 following:

23 "(i) Chief building official.

24 "(ii) Deputy building official.

25 "(iii) Building inspector.

26 "(iv) Housing inspector.

27 "(v) Design professional.

- 1                   "(vi) Plan reviewer.
- 2                   "2. Maintains current certification from the
- 3 International Code Council as one of the following:
- 4                   "(i) Certified building official.
- 5                   "(ii) Building inspector.
- 6                   "(iii) Residential building inspector.
- 7                   "(iv) Property maintenance and housing inspector.
- 8                   "(v) Building plans examiner.
- 9                   "(vi) Design professional.

10                   "3. Possesses sufficient building qualifications and

11 experience to receive a license, as demonstrated by

12 satisfactory evidence presented to the board.

13                   "~~4.~~(4) In the event a building official or building

14 inspector holding a current inactive license applies for a

15 license, he or she may rely upon his or her inactive license

16 as evidence of the experience and ability requirements for

17 licensure under subdivisions (1) and (2) of subsection (a).

18                   "§34-14A-8.

19                   "(a) The board may levy and collect administrative

20 fines not to exceed five thousand dollars (\$5,000) or revoke

21 or suspend the license of any licensee who, in the opinion of

22 the board, has committed fraud or deceit in obtaining a

23 license required by this chapter, ~~or~~ who has been guilty of

24 gross negligence, incompetence, or misconduct in the practice

25 of residential home building, who has engaged in the business

26 of residential home building outside the scope of the license,

27 or who has violated this chapter or a board rule. Should the

1 board establish or adopt, or both, standards of practice for  
2 residential home builders within the state, as provided in  
3 Section 34-14A-12, the board may suspend the license of any  
4 licensee who, in the opinion of the board, has committed a  
5 violation of the standards of practice and may impose any  
6 other disciplinary sanctions authorized pursuant to this  
7 chapter.

8 "(b) An original homeowner may file a consumer  
9 complaint alleging a violation of this section against any  
10 licensee hereunder. Consumer complaints shall be made in  
11 writing and sworn to by the person making the consumer  
12 complaint and shall be submitted to the executive director of  
13 the board within six years of the date of substantial  
14 completion of construction or within six years of the date the  
15 original homeowner took possession of the residence.

16 "(c) An investigation may be initiated upon receipt  
17 of a consumer complaint or may be initiated by the board. The  
18 board may resolve violations by agreement between the board  
19 and the licensee with or without the filing of a formal  
20 administrative summons and complaint.

21 "(d) With the consent of the licensee, the board may  
22 conduct an informal hearing without meeting the requirements  
23 of the Administrative Procedure Act if no action is taken  
24 other than a reprimand, public or private.

25 "(e) The charges, unless dismissed without hearing  
26 by the board as unfounded or trivial, shall be heard within

1 three months after the filing of an administrative summons and  
2 complaint by the board's executive director.

3 "(f) A copy of the charges, with notice of the time  
4 and place of the hearing, shall be served on the licensee  
5 charged at least 15 days before the hearing date.

6 "(g) The licensee charged may appear personally and  
7 may be represented by counsel. He or she may cross-examine  
8 witnesses against him or her and may produce evidence and  
9 witnesses in his or her defense.

10 "(h) If, after hearing, the board votes to revoke or  
11 suspend the license of, or impose a fine upon, the licensee  
12 charged on the basis of fraud or deceit in obtaining his or  
13 her license or gross negligence, incompetence, or misconduct  
14 in the practice of residential home building, a violation of  
15 this chapter or board rule, or a violation of the standards of  
16 practice, it shall so order, and the board may impose and  
17 collect the actual costs of the hearing.

18 "(i) The licensee may, within 30 days from the date  
19 of receipt or service of the order, file with the board  
20 written notice of his or her intention to appeal from the  
21 order of the board. Appeals from orders of the board shall be  
22 to the circuit court with jurisdiction of licensee's  
23 residence, or if the licensee is out of state, then to the  
24 Circuit Court of Montgomery County, for a determination by the  
25 court whether the decision of the board is supported by  
26 substantial evidence. If the court so finds, it shall affirm  
27 the action of the board.

1           "(j) The board may issue a license to a licensee  
2 whose license has been revoked, and may reinstate a suspended  
3 license prior to the end of the suspension period, if four or  
4 more members of the board vote in favor of the issuance or  
5 reinstatement.

6           "(k) In addition to any other disciplinary action  
7 authorized pursuant to this ~~chapter~~ section, the board may  
8 require a licensee to successfully complete education  
9 requirements to be determined by the board ~~and may levy and~~  
10 ~~collect administrative fines for violations of this chapter or~~  
11 ~~the rules or regulations of the board in an amount not to~~  
12 ~~exceed two thousand dollars (\$2,000) for each violation~~ for a  
13 violation of this chapter or a board rule.

