MISSISSIPPI LEGISLATURE

By: Representative Hines

To: Banking and Financial Services; Ways and Means

HOUSE BILL NO. 75

AN ACT TO CREATE THE MISSISSIPPI FORECLOSURE RESCUE BUSINESS ACT; TO EXPRESS LEGISLATIVE FINDINGS AND INTENT; TO DEFINE CERTAIN TERMS; TO PROHIBIT CERTAIN ACTS; TO REQUIRE WRITTEN AGREEMENTS REGARDING FORECLOSURE-RELATED RESCUE SERVICES; TO REQUIRE WRITTEN AGREEMENTS REGARDING FORECLOSURE-RELATED TRANSACTIONS; TO PROVIDE A REBUTTABLE PRESUMPTION REGARDING FORECLOSURE-RELATED TRANSACTIONS; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as the "Mississippi Foreclosure Rescue Business Act."

SECTION 2. The Legislature finds that homeowners who are in default on their mortgages, in foreclosure, or at risk of losing their homes due to nonpayment of taxes may be vulnerable to fraud, deception, and unfair dealings with foreclosure-rescue consultants or equity purchasers. The intent of this act is to provide a homeowner with information necessary to make an informed decision regarding the sale or transfer of his or her home to an equity purchaser. It is the further intent of this act to require that foreclosure-related rescue services agreements be expressed in writing in order to safeguard homeowners against deceit and financial hardship; to ensure, foster, and encourage fair dealing in the sale and purchase of homes in foreclosure or default; to prohibit representations that tend to mislead; to prohibit or restrict unfair contract terms; to provide a cooling-off period for homeowners who enter into contracts for services related to saving their homes from foreclosure or preserving their rights to possession of their homes; to afford homeowners a reasonable and meaningful opportunity to rescind sales to equity purchasers; and
to preserve and protect home equity for the homeowners of this state.

**SECTION 3.** The following words and phrases shall have the meanings ascribed in this section, unless the context clearly indicates otherwise:

(a) "Equity purchaser" means a person who acquires a legal, equitable, or beneficial ownership interest in any residential real property as a result of a foreclosure-rescue transaction. The term does not apply to a person who acquires the legal, equitable, or beneficial interest in that property:

(i) By a certificate of title from a foreclosure sale conducted under a sale of real property under an order or judgment;

(ii) At a sale of property authorized by statute;

(iii) By order or judgment of any court;

(iv) From a spouse, parent, grandparent, child, grandchild, or sibling of the person or the person's spouse; or

(v) As a deed in lieu of foreclosure, a workout agreement, a bankruptcy plan, or any other agreement between a foreclosing lender and a homeowner.

(b) "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. The term does not apply to:

(i) A person excluded under Section 75-24-7.

(ii) 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.

(iii) A charitable, not-for-profit agency or organization, as determined by the United States Internal Revenue
Service under Section 501(c)(3) of the Internal Revenue Code that 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.

(iv) 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.

(v) A financial institution, which means a state or federal savings or thrift association, bank, savings bank, trust company or credit union, or an international bank agency, international banking organization, international branch, international representative office or international administrative office, or an agreement corporation operating under Section 25 of the Federal Reserve Act, 12 USCS 601 et seq., or an Edge Act corporation organized under Section 25(a) of the Federal Reserve Act, 12 USCS 611 et seq.

(vi) A licensed mortgage broker or mortgage lender that provides mortgage counseling or advice regarding residential real property in foreclosure, which counseling or advice is within the scope of services set forth in Section 81-18-1 et seq. and is provided without payment of money or other consideration other than a loan origination fee.

(vii) An attorney licensed to practice law in this state who provides foreclosure-related rescue services as an ancillary matter to the attorney's representation of a homeowner as a client.
(c) "Foreclosure-related rescue services" means any good or service related to, or promising assistance in connection with:

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

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

(d) "Foreclosure-rescue transaction" means a transaction:

(i) By which residential real property in foreclosure is conveyed to an equity purchaser and the homeowner maintains a legal or equitable interest in the residential real property conveyed, including, without limitation, a lease option interest, an option to acquire the property, an interest as beneficiary or trustee to a land trust, or other interest in the property conveyed; and

(ii) That is designed or intended by the parties to stop, avoid, or delay foreclosure proceedings against a homeowner's residential real property.

(e) "Homeowner" means the record title owner of residential real property.

(f) "Residential real property" means real property consisting of one-family to four-family dwelling units.

(g) "Residential real property in foreclosure" means residential real property against which there is an outstanding notice of the pendency of foreclosure proceedings recorded under Section 11-47-1 et seq.

SECTION 4. In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:
(a) Engage in or initiate foreclosure-related rescue services without first executing a written agreement with the homeowner for foreclosure-related rescue services; or
(b) 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.

