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3 SUBSTITUTE FOR HB194
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8 SYNOPSIS: Under existing law, on a first conviction
9 for home repair fraud, a person is guilty of a
10 Class A misdemeanor, and on a second or subsequent
11 conviction for home repair fraud, a person is
12 guilty of a Class C felony.

13 This bill would establish the Alabama State
14 of Emergency Consumer Protection Act to provide
15 enhanced criminal penalties for home repair fraud
16 committed for the repair of a residential structure
17 that was damaged as a result of an event which was
18 declared a state of emergency by the Governor.

19 Amendment 621 of the Constitution of Alabama
20 of 1901, now appearing as Section 111.05 of the
21 Official Recompilation of the Constitution of
22 Alabama of 1901, as amended, prohibits a general
23 law whose purpose or effect would be to require a
24 new or increased expenditure of local funds from
25 becoming effective with regard to a local
26 governmental entity without enactment by a 2/3 vote
27 unless: it comes within one of a number of

1 specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

5 The purpose or effect of this bill would be
6 to require a new or increased expenditure of local
7 funds within the meaning of the amendment. However,
8 the bill does not require approval of a local
9 governmental entity or enactment by a 2/3 vote to
10 become effective because it comes within one of the
11 specified exceptions contained in the amendment.

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Relating to consumer protection; to establish the
18 Alabama State of Emergency Consumer Protection Act; to add
19 Section 13A-9-111.1 to the Code of Alabama 1975, to provide
20 criminal penalties for home repair fraud committed under
21 certain conditions; to amend Sections 13A-9-114, 34-14A-14,
22 34-31-32, 34-36-16, and 34-37-17, Code of Alabama 1975, to
23 provide further for criminal penalties; and in connection
24 therewith would have as its purpose or effect the requirement
25 of a new or increased expenditure of local funds within the
26 meaning of Amendment 621 of the Constitution of Alabama of
27 1901, now appearing as Section 111.05 of the Official

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 §13A-9-111.1.

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

9 (b) A person commits the offense of aggravated home
10 repair fraud when the person intentionally and knowingly does
11 any of the following:

12 (1) Enters into an agreement or contract for
13 consideration, written or oral, with a person for home repair
14 of a residential structure that is damaged, destroyed, or
15 otherwise in need of repair or services as a result of an
16 event for which the Governor declares a state of emergency, as
17 defined in Section 31-9-3, and the offending person knowingly
18 engages in any one or more of the following deceptive
19 activities:

20 a. Misrepresents of a material fact relating to the
21 terms of the contract or agreement or the preexisting or
22 existing condition of any portion of the property involved, or
23 the creation or confirmation of another's impression which is
24 false and which the offending person does not believe to be
25 true, or promises performance which the offending person does
26 not intend to perform or knows will not be performed.

1 b. Uses or employs any deception, false pretense, or
2 false promises in order to induce, encourage, or solicit a
3 person to enter into any contract or agreement.

4 c. Misrepresents or conceals of either the offending
5 person's real name or the name of his or her business or
6 business address.

7 d. Uses deception, coercion, or force to obtain a
8 person's consent to modification of the terms of the original
9 contract or agreement.

10 e. Is in violation of Sections 34-14A-14, 34-31-32,
11 34-36-16, or 34-37-17 and has previously been convicted of a
12 violation of Sections 34-14A-14, 34-31-32, 34-36-16, or
13 34-37-17 for noncompliance with state occupational license
14 requirements in any of those sections.

15 f. Is in violation of Sections 34-14A-14, 34-31-32,
16 34-36-16, or 34-37-17 by having misrepresented or concealed
17 his or her noncompliance with state occupational license
18 requirements in any of those sections.

19 (2) Damages the property of a person with the intent
20 to enter into an agreement or contract for home repair of a
21 residential structure that is damaged, destroyed, or otherwise
22 in need of repair or services as a result of an event for
23 which the Governor declares a state of emergency, as defined
24 in Section 31-9-3, Code of Alabama 1975.

25 (3) Misrepresents himself or herself or another
26 person as being an employee or agent of any unit of federal,
27 state, or municipal government or any other governmental unit,

1 or an employee or agent of any public utility, with the intent
2 to cause a person to enter into a contract or agreement for
3 home repair of a residential structure that does not belong to
4 the person and that is damaged, destroyed, or otherwise in
5 need of repair or services as a result of an event for which
6 the Governor declares a state of emergency, as defined in
7 Section 31-9-3, Code of Alabama 1975.

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

9 Section 2. Sections 13A-9-114, 34-14A-14, 34-31-32,
10 34-36-16, and 34-37-17, Code of Alabama 1975, are amended to
11 read as follows:

12 "§13A-9-114.

13 ~~"Violations~~ Except as provided in Section
14 13A-9-111.1, violations of this article shall be punished as
15 follows:

16 "(1) A first conviction shall be a Class A
17 misdemeanor.

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

20 "§34-14A-14.

21 "(a) ~~Any~~ Except as provided in Section 13A-9-111.1,
22 any person who undertakes or attempts to undertake the
23 business of residential home building without holding a
24 current and valid residential home builders license, issued by
25 the Home Builders Licensure Board, as required by this
26 chapter, or who knowingly presents to, or files false
27 information with the board for the purpose of obtaining the

1 license or who violates any law or code adopted by a county
2 commission under this chapter shall be deemed guilty of a
3 Class A misdemeanor.

4 "(b) Upon notice from the board, any person who
5 undertakes or attempts to undertake the business of
6 residential home building without holding a current and valid
7 residential home builders license, as required by the
8 provisions of this chapter, shall immediately cease. Such
9 notice shall be in writing and shall be given to the owner of
10 the property, or to his or her agent, or to the residential
11 home builder, or to the person doing the work, and shall state
12 the conditions under which work may be resumed.

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

25 "(d) A residential home builder, who does not have
26 the license required, shall not bring or maintain any action
27 to enforce the provisions of any contract for residential home

1 building which he or she entered into in violation of this
2 chapter.

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

9 "§34-31-32.

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

15 "(b) The board may, at its discretion, impose late
16 penalties on those certified contractors who fail to renew
17 certificates by December 31 of each year. The board may also
18 remove certification from any certified person who fails to
19 renew his or her certificate by the first day of March and
20 require the person to apply for a new certificate.
21 Furthermore, the board may at its discretion, remove, revoke,
22 or suspend the certification from any certified contractor who
23 provides substandard or dangerous service, repair, or
24 installation, or who otherwise violates this chapter, and may
25 require such person to apply for a new certification. The
26 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
26 corporation from engaging in any activity, conduct, practice,
27 or performance of work prohibited by this chapter. Upon

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

24 "§34-36-16.

25 "(a) ~~It~~ Except as provided in Section 13A-9-111.1,
26 it shall be unlawful for any person to violate any provision
27 of this chapter regulating electrical contracting, and any

1 person convicted of such violation shall be punished as
2 prescribed for a Class A misdemeanor.

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

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

17 "§34-37-17.

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

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

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

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

23 Section 4. 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.