

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

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 §13A-9-111.1.

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

3 (b) A person commits the offense of aggravated home
4 repair fraud when the person knowingly does any of the
5 following:

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

13 a. Knowingly misrepresents a material fact relating
14 to the terms of the contract or agreement or the preexisting
15 or existing condition of any portion of the property involved.

16 b. Knowingly creates or confirms another person's
17 impression which is false and which he or she does not believe
18 to be true.

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

21 d. Knowingly uses or employs any deception, false
22 pretense, or false promises in order to induce, encourage, or
23 solicit another person to enter into any contract or
24 agreement.

25 e. Knowingly misrepresents or conceals either his or
26 her real name or the name of his or her business or business
27 address.

1 f. Knowingly uses deception, coercion, or force to
2 obtain another person's consent to modification of the terms
3 of the original contract or agreement.

4 g. After having previously been convicted of a
5 violation of Sections 34-14A-14, 34-31-32, 34-36-16, or
6 34-37-17 for noncompliance with a state occupational license
7 requirement, violates Sections 34-14A-14, 34-31-32, 34-36-16,
8 or 34-37-17.

9 h. Is in violation of Sections 34-14A-14, 34-31-32,
10 34-36-16, or 34-37-17 by knowingly misrepresenting or
11 concealing his or her noncompliance with a state occupational
12 license requirement.

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

19 (3) Misrepresents himself or herself or another
20 person as being an employee or agent of any unit of federal,
21 state, or municipal government or any other governmental unit,
22 or an employee or agent of any public utility, with the intent
23 to cause another person to enter into a contract or agreement
24 for home repair of a residential structure that does not
25 belong to the offending person and that is damaged, destroyed,
26 or otherwise in need of repair or services as a result of an

1 event for which the Governor has declared a state of
2 emergency, as defined in Section 31-9-3.

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

4 Section 2. Sections 13A-9-114, 34-14A-14, 34-31-32,
5 34-36-16, and 34-37-17, Code of Alabama 1975, are amended to
6 read as follows:

7 "§13A-9-114.

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

11 "(1) A first conviction shall be a Class A
12 misdemeanor.

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

15 "§34-14A-14.

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

26 "(b) Upon notice from the board, any person who
27 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.

25 "(e) Whenever it appears to the board that any
26 residential home builder has violated or is about to violate
27 this chapter, the board may in its own name petition the

1 circuit court of the county where the violation occurred or is
2 about to occur to issue a temporary restraining order or other
3 appropriate injunctive relief enjoining the violation.

4 "§34-31-32.

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

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

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

1 "(d) The board may levy and collect administrative
2 fines for serious violations of this chapter or the rules and
3 regulations of the board of not more than two thousand dollars
4 (\$2,000) for each violation.

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

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

18 "§34-36-16.

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

24 "(b) It shall be unlawful, except as otherwise
25 provided, on or after December 31, 2011, for a person not
26 licensed as an electrical contractor to solicit, represent,
27 seek to perform, or perform those tasks and functions that can

1 only be performed by a licensed electrical contractor in
2 accordance with this chapter.

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

11 "§34-37-17.

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

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

1 activity, conduct, practice, or performance of any work then
2 being performed or about to be commenced.

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

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

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

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 02-FEB-21

Read for the second time and placed on the calen-
dar 1 amendment..... 03-FEB-21

Read for the third time and passed as amended 09-FEB-21

Yeas 30
Nays 0

Patrick Harris,
Secretary.