

1 HB594
2 199641-1
3 By Representative Ellis
4 RFD: Boards, Agencies and Commissions
5 First Read: 08-MAY-19

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8 SYNOPSIS: Under existing law, a person who provides
9 services for any of the following without a license
10 as required by law is guilty of a Class A
11 misdemeanor: General contracting services;
12 residential homebuilding services; heating, air
13 conditioning, or refrigeration contracting
14 services; electrical contracting services;
15 plumbing, gas fitting, or medical gas pipe fitting
16 services; and home repair services.

17 This bill would provide that if a person
18 provides any of these services on a residential or
19 commercial structure that was damaged or otherwise
20 in need of repair or services because of an event
21 for which the Governor declared a state of
22 emergency, the person would be guilty of a Class C
23 felony.

24 This bill would also specify that the
25 provisions of the bill do not apply to charitable
26 cleanup or repair services for which no license is
27 required and for which no fee is charged.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of
4 Alabama of 1901, as amended, prohibits a general
5 law whose purpose or effect would be to require a
6 new or increased expenditure of local funds from
7 becoming effective with regard to a local
8 governmental entity without enactment by a 2/3 vote
9 unless: it comes within one of a number of
10 specified exceptions; it is approved by the
11 affected entity; or the Legislature appropriates
12 funds, or provides a local source of revenue, to
13 the entity for the purpose.

14 The purpose or effect of this bill would be
15 to require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a 2/3 vote to
19 become effective because it comes within one of the
20 specified exceptions contained in the amendment.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating to consumer protection; to amend Sections
27 13A-9-114, 34-8-6, 34-14A-14, 34-31-32, 34-36-16, and

1 34-37-17, Code of Alabama 1975, to establish the Alabama State
2 of Emergency Consumer Protection Act, to provide additional
3 criminal penalties for certain crimes committed under certain
4 conditions; and in connection therewith would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds within the meaning of Amendment 621
7 of the Constitution of Alabama of 1901, now appearing as
8 Section 111.05 of the Official Recompilation of the
9 Constitution of Alabama of 1901, as amended.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14 (b) A person not licensed as required by law who
15 engages in, provides, or agrees or contracts to provide, any
16 of the following services for a residential structure,
17 commercial structure, or other structure which does not belong
18 to the person and which is damaged, destroyed, or otherwise in
19 need of repair or services as a result of an event for which
20 the Governor declares a state of emergency, as defined in
21 Section 31-9-3, Code of Alabama 1975, is guilty of a Class C
22 felony:

23 (1) General contracting services under Section
24 34-8-6, Code of Alabama 1975.

25 (2) Residential homebuilding services under Section
26 34-14A-14, Code of Alabama 1975.

1 (3) Heating, air conditioning, or refrigeration
2 contracting services under Section 34-31-32, Code of Alabama
3 1975.

4 (4) Electrical contracting services under Section
5 34-36-16, Code of Alabama 1975.

6 (5) Plumbing, gas fitting, or medical gas pipe
7 fitting services under Section 34-37-17, Code of Alabama 1975.

8 (6) Home repair, as defined by Section 13A-9-110,
9 Code of Alabama 1975.

10 (c) A certified copy of the emergency declaration
11 signed by the Governor shall be prima facie evidence of the
12 event giving rise to the emergency in the affected
13 municipality or county.

14 (d) Nothing in this section precludes the
15 prosecution of other crimes, including, but not limited to,
16 financial exploitation of an elderly person, theft of
17 property, theft of property by deception, and insurance fraud.

18 (e) In addition to any other sentence the court may
19 impose under this section, the court shall order the defendant
20 to make restitution to the victim as a condition of probation
21 or suspension of sentence, either within a specified period of
22 time or in specified installments. Intentional refusal to make
23 restitution under the order may be considered as grounds for
24 revocation of the person's probation or suspension of
25 sentence.

26 (f) This section does not provide any limitation or
27 restriction on a person from providing charitable cleanup or

1 repair services for which no license is required by law and
2 for which no fee is charged.

3 Section 2. Sections 13A-9-114, 34-8-6, 34-14A-14,
4 34-31-32, 34-36-16, and 34-37-17, Code of Alabama 1975, are
5 amended to read as follows:

6 "§13A-9-114.

7 "Violations of this article shall be punished as
8 follows:

9 "(1) Except as provided in Section 1 of the act
10 providing this amendatory language, a ~~A~~ first conviction shall
11 be a Class A misdemeanor.

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

14 "§34-8-6.

