

1 HB182
2 189641-1
3 By Representatives McMillan, Ellis, Davis, Hanes, Ball,
4 Pringle, Whorton (R), Rogers, Faulkner and Jackson
5 RFD: Boards, Agencies and Commissions
6 First Read: 11-JAN-18

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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 require a roofer to hold a
14 license from the Home Builders Licensure Board when
15 the cost of a roofing project exceeds \$2,500.

16 This bill would revise definitions and the
17 requirements for board membership.

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.

6
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 require a roofer to
14 hold a license from the Home Builders Licensure Board when the
15 cost of a roofing project exceeds \$2,500; to revise
16 definitions; to revise requirements for board membership; to
17 authorize the board to collect costs relating to hearings for
18 disciplinary actions; to increase administrative fines for a
19 violation; to allow the cap on the payment amount to an
20 aggrieved homeowner from the Homeowners' Recovery Fund when
21 the homeowner is injured due to a violation committed by a
22 licensee to be set by rule; and to authorize the board to
23 revoke the license or refuse to issue a new license to the
24 licensee and certain other license holders when the licensee
25 has not paid a judgment claim under the Homeowners' Recovery
26 Fund.

27 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 thousand dollars
3 (\$10,000). Notwithstanding the foregoing, the term includes a
4 residential roofer when the cost of the undertaking exceeds
5 two thousand five hundred dollars (\$2,500). Nothing herein
6 shall prevent any person from performing these acts on his or
7 her own residence or on his or her other real estate holdings.
8 Anyone who engages or offers to engage in ~~such undertaking in~~
9 ~~this state~~ any acts described in this subdivision, through
10 advertising or otherwise, shall be deemed to have engaged in
11 the business of residential home building.

12 "(12) RESIDENTIAL ROOFER. A person that installs
13 products or repairs surfaces on the external upper covering of
14 a residence or structure that seals, waterproofs, or
15 weatherproofs the residence or structure.

16 "~~(11)~~ (13) STRUCTURE. A residence on a single lot,
17 including a site-built home, a condominium, a duplex or
18 multi-unit residential building consisting of not more than
19 four residential units or any improvement thereto.

20 "~~(12)~~ (14) TRANSACTION. The act of entering into a
21 contract with a licensee ~~for the purchase, construction,~~
22 ~~repair, improvement, or reimprovement of a structure to be~~
23 ~~used as a residence~~ to engage in the business of residential
24 home building.

25 "§34-14A-3.

26 "There is established the Home Builders Licensure
27 Board to regulate the residential home building and

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

1 vacancy for the remainder of any unexpired term from a list of
2 three qualified persons supplied by the governing body of the
3 Home Builders Association of Alabama. Each board member shall
4 hold over after the expiration of his or her term until his or
5 her successor shall be duly appointed and qualified.

6 "§34-14A-4.

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

14 "(b) The board, at a minimum, shall meet on a
15 quarterly basis and at such other times as the chair may
16 designate; ~~provided, however, that the board shall meet within~~
17 ~~30 days after appointment for the purpose of organizing and~~
18 ~~transacting such~~ for the purpose of transacting business as
19 may properly come before ~~it~~ the board. Four members shall
20 constitute a quorum at all meetings. The secretary of the
21 board shall keep such records of each meeting as shall be
22 required by the board.

23 "(c) Members of the board may be compensated in an
24 amount not to exceed three hundred fifty dollars (\$350) per
25 day, not to exceed 15 days per year, for attending meetings of
26 the board or its committees and, in addition, may be

1 reimbursed for such necessary travel expenses as are paid to
2 state employees.

3 "(d) The board may employ an executive director and
4 a deputy director. The board shall have sole authority to fix
5 the salary of the executive director. The authority to fix the
6 salary of the executive director is not subject to subsection
7 (b) of Section 36-6-6.

8 "(e) The executive director may hire staff to carry
9 out this chapter.

10 "§34-14A-5.

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

14 "(2) The board may issue licenses that vary in scope
15 of work authorized, including, but not limited to, licenses
16 without limitation and with limitation.

17 "(3) The board may issue licenses that vary in
18 requirements for licensure, including, but not limited to,
19 evidence of experience and ability and financial
20 responsibility, as determined by the cost of the undertaking.

