STATE OF TENNESSEE

PUBLIC CHAPTER NO. 198

HOUSE BILL NO. 2218

By Representatives Gilmore, Hardaway, Cooper

Substituted for: Senate Bill No. 1763

By Senators Herron, Marrero, Harper

AN ACT to amend Tennessee Code Annotated, Title 45 and Title 47, relative to certain foreclosure-related rescue services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following new part thereto:

§ 47-18-5401.

As used in this part, unless the context otherwise requires:

(1) "Foreclosure-rescue consultant" means a person who directly or indirectly makes a solicitation, representation, or offer to a homeowner to provide or perform, in return for payment of money or other valuable consideration, foreclosure-related rescue services; provided, that foreclosure-rescue consultant shall not include:

(A) A person acting under the express authority or written approval of the United States department of housing and urban development or other department or agency of the United States or this state to provide foreclosure-related rescue services; provided such person does not solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services except as expressly authorized by federal law, regulation, or rule;

(B) A charitable, not-for-profit agency or organization, as determined by the United States Internal Revenue Service under § 501(c)(3) of the Internal Revenue Code, which offers counseling or advice to an owner of residential real property in foreclosure or loan default if the agency or organization does not contract for foreclosure-related rescue services with a for-profit lender or person facilitating or engaging in foreclosure-rescue transactions; and does not solicit, charge, receive or

attempt to collect or secure payment, directly or indirectly, for foreclosure-related services;

(C) A person who holds or is owed an obligation secured by a lien on any residential real property in foreclosure if the person performs foreclosure-related rescue services in connection with this obligation or lien and the obligation or lien was not the result of or part of a proposed foreclosure reconveyance or foreclosure-rescue transaction; or

(D) A state or national bank, or its subsidiary; a state or federal savings institution, or its subsidiary; a state or federal credit union; an industrial loan and thrift company; or a licensed mortgage loan broker or originator.

(E) An attorney licensed or otherwise authorized to practice law in this state who is providing legal services to a client;

(2) "Foreclosure-related rescue services" means any service related to, or promising assistance in connection with:

(A) Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or

(B) Curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.

(3) "Foreclosure-rescue transaction" means a transaction that is designed or intended by the parties to stop, avoid, or delay foreclosure proceedings against a homeowner's residential real property;

(4) "Homeowner" means any record title owner of residential real property that is the subject of foreclosure proceedings; and

(5) "Residential real property" means improved real property used or occupied or intended to be used or occupied for residential purposes by the owner.

§ 47-18-5402.

(a) In the course of offering or providing foreclosure-related rescue services, no foreclosure-rescue consultant shall:

(1) Engage in any unfair, misleading, or deceptive acts or practices during the course of advertising, marketing, offering, selling, or contracting for foreclosure-related services;

(2) Engage in or initiate foreclosure-related rescue services without first executing a written agreement with the homeowner for foreclosure-related rescue services;

(3) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before completing or performing all services contained in the agreement for foreclosure-related rescue services;

(4) Induce or attempt to induce any consumer to enter into a contract or agreement which does not fully comply in all respects with this part; or

(5) Fail to accept and honor a consumer's request to cancel and provide any related refunds within ten (10) business days.

(b) The written agreement for foreclosure-related rescue services required by subdivision (a)(1) of this section shall be printed in at least 12-point uppercase type and signed by both parties. The agreement shall include the name, physical address, telephone number and electronic mail address of the person providing foreclosure-related rescue services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the homeowner for the services, and the date of the agreement. The date of the agreement shall not be earlier than the date the homeowner signed the agreement. The foreclosure-rescue consultant shall give the homeowner a copy of the agreement to review not less than one (1) business day before the homeowner is to sign the agreement.

(c) The homeowner has the right to cancel the written agreement without any penalty or obligation if the homeowner cancels the agreement within three (3) business days after signing the written agreement. The right to cancel may not be waived by the homeowner or limited in any manner by the foreclosure-rescue consultant. If the homeowner cancels the agreement, any payments that have been given to the foreclosure-rescue consultant shall be returned to the homeowner within ten (10) business days after receipt of the notice of cancellation.

(d) An agreement for foreclosure-related rescue services shall contain, immediately above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

HOMEOWNER'S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU. THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY

LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE. TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELLING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO _____ (NAME) AT _____ (PHYSICAL ADDRESS) OR _____ (E-MAIL ADDRESS) NO LATER THAN MIDNIGHT OF _____ (DATE). IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

(e) The inclusion of the statement does not prohibit the foreclosure-rescue consultant from giving the homeowner more time in which to cancel the agreement than is set forth in the statement, provided all other requirements of this subsection are met.

(f) The foreclosure-rescue consultant shall give the homeowner a copy of the signed agreement within three (3) hours after the homeowner signs the agreement.

(g) Any contract or agreement for foreclosure-related services that does not contain the provisions set forth herein shall be void and unenforceable as a matter of law and public policy.

SECTION 2. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following language as a new, appropriately designated subdivision:

( ) Violating the provisions of § 47-18-5402;

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 30, 2009

KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 13th day of May 2009

PHIL BREDESEN, GOVERNOR