14           "§34-14A-14.

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

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

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

6 "(c) The board may invoke a complaint procedure  
7 against any person who violates this chapter by undertaking or  
8 attempting to undertake the business of home building without  
9 holding a current and valid residential home builders license  
10 issued by the board. Whenever it appears to the board that any  
11 residential home builder has violated or is about to violate  
12 this chapter, the board may resolve the violation by agreement  
13 with the residential home builder, may initiate a complaint  
14 against the residential home builder, and may levy and collect  
15 administrative fines for violations of this chapter or the  
16 rules of the board in an amount not to exceed ~~two thousand~~  
17 ~~dollars (\$2,000)~~ five thousand dollars (\$5,000) for each  
18 violation.

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

24 "(e) Whenever it ~~shall appear~~ appears to the board  
25 that any residential home builder has violated or is about to  
26 violate this chapter, the board may in its own name petition  
27 the circuit court of the county where the violation occurred

1 or is about to occur to issue a temporary restraining order or  
2 other appropriate injunctive relief enjoining the violation.

3 "§34-14A-15.

4 "(a) The board ~~is authorized to~~ may establish a  
5 ~~Homeowner's~~ Homeowners' Recovery Fund ~~from which an~~ for the  
6 purpose of consumer protection, consumer education, and  
7 consumer awareness. An aggrieved homeowner may recover actual  
8 economic damages, not including interest and court costs,  
9 sustained within the ~~State of Alabama~~ state as the direct  
10 result of conduct of a licensee in violation of this chapter  
11 or the rules ~~and regulations~~ of the board from the Homeowners'  
12 Recovery Fund. Any payments from the ~~Homeowner's~~ Homeowners'  
13 Recovery Fund shall be subject to the following limitations  
14 and conditions:

15 "~~(1) Payments for claims based on judgments or~~  
16 ~~settlements against any one licensee shall not exceed fifty~~  
17 ~~thousand dollars (\$50,000) in the aggregate.~~

18 "~~(2) Payments for claims arising out of the same~~  
19 ~~transaction shall not exceed twenty thousand dollars (\$20,000)~~  
20 ~~in the aggregate.~~

21 "~~(3)~~ (1) The ~~Homeowner's~~ Homeowners' Recovery Fund  
22 shall make payments only to homeowners who file a complaint  
23 with the board pursuant to the requirements of subsection (b)  
24 of Section 34-14A-8.

25 "~~(4)~~ (2) The ~~Homeowner's~~ Homeowners' Recovery Fund  
26 shall not make payments based on consent judgments.



1           "~~(5)~~(3) Failure of the homeowner to follow any  
2 provisions of this chapter shall preclude payment from the  
3 ~~Homeowner's~~ Homeowners' Recovery Fund.

4           "(b) The board, by rule, shall determine the maximum  
5 amount of any payment from the Homeowners' Recovery Fund for  
6 the following:

7           "(1) Payments for claims based on judgments or  
8 settlements against any one licensee.

9           "(2) Payments for claims arising out of the same  
10 transaction.

11           "(c) Each licensee shall, on order of the board, pay  
12 a fee not to exceed sixty dollars (\$60), no more than once a  
13 year, per licensee for deposit in the ~~Homeowner's~~ Homeowners'  
14 Recovery Fund. A licensee on inactive status shall not be  
15 required to contribute to the ~~Homeowner's~~ Homeowners' Recovery  
16 Fund. The annual ~~Homeowner's~~ Homeowners' Recovery Fund fee  
17 shall be set by the board after considering all expenses  
18 incurred by the board in defending, satisfying, or settling  
19 any claims paid from the ~~Homeowner's~~ Homeowners' Recovery  
20 Fund.

21           "(d) (1) When a complaint is filed ~~which~~ in a court  
22 of competent jurisdiction that may result in liability for the  
23 ~~Homeowner's~~ Homeowners' Recovery Fund, the complainant shall  
24 notify the board in writing, by certified mail, when the  
25 action is commenced.

26           "(2) When the notice is received, the board may  
27 enter an appearance, file pleadings and appear at court

1 hearings, defend or take action it deems appropriate either on  
2 the behalf and in the name of the defendant or in its own  
3 name. The board may seek any appropriate method of judicial  
4 review. The board may settle or compromise the claim. Any  
5 expenses incurred by the board in defending, satisfying, or  
6 settling any claim ~~shall~~ may be paid from the ~~Homeowner's~~  
7 Homeowners' Recovery Fund.