21 "(4) The board may charge varying fees for licenses.

22 ~~"(b) Any person engaged in residential home building~~
23 ~~in Washington County shall be duly licensed by the board,~~
24 ~~without a written examination testing his or her experience~~
25 ~~and ability, by meeting the licensing requirements of Section~~
26 ~~34-14A-7, by paying the required annual license fee, and by~~

1 ~~meeting any one of the following requirements by March 1,~~
2 ~~2007:~~

3 ~~"(1) The person submits to the board an affidavit~~
4 ~~showing that the residential home builder has constructed a~~
5 ~~minimum of one residence within the year prior to March 1,~~
6 ~~2007, or five residences within the previous five years.~~

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

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

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

17 ~~"(c) (b) (1) Except as provided in this chapter, all~~
18 ~~licenses shall be issued or renewed upon the payment to the~~
19 ~~board of the annual license fee. The annual license fee shall~~
20 ~~be set by the board after it considers its cost of operation.~~
21 ~~The annual fee may be increased or decreased by the board but~~
22 ~~in no event shall the board set the annual fee at an amount~~
23 ~~which would not provide sufficient revenues to pay all the~~
24 ~~salaries, costs, and expenses incurred by the board in~~
25 ~~enforcing this chapter and promoting public health, safety,~~
26 ~~welfare, and consumer protection.~~

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

9 "(3) The annual license fee shall be for a period of
10 12 months beginning January first of each year. All license
11 fees collected by the board shall be paid into the State
12 Treasury to the credit of the Home Builders Licensure Board
13 Fund and its funds shall be subject to withdrawal only upon
14 warrant of the state Comptroller to be issued upon
15 certification of the secretary/treasurer of the board.

16 "~~(d)~~(c) Any funds remaining in the State Treasury to
17 the credit of the Home Builders Licensure Board Fund at the
18 end of each year shall be paid into the General Fund of the
19 state on or before January 15, and in each succeeding year,
20 except that should the board exercise its authority to
21 establish the ~~Homeowner's~~ Homeowners' Recovery Fund or the
22 Home Builders Property Acquisition Fund, or both, as provided
23 in this chapter, any funds remaining in the State Treasury to
24 the credit of the Home Builders Licensure Board Fund shall be
25 paid into the ~~Homeowner's~~ Homeowners' Recovery Fund or the
26 Home Builders Property Acquisition Fund, or both, of the
27 board. The board is authorized to maintain sufficient funds to

1 carry out the purposes of the ~~Homeowner's~~ Homeowners' Recovery
2 Fund and the Home Builders Property Acquisition Fund, as set
3 forth in Sections 34-14A-15 and 34-14A-18, including, but not
4 limited to, the transfer of funds between the ~~Homeowner's~~
5 Homeowners' Recovery Fund and the Home Builders Property
6 Acquisition Fund. The board is authorized, at all times, to
7 retain a sum ~~not in excess of two hundred fifty thousand~~
8 ~~dollars (\$250,000)~~ sufficient to meet any emergency that may
9 arise which may affect its efficient operation.

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

15 "§34-14A-6.

16 "This chapter does not apply to:

17 "(1) Any employee of a licensee who does not hold
18 himself or herself out for hire or engage in ~~contracting~~
19 residential home building, except as such employee of a
20 licensee.

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

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

4 "~~(4) Licensed real estate agents,~~ Real estate
5 licensees, licensed engineers, and licensed architects
6 operating within the scope of their respective licenses on
7 behalf of clients.

8 "(5) a. Owners of property when acting as their own
9 contractor and providing all material supervision themselves,
10 when building or improving one-family or two-family residences
11 on such property for the occupancy or use of such owners and
12 not offered for sale. This exception may not be transferred to
13 any other person, including, but not limited to, an agent
14 through a power of attorney.

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

20 "~~(6) This chapter does not apply to mobile~~ Mobile
21 homes or ~~to~~ any structure that is installed, inspected, or
22 regulated by the Alabama Manufactured Housing Commission or
23 the repair, improvement, or reimprovement of any such
24 structure, and shall not in any way change or interfere with
25 the duties, responsibilities, and operations of the Alabama
26 Manufactured Housing Commission as defined in Sections 24-4A-1
27 through 24-6-4.

1 "(7) Agricultural buildings, except for any
2 residence contained therein.

