

1 SB379  
2 199641-3  
3 By Senators Price, Sessions, Whatley, Williams, Elliott,  
4 Scofield, Chambliss and Gudger  
5 RFD: Governmental Affairs  
6 First Read: 07-MAY-19

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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 amend Sections  
12 13A-9-114, 34-8-6, 34-14A-14, 34-31-32, 34-36-16, and  
13 34-37-17, Code of Alabama 1975, to establish the Alabama State  
14 of Emergency Consumer Protection Act, to provide additional  
15 criminal penalties for certain crimes committed under certain  
16 conditions; and in connection therewith would have as its  
17 purpose or effect the requirement of a new or increased  
18 expenditure of local funds within the meaning of Amendment 621  
19 of the Constitution of Alabama of 1901, now appearing as  
20 Section 111.05 of the Official ReCompilation of the  
21 Constitution of Alabama of 1901, as amended.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 (b) A person not licensed as required by law who  
27 engages in, provides, or agrees or contracts to provide, any

1 of the following services to one or more property owners where  
2 the cumulative cost of the undertaking, inclusive of labor,  
3 materials, overhead, and profit, exceeds two thousand five  
4 hundred dollars (\$2,500) or the statutory threshold for a  
5 required license, whichever is greater, for a residential  
6 structure, commercial structure, or other structure which does  
7 not belong to the person and which is damaged, destroyed, or  
8 otherwise in need of repair or services as a result of an  
9 event for which the Governor declares a state of emergency, as  
10 defined in Section 31-9-3, Code of Alabama 1975, is guilty of  
11 a Class C felony:

12 (1) General contracting services under Section  
13 34-8-6, Code of Alabama 1975.

14 (2) Residential homebuilding services under Section  
15 34-14A-14, Code of Alabama 1975.

16 (3) Heating, air conditioning, or refrigeration  
17 contracting services under Section 34-31-32, Code of Alabama  
18 1975.

19 (4) Electrical contracting services under Section  
20 34-36-16, Code of Alabama 1975.

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

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

25 (c) A certified copy of the emergency declaration  
26 signed by the Governor shall be prima facie evidence of the

1 event giving rise to the emergency in the affected  
2 municipality or county.

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

7 (e) In addition to any other sentence the court may  
8 impose under this section, the court shall order the defendant  
9 to make restitution to the victim as a condition of probation  
10 or suspension of sentence, either within a specified period of  
11 time or in specified installments. Intentional refusal to make  
12 restitution under the order may be considered as grounds for  
13 revocation of the person's probation or suspension of  
14 sentence.

15 (f) This section does not provide any limitation or  
16 restriction on a person from providing charitable cleanup or  
17 repair services for which no license is required by law and  
18 for which no fee is charged.

19 Section 2. Sections 13A-9-114, 34-8-6, 34-14A-14,  
20 34-31-32, 34-36-16, and 34-37-17, Code of Alabama 1975, are  
21 amended to read as follows:

22 "§13A-9-114.

23 "Violations of this article shall be punished as  
24 follows:

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

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

3           "§34-8-6.

4           "(a) ~~Any~~ Except as provided in Section 1 of the act  
5 providing this amendatory language, any person, firm, or  
6 corporation not being duly authorized who shall engage in the  
7 business of general contracting in this state, except as  
8 provided for in this chapter, and any person, firm, or  
9 corporation presenting or attempting to file as its own the  
10 license certificate of another, or who shall give false or  
11 forged evidence of any kind to the board, or to any member  
12 thereof, in obtaining a certificate of license, or who falsely  
13 shall impersonate another, or who shall use an expired or  
14 revoked certificate of license shall be ~~deemed~~ guilty of a  
15 Class A misdemeanor ~~and for each offense for which he or she~~  
16 ~~is convicted shall be punished as provided by law.~~

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

23           "(b) Every person, firm, or corporation licensed  
24 pursuant to this chapter shall include his or her license  
25 number in all construction contracts, subcontracts, bids, and  
26 proposals. Any person, firm, or corporation violating this  
27 provision shall be guilty of a Class B misdemeanor ~~and shall~~

1 ~~for each offense of which he or she is convicted be punished~~  
2 ~~as provided by law.~~

3           "(c) 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 the performance of  
10 any work then being done or about to be commenced. The order  
11 shall be issued in the name of the State of Alabama under the  
12 official seal of the board. If the person, firm, or  
13 corporation to whom the board directs a cease and desist order  
14 does not cease or desist the proscribed activity, conduct,  
15 practice, or performance of work immediately, the board shall  
16 cause to issue in any court of competent jurisdiction and  
17 proper venue, a writ of injunction enjoining the person, firm,  
18 or corporation from engaging in any activity, conduct,  
19 practice, or performance of work as prohibited by this  
20 chapter. Upon showing by the board that the person, firm, or  
21 corporation has engaged or is engaged in any activity,  
22 conduct, practice, or performance of work prohibited by this  
23 chapter, the courts shall issue a temporary restraining order  
24 restraining the person, firm, or corporation from engaging in  
25 such unlawful activity, conduct, practice, or performance of  
26 work pending the hearing on a preliminary injunction, and in  
27 due course a permanent injunction shall issue after the

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

21 "(d) The submission of the contractor's current  
22 license number before considering the bid shall be sufficient  
23 evidence to relieve the owner, architect, engineer,  
24 construction manager, or awarding authority of any liability  
25 under this chapter.

26 "§34-14A-14.

