

1 HB538  
2 149603-4  
3 By Representatives Butler, Todd and Farley  
4 RFD: Commerce and Small Business  
5 First Read: 02-APR-13

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8 SYNOPSIS: Under existing law, if the current license  
9 number of a contractor is submitted with a bid, the  
10 owner, architect, engineer, construction manager,  
11 or awarding authority considering the bid is  
12 relieved of any liability under the licensing  
13 statute for general contractors.

14 This bill would specify that the same  
15 limitation of liability of a general contractor or  
16 subcontractor, or both, would apply if the current  
17 license number of a subcontractor is submitted with  
18 a bid.

19 Under existing law, a subcontractor is  
20 required to be licensed by the State Licensing  
21 Board for General Contractors if the subcontractor  
22 performs work under a general contractor or another  
23 subcontractor and the costs of the undertaking  
24 exceeds \$50,000. Existing law provides that a  
25 subcontractor is not required to be licensed at the  
26 time a project is bid.

1                   This bill would delete the above exception  
2                   applicable to subcontractors.

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4                   A BILL  
5                   TO BE ENTITLED  
6                   AN ACT

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8                   To amend Sections 34-8-6 and 34-8-7 of the Code of  
9                   Alabama 1975, relating to the State Licensing Board for  
10                  General Contractors; to further provide for the limitation of  
11                  liability of a contractor or subcontractor, or both, under  
12                  this act if the current license number of a subcontractor is  
13                  submitted with a bid; and to further provide for the  
14                  compliance of subcontractors with the licensing requirements  
15                  of the board.

16                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17                  Section 1. Sections 34-8-6 and 34-8-7 of the Code of  
18                  Alabama 1975, are amended to read as follows:

19                  "§34-8-6.

20                  "(a) Any person, firm, or corporation not being duly  
21                  authorized who shall engage in the business of general  
22                  contracting in this state, except as provided for in this  
23                  chapter, and any person, firm, or corporation presenting or  
24                  attempting to file as its own the license certificate of  
25                  another, or who shall give false or forged evidence of any  
26                  kind to the board, or to any member thereof, in obtaining a  
27                  certificate of license, or who falsely shall impersonate

1 another, or who shall use an expired or revoked certificate of  
2 license shall be deemed guilty of a Class A misdemeanor and  
3 for each offense for which he or she is convicted shall be  
4 punished as provided by law. Furthermore, any person including  
5 an owner, architect, engineer, construction manager, or  
6 private awarding authority who considers a bid from anyone not  
7 properly licensed under this chapter shall be deemed guilty of  
8 a Class B misdemeanor and shall for each offense of which he  
9 or she is convicted be punished as provided by law.

10 "(b) Every person, firm, or corporation licensed  
11 pursuant to this chapter shall include his or her license  
12 number in all construction contracts, subcontracts, bids, and  
13 proposals. In addition, a general contractor or subcontractor  
14 may not enter into a construction contract with a  
15 subcontractor unless the subcontractor was licensed prior to  
16 the date on which the project or job was bid. Any person,  
17 firm, or corporation violating this provision shall be guilty  
18 of a Class B misdemeanor and shall for each offense of which  
19 he or she is convicted be punished as provided by law.

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

1 shall be issued in the name of the State of Alabama under the  
2 official seal of the board. If the person, firm, or  
3 corporation to whom the board directs a cease and desist order  
4 does not cease or desist the proscribed activity, conduct,  
5 practice, or performance of work immediately, the board shall  
6 cause to issue in any court of competent jurisdiction and  
7 proper venue, a writ of injunction enjoining the person, firm,  
8 or corporation from engaging in any activity, conduct,  
9 practice, or performance of work as prohibited by this  
10 chapter. Upon showing by the board that the person, firm, or  
11 corporation has engaged or is engaged in any activity,  
12 conduct, practice, or performance of work prohibited by this  
13 chapter, the courts shall issue a temporary restraining order  
14 restraining the person, firm, or corporation from engaging in  
15 such unlawful activity, conduct, practice, or performance of  
16 work pending the hearing on a preliminary injunction, and in  
17 due course a permanent injunction shall issue after the  
18 hearing, commanding the cessation of the unlawful activity,  
19 conduct, practice, or performance of work complained of, all  
20 without the necessity of the board having to give bond. A  
21 temporary restraining order, preliminary injunction, or  
22 permanent injunction issued pursuant to this subsection shall  
23 not be subject to being released on bond. In the suit for an  
24 injunction, the board may demand of the defendant a fine of up  
25 to five thousand dollars (\$5,000) plus costs and attorney fees  
26 for each offense. A judgment for penalty, attorney fees, and  
27 costs may be rendered in the same judgment in which the

1 injunction is made absolute. The trial of the proceeding by  
2 injunction shall be summary and by the trial judge without  
3 jury. Anyone violating this chapter who fails to cease work,  
4 after a hearing and notification from the board, shall not be  
5 eligible to apply for a contractor's license for a period not  
6 to exceed one year from the date of official notification to  
7 cease work. It shall be within the power of the board to  
8 withhold approval, for up to six months, of any application  
9 from anyone who prior to the application has been found in  
10 violation of this chapter.