3 "§34-14A-7.

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

17 "(1) Experience.

18 "(2) Ability.

19 "(3) Character.

20 "(4) Business-related financial condition.

21 "a. The board may require a financial statement on a
22 form prescribed by the board and a public records search
23 directly from a credit reporting agency.

24 "b. The board may require a positive net worth or
25 other evidence of business-related financial condition
26 sufficient to reasonably satisfy the board of the applicant's
27 financial responsibility.

1 "c. The board may require that business-related
2 judgments, judgment liens, and other perfected liens, must be
3 satisfied and released.

4 "d. Any information obtained by the board pursuant
5 to this subsection relating to the financial condition of an
6 applicant shall not be public information.

7 "(5) Ability and willingness to serve the public and
8 conserve the public health and safety.

9 "(6) Any other pertinent information the board may
10 require.

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

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

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

24 "~~(b)~~ (d) The board ~~is authorized to,~~ by rule, may
25 establish or adopt, or both, education requirements and may
26 approve, or administer, or both, financially support the

1 program or programs providing residential construction
2 education ~~to fulfill the requirements.~~

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

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

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

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

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

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

26 "~~(2) (3)~~ Any building official or building inspector
27 who desires to receive an inactive license shall make and file

1 with the board 30 days prior to the next meeting of the board
2 a written application for an inactive license on a form
3 prescribed by the board. After the board accepts the
4 application, the applicant may be examined by the board at its
5 next board meeting. The board, in examining the applicant,
6 shall consider the following qualifications of the applicant
7 as satisfying the experience and ability requirements for
8 licensure:

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

14 "b. That the building inspector does any of the
15 following:

16 "1. Maintains current certification from the
17 Southern Building Code Congress International as one of the
18 following:

19 "(i) Chief building official.

20 "(ii) Deputy building official.

21 "(iii) Building inspector.

22 "(iv) Housing inspector.

23 "(v) Design professional.

24 "(vi) Plan reviewer.

25 "2. Maintains current certification from the
26 International Code Council as one of the following:

27 "(i) Certified building official.

- 1 "(ii) Building inspector.
- 2 "(iii) Residential building inspector.
- 3 "(iv) Property maintenance and housing inspector.
- 4 "(v) Building plans examiner.
- 5 "(vi) Design professional.

6 "3. Possesses sufficient building qualifications and
7 experience to receive a license, as demonstrated by
8 satisfactory evidence presented to the board.

9 "~~4.~~(4) In the event a building official or building
10 inspector holding a current inactive license applies for a
11 license, he or she may rely upon his or her inactive license
12 as evidence of the experience and ability requirements for
13 licensure under subdivisions (1) and (2) of subsection (a).

14 "§34-14A-8.

15 "(a) The board may levy and collect administrative
16 fines not to exceed five thousand dollars (\$5,000) for each
17 violation or revoke or suspend the license of any licensee
18 who, in the opinion of the board, has committed fraud or
19 deceit in obtaining a license required by this chapter, ~~or~~ who
20 has been guilty of gross negligence, incompetence, or
21 misconduct in the practice of residential home building, who
22 has engaged in the business of residential home building
23 outside the scope of the license, or who has violated this
24 chapter or a board rule. Should the board establish or adopt,
25 or both, standards of practice for residential home builders
26 within the state, as provided in Section 34-14A-12, the board
27 may suspend the license of any licensee who, in the opinion of

1 the board, has committed a violation of the standards of
2 practice and may impose any other disciplinary sanctions
3 authorized pursuant to this chapter.

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

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

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

21 "(e) The charges, unless dismissed without hearing
22 by the board as unfounded or trivial, shall be heard within
23 three months after the filing of an administrative summons and
24 complaint by the board's executive director.

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

1 "(g) The licensee charged may appear personally and
2 may be represented by counsel. He or she may cross-examine
3 witnesses against him or her and may produce evidence and
4 witnesses in his or her defense.

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

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

23 "(j) The board may issue a license to a licensee
24 whose license has been revoked, and may reinstate a suspended
25 license prior to the end of the suspension period, if four or
26 more members of the board vote in favor of the issuance or
27 reinstatement.

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

9 "§34-14A-14.

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

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

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

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

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

25 "§34-14A-15.