15 "(a) ~~Any~~ Except as provided in Section 1 of the act
16 providing this amendatory language, any person, firm, or
17 corporation not being duly authorized who shall engage in the
18 business of general contracting in this state, except as
19 provided for in this chapter, and any person, firm, or
20 corporation presenting or attempting to file as its own the
21 license certificate of another, or who shall give false or
22 forged evidence of any kind to the board, or to any member
23 thereof, in obtaining a certificate of license, or who falsely
24 shall impersonate another, or who shall use an expired or
25 revoked certificate of license shall be ~~deemed~~ guilty of a
26 Class A misdemeanor ~~and for each offense for which he or she~~
27 ~~is convicted shall be punished as provided by law.~~

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

7 "(b) Every person, firm, or corporation licensed
8 pursuant to this chapter shall include his or her license
9 number in all construction contracts, subcontracts, bids, and
10 proposals. Any person, firm, or corporation violating this
11 provision shall be guilty of a Class B misdemeanor ~~and shall~~
12 ~~for each offense of which he or she is convicted be punished~~
13 ~~as provided by law.~~

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

1 proper venue, a writ of injunction enjoining the person, firm,
2 or corporation from engaging in any activity, conduct,
3 practice, or performance of work as prohibited by this
4 chapter. Upon showing by the board that the person, firm, or
5 corporation has engaged or is engaged in any activity,
6 conduct, practice, or performance of work prohibited by this
7 chapter, the courts shall issue a temporary restraining order
8 restraining the person, firm, or corporation from engaging in
9 such unlawful activity, conduct, practice, or performance of
10 work pending the hearing on a preliminary injunction, and in
11 due course a permanent injunction shall issue after the
12 hearing, commanding the cessation of the unlawful activity,
13 conduct, practice, or performance of work complained of, all
14 without the necessity of the board having to give bond. A
15 temporary restraining order, preliminary injunction, or
16 permanent injunction issued pursuant to this subsection shall
17 not be subject to being released on bond. In the suit for an
18 injunction, the board may demand of the defendant a fine of up
19 to five thousand dollars (\$5,000) plus costs and attorney fees
20 for each offense. A judgment for penalty, attorney fees, and
21 costs may be rendered in the same judgment in which the
22 injunction is made absolute. The trial of the proceeding by
23 injunction shall be summary and by the trial judge without
24 jury. Anyone violating this chapter who fails to cease work,
25 after a hearing and notification from the board, shall not be
26 eligible to apply for a contractor's license for a period not
27 to exceed one year from the date of official notification to

1 cease work. It shall be within the power of the board to
2 withhold approval, for up to six months, of any application
3 from anyone who prior to the application has been found in
4 violation of this chapter.

5 "(d) The submission of the contractor's current
6 license number before considering the bid shall be sufficient
7 evidence to relieve the owner, architect, engineer,
8 construction manager, or awarding authority of any liability
9 under this chapter.

10 "§34-14A-14.

11 "(a) Any Except as provided in Section 1 of the act
12 providing this amendatory language, any person who undertakes
13 or attempts to undertake the business of residential home
14 building without holding a current and valid residential home
15 builders license, issued by the Home Builders Licensure Board,
16 as required by this chapter, or who knowingly presents to, or
17 files false information with the board for the purpose of
18 obtaining the license or who violates any law or code adopted
19 by a county commission under this chapter shall be ~~deemed~~
20 guilty of a Class A misdemeanor.

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

1 home builder, or to the person doing the work, and shall state
2 the conditions under which work may be resumed.

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

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

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

26 "§34-31-32.

1 "(a) ~~Any~~ Except as provided in Section 1 of the act
2 providing this amendatory language, any person engaged in
3 business as a certified contractor or performing the functions
4 of a certified contractor in violation of this chapter shall
5 be guilty of a Class A misdemeanor, ~~as defined by the state~~
6 ~~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 shall be unlawful for any person to violate
18 any provision of this chapter regulating electrical
19 contracting, and, except as provided in Section 1 of the act
20 providing this amendatory language, any person convicted of
21 such violation ~~shall be punished as prescribed for~~ is guilty
22 of a Class A misdemeanor.

23 "(b) It shall be unlawful, except as otherwise
24 provided, on or after December 31, 2011, for a person not
25 licensed as an electrical contractor to solicit, represent,
26 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 shall be unlawful for any person or legal
4 entity to violate any provision of this chapter regulating
5 plumbers, gas fitters, or medical gas piping fitters. ~~Any~~
6 Except as provided in Section 1 of the act providing this
7 amendatory language, any person convicted of such violation
8 ~~shall be punished as prescribed for~~ is guilty of a Class A
9 misdemeanor."

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

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