11 "(d) The submission of the contractor's or  
12 subcontractor's current license number before considering the  
13 bid shall be sufficient evidence to relieve the owner,  
14 architect, engineer, construction manager, contractor,  
15 subcontractor, or awarding authority of any liability under  
16 this chapter.

17 "(e) Notwithstanding any provision of this chapter  
18 to the contrary, a general contractor or a subcontractor shall  
19 not be in violation of this chapter or deemed to have  
20 committed a prohibited act under this chapter for receiving a  
21 bid from an unlicensed contractor.

22 "§34-8-7.

23 "(a) The following shall be exempted from this  
24 chapter:

25 "(1) The practice of general contracting, as defined  
26 in Section 34-8-1, by an authorized representative or  
27 representatives of the United States Government, State of

1 Alabama, incorporated town, city, or county in this state,  
2 which is under the supervision of a licensed architect or  
3 engineer provided any work contracted out by the  
4 representative shall comply with the provisions of this  
5 chapter for "general contractor."

6 "(2) The construction of any residence or private  
7 dwelling.

8 "(3) A person, firm, or corporation constructing a  
9 building or other improvements on his, her, or its own  
10 property provided that any of the work contracted out complies  
11 with the definition in this chapter for "general contractor."

12 "(4) The installation, repair, maintenance, or  
13 removal of facilities, equipment, or systems used in or  
14 substantially related to the generation, transmission, or  
15 distribution of electric power, natural gas, or  
16 telecommunications in an emergency by a utility regulated by  
17 the Public Service Commission, or any entity engaged in the  
18 generation, transmission, or distribution of electric power,  
19 natural gas, or telecommunications, or any of their respective  
20 general contractors or subcontractors, provided the work is  
21 performed under the supervision of a licensed architect or  
22 engineer. For purposes of this subdivision, the term  
23 "emergency" is defined as a situation whereby service to the  
24 consumer has been interrupted or may be interrupted if work to  
25 remedy the emergency is not performed and completed within 60  
26 days, and such other situations that are determined to be an  
27 emergency in the discretion of the board.

1           "(5) The repair, maintenance, replacement,  
2           reinstallation, or removal of facilities, equipment, or  
3           systems used in or substantially related to the generation,  
4           transmission, or distribution of electric power, natural gas,  
5           or telecommunications on a routine, regular, or recurring  
6           basis by a utility regulated by the Public Service Commission  
7           or any entity engaged in the generation, transmission, or  
8           distribution of electric power, natural gas, or  
9           telecommunications or any of their respective general  
10          contractors or subcontractors, provided the work is performed  
11          under the supervision of a licensed architect or engineer.

12          "(6) Routine or regular maintenance, repair,  
13          replacement, reinstallation, or removal of equipment,  
14          specialized technological processes, or equipment facility  
15          systems as determined by the board with regard to scope,  
16          frequency, and speciality of the work to be performed.

17          "(b) The aforementioned exemptions shall exclude a  
18          swimming pool contractor. Provided, however, a person, firm,  
19          or corporation constructing a swimming pool on his, her, or  
20          its own property shall be exempted from this chapter.

21          "(c) A subcontractor, as defined in subsection (c)  
22          of Section 34-8-1, is subject to and shall comply with all the  
23          provisions of this chapter as specified for general contractor  
24          except as follows:

25          "(1) A subcontractor shall pay one-half the fees as  
26          required in this chapter for general contractor.



1           "(2) No bid limits shall be established for a  
2 subcontractor.

3           "(3) A subcontractor shall submit with license  
4 application and renewals a statement of financial condition as  
5 prescribed by the board.

6           "(4) A subcontractor shall furnish three references  
7 from any combination of the following: Licensed general  
8 contractors, registered professional engineers, or registered  
9 architects, or qualified person, as declared by the board, for  
10 whom they have worked. If a subcontractor has only been  
11 employed by one company, the subcontractor shall provide the  
12 following: Three or more jobs he or she has worked on, the  
13 amounts of the contracts, the time period of the contracts,  
14 the location of the contracts, and a statement of experience.

15           "~~(5) A subcontractor is not required to be licensed  
16 at the time a project is bid, but must be licensed with the  
17 board prior to beginning work on the project.~~

18           "~~(6)~~ (5) A general contractor license and license  
19 number issued by the board to subcontractors shall denote  
20 subcontractor status.

21           "~~(7)~~ (6) A subcontractor is not required to sit for  
22 any examination before being licensed."

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