

**PUBLIC CHAPTER NO. 908**

**HOUSE BILL NO. 185**

**By Representatives Floyd, Dennis**

Substituted for: Senate Bill No. 744

By Senators Watson, Berke

AN ACT to amend Tennessee Code Annotated, Title 16.

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

SECTION 1. Tennessee Code Annotated, Title 16, Chapter 1, is amended by adding the following language as a new, appropriately designated part:

§ 16-1-201. Fraud, deceit, intentional misrepresentation and other unconscionable or inequitable conduct, as well as the schemes and illicit activities promoted thereby, are contrary to the public policy of this state and have long been condemned by the equitable and common law defense of unclean hands. This part codifies and gives statutory effect to Tennessee's equitable and common law defense of unclean hands with respect to commercial transactions. This part is to be in aid of the development of the equitable and common law defense of unclean hands in Tennessee and not in abrogation or derogation of such equitable and common law defense which shall remain in full force and effect and shall develop concurrent with this part. It is also the intent and purpose of this part to ensure that Tennessee's equitable and common law defense of unclean hands can be given uniform effect regardless of the state in which a legal proceeding may be initiated or pending so as to protect victims of fraud, deceit, intentional misrepresentation and other unconscionable or inequitable schemes and conduct. Because the primary purpose of this part is to enable state and federal courts sitting in other states to apply Tennessee's defense of unclean hands in cases arising out of commercial transactions, no negative inference shall be drawn from the failure of this part to codify Tennessee's other equitable and common law principles or to codify the unclean hands defense with respect to cases that do not arise out of commercial transactions. This part shall be construed to give effect to its intent and purpose, and in a manner consistent with the equitable and common law principles embodied in Tennessee's defense of unclean hands statutorily codified hereby.

§ 16-1-202. As used in this part, unless the context otherwise requires:

(1) "Claim" means any:

(A) Indebtedness, account, promissory note, instrument, monies, sums or damages which is or may be claimed or asserted as payable to any person in connection with any commercial transaction or series of related commercial transactions;

(B) Property or other right which is or may be claimed or asserted by any person based on any contract or agreement, written or oral, in connection with any commercial transaction or series of related commercial transactions; any lien, encumbrance or security interest of any type or nature which is or may be asserted against the property of another person to enforce a claim for the payment of any money or indebtedness in connection with any commercial transaction or series of related commercial transactions; or

(C) Claim, action, suit or other proceeding at law or in equity which at any time is or may be pending or thereafter asserted in any court in connection with any commercial transaction or series of related commercial transactions for damages or to enforce any legal, equitable or contractual right or remedy which, in the case of any of the foregoing, is or may thereafter be asserted against another person, or by recourse against such other person's property, in connection with any commercial transaction or series of related commercial transactions, accounts, contracts, agreements, promissory notes, loans, lines of credit, instruments, deeds of trust, mortgages, security deeds, assignment of rents or leases, pledge or security agreements, or other asserted property rights or interests, in which the person asserting the claim or right, or such person's predecessor-in-interest from whom the claim or right has derived, has unclean hands;

(2) "Court" means any court of general or limited jurisdiction established pursuant to the laws of Tennessee or the laws or constitutions of the United States of America or any state or commonwealth thereof, and shall include all appellate courts having jurisdiction thereover;

(3) "Person" means any individual as well as any for-profit corporation, non-profit corporation, company, general partnership, limited partnership, limited liability company, trust, association, charity or other entity of any type or nature, whether organized under the laws of Tennessee or any other jurisdiction, foreign or domestic;

(4) "Unclean hands" means any fraud, deceit, intentional misrepresentation or other unconscionable or inequitable scheme or conduct in connection with any commercial transaction or series of related commercial transactions pursuant to which any person has or may seek financial or other gain from another person, or by recourse to such other person's property, in connection with such fraud, deceit, intentional misrepresentation or other unconscionable or inequitable scheme or conduct; and

(5) "Uniform commercial code" means the Tennessee uniform commercial code, as amended.

§ 16-1-203. If any person, or such person's predecessor-in-interest from whom the claim has derived, is found by the applicable trier of the fact in any court of competent jurisdiction to have unclean hands with respect to any claim, then such claim shall not be enforceable in such court, or any other court, unless the holder of such claim is a holder in due course of a negotiable instrument as provided in § 16-1-204 or unless such finding and the judgment, order and decree embodying such finding is overturned following timely appeal in accordance with applicable rules of civil or appellate procedure from which no further appeal may be taken. Nor may the person whose claim is determined to be unenforceable by reason of unclean hands in any proceeding before any court thereafter enforce any lien, encumbrance or security interest to enforce such claim pursuant to any deed of trust, mortgage, security deed, assignment of rents or leases, pledge agreement, security agreement or other security instrument of any kind, type or nature, unless such finding, and the judgment, order and decree in which such finding is embodied is overturned on appeal.

§ 16-1-204. Defenses based on unclean hands pursuant to this part are comprehended by, and may be asserted by an obligor pursuant to § 47-3-305, except as against a holder in due course of a negotiable instrument, as each such term is defined in the uniform commercial code, unless otherwise permitted under § 47-3-305(a)(1).

§ 16-1-205. Any court of competent jurisdiction may issue any temporary, preliminary or permanent injunctive relief or restraining order which may be appropriate in the circumstances in accordance with the applicable procedural rules and requirements governing such proceedings before such court, to declare, uphold and enforce the provisions of this part, and to maintain the status quo pending the adjudication of the rights of any person under this part prior to the entry of any judgment, order or decree which may be entered by such court and during the pendency of any appeals which may be permitted therefrom.

§ 16-1-206. The defense of unclean hands codified by this part may be pled by any person in any court, and shall apply to all cases, suits, actions, and other proceedings arising out of any commercial transaction or series of related commercial transactions before any court established under Tennessee law, as well as all courts of general or limited jurisdiction established pursuant to the constitutions or laws of the United States of America or any state or commonwealth thereof, if the fraud, deceit, intentional misrepresentation or other unconscionable or inequitable scheme or conduct was made or directed by any person from within Tennessee, or was aimed or directed by a person outside Tennessee at or against a person who is either a resident within Tennessee, or conducting business or charitable operations and activities within Tennessee and such fraud, deceit, intentional misrepresentation, or other unconscionable or inequitable scheme or conduct affects or would damage the business or charitable operations and activities conducted by such person within Tennessee.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

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

**PASSED: April 29, 2010**

  
KENT WILLIAMS, SPEAKER  
HOUSE OF REPRESENTATIVES

  
RON RAMSEY  
SPEAKER OF THE SENATE

**APPROVED this 12th day of May 2010**

  
PHIL BREDEESEN, GOVERNOR