1           "(a) ~~Any~~ Except as provided in Section 1 of the act  
2 providing this amendatory language, any person who undertakes  
3 or attempts to undertake the business of residential home  
4 building without holding a current and valid residential home  
5 builders license, issued by the Home Builders Licensure Board,  
6 as required by this chapter, or who knowingly presents to, or  
7 files false information with the board for the purpose of  
8 obtaining the license or who violates any law or code adopted  
9 by a county commission under this chapter shall be ~~deemed~~  
10 guilty of a Class A misdemeanor.

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

20           "(c) The board may invoke a complaint procedure  
21 against any person who violates this chapter by undertaking or  
22 attempting to undertake the business of home building without  
23 holding a current and valid residential home builders license  
24 issued by the board. Whenever it appears to the board that any  
25 residential home builder has violated or is about to violate  
26 this chapter, the board may resolve the violation by agreement  
27 with the residential home builder, may initiate a complaint



1 against the residential home builder, and may levy and collect  
2 administrative fines for violations of this chapter or the  
3 rules of the board in an amount not to exceed five thousand  
4 dollars (\$5,000) for each violation.

5 "(d) A residential home builder, who does not have  
6 the license required, shall not bring or maintain any action  
7 to enforce the provisions of any contract for residential home  
8 building which he or she entered into in violation of this  
9 chapter.

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

16 "§34-31-32.

17 "(a) Any Except as provided in Section 1 of the act  
18 providing this amendatory language, any person engaged in  
19 business as a certified contractor or performing the functions  
20 of a certified contractor in violation of this chapter shall  
21 be guilty of a Class A misdemeanor, ~~as defined by the state~~  
22 ~~criminal code.~~

23 "(b) The board may, at its discretion, impose late  
24 penalties on those certified contractors who fail to renew  
25 certificates by December 31 of each year. The board may also  
26 remove certification from any certified person who fails to  
27 renew his or her certificate by the first day of March and

1 require the person to apply for a new certificate.  
2 Furthermore, the board may at its discretion, remove, revoke,  
3 or suspend the certification from any certified contractor who  
4 provides substandard or dangerous service, repair, or  
5 installation, or who otherwise violates this chapter, and may  
6 require such person to apply for a new certification. The  
7 board may, in its discretion, also require the successful  
8 re-testing of any such person who applies for a new  
9 certification.

10 "(c) The board may reprimand, in writing, any  
11 certified contractor who provides substandard or dangerous  
12 service, repair, or installation, or who otherwise violates  
13 this chapter.

14 "(d) The board may levy and collect administrative  
15 fines for serious violations of this chapter or the rules and  
16 regulations of the board of not more than two thousand dollars  
17 (\$2,000) for each violation.

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

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

1 cease work. The board may withhold approval, for up to six  
2 months, of any application from anyone who prior to the  
3 application has been found in violation of this chapter.

4 "§34-36-16.

5 "(a) It shall be unlawful for any person to violate  
6 any provision of this chapter regulating electrical  
7 contracting, and, except as provided in Section 1 of the act  
8 providing this amendatory language, any person convicted of  
9 such violation ~~shall be punished as prescribed for~~ is guilty  
10 of a Class A misdemeanor.

11 "(b) It shall be unlawful, except as otherwise  
12 provided, on or after December 31, 2011, for a person not  
13 licensed as an electrical contractor to solicit, represent,  
14 seek to perform, or perform those tasks and functions that can  
15 only be performed by a licensed electrical contractor in  
16 accordance with this chapter.

17 "(c) Subsection (b) shall not apply to an electrical  
18 contractor who has taken an examination offered by the board  
19 within the preceding 12 months, who holds a license or permit  
20 issued by a county or municipal government to perform the  
21 tasks and functions that can only be performed by a licensed  
22 electrical contractor, and who performs those tasks and  
23 functions within the boundaries of the county or municipality  
24 that issued the license or permit.

25 "§34-37-17.

26 "(a) The board shall have the administrative  
27 authority to discipline or require a certificate holder to

1 attend training specific to violations. The board has the  
2 authority to levy civil fines or penalties to any registered  
3 apprentice, certificate holder, or legal entity registered by  
4 the board for a violation of any provision of this chapter  
5 regulating plumbers, gas fitters, or medical gas pipe fitters  
6 up to two thousand dollars (\$2,000) per violation and actual  
7 hearing cost.

8 "(b) In addition to or in lieu of the criminal  
9 penalties and administrative sanctions provided in this  
10 chapter, the board may issue an order to any person or legal  
11 entity engaged in any activity, conduct, or practice  
12 constituting a violation of this chapter, directing the person  
13 or legal entity to forthwith cease and desist from the  
14 activity, conduct, practice, or performance of any work then  
15 being performed or about to be commenced.

16 "(c) It shall be unlawful for any person or legal  
17 entity to violate any provision of this chapter regulating  
18 plumbers, gas fitters, or medical gas piping fitters. ~~Any~~  
19 Except as provided in Section 1 of the act providing this  
20 amendatory language, any person convicted of such violation  
21 ~~shall be punished as prescribed for~~ is guilty of a Class A  
22 misdemeanor."

23 Section 3. Although this bill would have as its  
24 purpose or effect the requirement of a new or increased  
25 expenditure of local funds, the bill is excluded from further  
26 requirements and application under Amendment 621, now  
27 appearing as Section 111.05 of the Official Recompilation of

1 the Constitution of Alabama of 1901, as amended, because the  
2 bill defines a new crime or amends the definition of an  
3 existing crime.

4 Section 4. This act shall become effective on the  
5 first day of the third month following its passage and  
6 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 Governmental Affairs..... 07-MAY-19

Read for the second time and placed on the calen-  
dar..... 14-MAY-19

Read for the third time and passed as amended .... 23-MAY-19

Yeas 31  
Nays 0

Patrick Harris,  
Secretary.