8 "(3) When a complainant obtains a valid judgment,  
9 excluding consent judgments, in a court of competent  
10 jurisdiction against a licensee ~~on the grounds set out above,~~  
11 the aggrieved homeowner may, when judgment is final, file a  
12 verified claim in the court in which the judgment was entered  
13 and, on 30 days' written notice to the board, may apply to the  
14 court for an order directing payment out of the Homeowner's  
15 Recovery Fund of the amount remaining unpaid on the judgment.

16 "(4) The court shall proceed on such application  
17 ~~forthwith and, on hearing,~~ the complainant shall be required  
18 to show that:

19 "~~(1)~~a. He or she is not the spouse, child, or parent  
20 of the debtor, or the personal representative of the spouse,  
21 child, or parent or a shareholder, officer, or director of the  
22 debtor.

23 "~~(2)~~b. He or she has obtained a judgment, as  
24 described in this section, stating the amount of the judgment  
25 and the amount owing on the judgment at the date of the  
26 application, and, that in such action, he or she had joined  
27 any and all bonding companies which issued corporate surety

1 bonds to the judgment debtor as principal and all other  
2 necessary parties.

3 "~~(3)~~c. The following items, if recovered by him or  
4 her, have been applied to the actual compensatory damages  
5 awarded by the court:

6 "a.1. Any amount recovered from the judgment debtor.

7 "b.2. Any amount recovered from bonding companies.

8 "c.3. Any amount recovered in out-of-court  
9 settlements.

10 "(5) The court shall order the ~~Homeowner's~~  
11 Homeowners' Recovery Fund to pay the sum it finds due, subject  
12 to the provisions and limitations of this section.

13 "(e) ~~In the event should~~ the board ~~pay~~ pays from the  
14 ~~Homeowner's~~ Homeowners' Recovery Fund any amount in settlement  
15 of a claim or toward satisfaction of a judgment against a  
16 licensee, ~~all licenses of the licensee may be terminated by~~  
17 the board may revoke the license of the licensee, any  
18 individual license held by the licensee's qualifying  
19 representative, and the licenses of any entities with the same  
20 qualifying representative as the licensee. The board may  
21 refuse to issue a new license to the former licensee, any  
22 individual license held by the former licensee's qualifying  
23 representative, and the licenses of any entities with the same  
24 qualifying representative as the former licensee, until he or  
25 she the former licensee has repaid in full, plus interest at  
26 the rate of 12 percent per annum, the amount paid from the  
27 ~~Homeowner's~~ Homeowners' Recovery Fund. A discharge in

1 bankruptcy shall not relieve a person from the penalties and  
2 disabilities provided in this section.

3 "(f) If the balance in the ~~Homeowner's~~ Homeowners'  
4 Recovery Fund is insufficient to satisfy a duly authorized  
5 claim or portion of a claim, the board shall, when sufficient  
6 money has been deposited in the ~~Homeowner's~~ Homeowners'  
7 Recovery Fund, satisfy the unpaid claims in the order that the  
8 claims were filed.

9 "(g) The sums received by the board, pursuant to the  
10 provisions of this section, shall be deposited into the State  
11 Treasury and held in a special fund to be known as the  
12 ~~Homeowner's~~ Homeowners' Recovery Fund, and shall be held by  
13 the board in trust for carrying out the purposes of the  
14 ~~Homeowner's~~ Homeowners' Recovery Fund. These sums may be  
15 invested by the State Treasurer in any investments which are  
16 legal under the laws of this state. Any interest or other  
17 income from investments of the ~~Homeowner's~~ Homeowners'  
18 Recovery Fund shall be deposited into the ~~Homeowner's~~  
19 Homeowners' Recovery Fund.

20 "(h) When, on order of the court, the board has paid  
21 from the ~~Homeowner's~~ Homeowners' Recovery Fund any sum, the  
22 board shall be subrogated to all the rights of the judgment  
23 creditor, and all his or her rights, title, and interest in  
24 the judgment, to the extent of the amount paid from the  
25 ~~Homeowner's~~ Homeowners' Recovery Fund, shall thereby be  
26 assigned to the board. Any amount and interest recovered by

1 the board on the judgment shall be deposited to the  
2 ~~Homeowner's~~ Homeowners' Recovery Fund.

3 "(i) The limitations and conditions of payment from  
4 the ~~Homeowner's~~ Homeowners' Recovery Fund as established by  
5 Act 2002-72 shall not apply in any case where, prior to May 1,  
6 2002, a complainant has obtained a valid judgment in a court  
7 of competent jurisdiction against a licensee on the grounds  
8 set out in this chapter."

9 Section 2. This act shall become effective on the  
10 first day of the third month following its passage and  
11 approval by the Governor, or its otherwise becoming law.