26 "(a) The board ~~is authorized to~~ may establish a
27 ~~Homeowner's~~ Homeowners' Recovery Fund ~~from which an~~ for the

1 purpose of consumer protection, consumer education, and
2 consumer awareness. An aggrieved homeowner may recover actual
3 economic damages, not including interest and court costs,
4 sustained within the ~~State of Alabama~~ state as the direct
5 result of conduct of a licensee in violation of this chapter
6 or the rules ~~and regulations~~ of the board from the Homeowners'
7 Recovery Fund. Any payments from the ~~Homeowner's~~ Homeowners'
8 Recovery Fund shall be subject to the following limitations
9 and conditions:

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

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

16 ~~"(3)~~ (1) The ~~Homeowner's~~ Homeowners' Recovery Fund
17 shall make payments only to homeowners who file a complaint
18 with the board pursuant to the requirements of subsection (b)
19 of Section 34-14A-8.

20 ~~"(4)~~ (2) The ~~Homeowner's~~ Homeowners' Recovery Fund
21 shall not make payments based on consent judgments.

22 ~~"(5)~~ (3) Failure of the homeowner to follow any
23 provisions of this chapter shall preclude payment from the
24 ~~Homeowner's~~ Homeowners' Recovery Fund.

25 "(b) The board, by rule, shall determine the maximum
26 amount of payment from the Homeowners' Recovery Fund for the
27 following:

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

3 "(2) Payments for claims arising out of the same
4 transaction.

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

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

20 "(2) When the notice is received, the board may
21 enter an appearance, file pleadings and appear at court
22 hearings, defend or take action it deems appropriate either on
23 the behalf and in the name of the defendant or in its own
24 name. The board may seek any appropriate method of judicial
25 review. The board may settle or compromise the claim. Any
26 expenses incurred by the board in defending, satisfying, or

1 settling any claim ~~shall~~ may be paid from the ~~Homeowner's~~
2 Homeowners' Recovery Fund.

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

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

14 "~~(1)~~a. He or she is not the spouse, child, or parent
15 of the debtor, or the personal representative of the spouse,
16 child, or parent or a shareholder, officer, or director of the
17 debtor.

18 "~~(2)~~b. He or she has obtained a judgment, as
19 described in this section, stating the amount of the judgment
20 and the amount owing on the judgment at the date of the
21 application, and, that in such action, he or she had joined
22 any and all bonding companies which issued corporate surety
23 bonds to the judgment debtor as principal and all other
24 necessary parties.

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

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

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

3 "~~c.3.~~ Any amount recovered in out-of-court
4 settlements.

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

8 "(e) In the event ~~should~~ the board ~~pay~~ pays from the
9 ~~Homeowner's~~ Homeowners' Recovery Fund any amount in settlement
10 of a claim or toward satisfaction of a judgment against a
11 licensee, ~~all licenses of the licensee may be terminated by~~
12 the board may revoke the license of the licensee and may no
13 longer recognize the experience and ability qualifications of
14 the individual licensee or the qualifying representative of
15 the licensee for licensing purposes. The board may refuse to
16 issue a new licensee to the former licensee or to recognize
17 the experience and ability qualifications of the individual
18 former licensee or the former licensee's qualifying
19 representative until ~~he or she~~ the former licensee or the
20 former licensee's qualifying representative has repaid in
21 full, plus interest at the rate of 12 percent per annum, the
22 amount paid from the ~~Homeowner's~~ Homeowners' Recovery Fund. A
23 discharge in bankruptcy shall not relieve a person from the
24 penalties and disabilities provided in this section.

25 "(f) If the balance in the ~~Homeowner's~~ Homeowners'
26 Recovery Fund is insufficient to satisfy a duly authorized
27 claim or portion of a claim, the board shall, when sufficient

1 money has been deposited in the ~~Homeowner's~~ Homeowners'
2 Recovery Fund, satisfy the unpaid claims in the order that the
3 claims were filed.

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

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

24 "(i) The limitations and conditions of payment from
25 the ~~Homeowner's~~ Homeowners' Recovery Fund as established by
26 Act 2002-72 shall not apply in any case where, prior to May 1,
27 2002, a complainant has obtained a valid judgment in a court

1 of competent jurisdiction against a licensee on the grounds
2 set out in this chapter."

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