SECTION 5. (1) The written agreement for foreclosure-related rescue services must be printed in at least 12-point uppercase type and signed by both parties. The agreement must include the name and 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 may not be earlier than the date the homeowner signed the agreement. The foreclosure-rescue consultant must 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.

(2) 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 must be returned to the homeowner within ten (10) business days after receipt of the notice of cancellation.

(3) An agreement for foreclosure-related rescue services must 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 THREE (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 TEN (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 CANCELING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO____________________(NAME) AT ______________________(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.

(4) 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.

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

SECTION 6. (1) (a) A foreclosure-rescue transaction must include a written agreement prepared in at least 12-point uppercase type that is completed, signed, and dated by the homeowner and the equity purchaser before executing any instrument from the homeowner to the equity purchaser quitclaiming, assigning, transferring, conveying, or encumbering an interest in
the residential real property in foreclosure. The equity purchaser must give the homeowner a copy of the completed agreement within three (3) hours after the homeowner signs the agreement. The agreement must contain the entire understanding of the parties and must include:

(i) The name, business address, and telephone number of the equity purchaser.

(ii) The street address and full legal description of the property.

(iii) Clear and conspicuous disclosure of any financial or legal obligations of the homeowner that will be assumed by the equity purchaser.

(iv) The total consideration to be paid by the equity purchaser in connection with or incident to the acquisition of the property by the equity purchaser.

(v) The terms of payment or other consideration, including, but not limited to, any services that the equity purchaser represents will be performed for the homeowner before or after the sale.

(vi) The date and time when possession of the property is to be transferred to the equity purchaser.

(b) A foreclosure-rescue transaction agreement must contain, above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

I UNDERSTAND THAT UNDER THIS AGREEMENT I AM SELLING MY HOME TO THE OTHER UNDERSIGNED PARTY.

(c) A foreclosure-rescue transaction agreement must state the specifications of any option or right to repurchase the residential real property in foreclosure, including the specific amounts of any escrow payments or deposit, down payment, purchase price, closing costs, commissions, or other fees or costs.
(d) A foreclosure-rescue transaction agreement must comply with all applicable provisions of 15 USCS 1600 et seq. and related regulations.

(2) The homeowner may cancel the foreclosure-rescue transaction agreement without penalty if the homeowner notifies the equity purchaser of the cancellation no later than 5:00 p.m. on the third business day after signing the written agreement.

Any monies paid by the equity purchaser to the homeowner or by the homeowner to the equity purchaser must be returned at cancellation. The right to cancel does not limit or otherwise affect the homeowner's right to cancel the transaction under any other law. The right to cancel may not be waived by the homeowner or limited in any way by the equity purchaser. The equity purchaser must give the homeowner, at the time the written agreement is signed, a notice of the homeowner's right to cancel the foreclosure-rescue transaction as set forth in this subsection. The notice, which must be set forth on a separate cover sheet to the written agreement that contains no other written or pictorial material, must be in at least 12-point uppercase type, double-spaced, and read as follows:

NOTICE TO THE HOMEOWNER/SELLER

PLEASE READ THIS FORM COMPLETELY AND CAREFULLY. IT CONTAINS VALUABLE INFORMATION REGARDING CANCELLATION RIGHTS.

BY THIS CONTRACT, YOU ARE AGREEING TO SELL YOUR HOME. YOU MAY CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. OF THE THIRD BUSINESS DAY FOLLOWING RECEIPT OF THIS NOTICE. THIS CANCELLATION RIGHT MAY NOT BE WAIVED IN ANY MANNER BY YOU OR BY THE PURCHASER.

ANY MONEY PAID DIRECTLY TO YOU BY THE PURCHASER MUST BE RETURNED TO THE PURCHASER AT CANCELLATION. ANY MONEY PAID BY YOU TO THE PURCHASER MUST BE RETURNED TO YOU AT CANCELLATION.

TO CANCEL, SIGN THIS FORM AND RETURN IT TO THE PURCHASER BY 5:00 P.M. ON ______ (DATE) AT _____________________ (ADDRESS).
IT IS BEST TO MAIL IT BY CERTIFIED MAIL OR OVERNIGHT DELIVERY, RETURN RECEIPT REQUESTED, AND TO KEEP A PHOTOCOPY OF THE SIGNED FORM AND YOUR POST OFFICE RECEIPT.

I (we) cancel this transaction.

______________________________________Seller's Signature
________________________________________Printed Name of Seller
______________________________________Seller's Signature
________________________________________Printed Name of Seller
________________________________________Date

(3) In any foreclosure-rescue transaction in which the homeowner is provided the right to repurchase the residential real property, the homeowner has a thirty-day right to cure any default of the terms of the contract with the equity purchaser, and this right to cure may be exercised on up to three (3) separate occasions. The homeowner's right to cure must be included in any written agreement required by this subsection.

(4) In any foreclosure-rescue transaction, before or at the time of conveyance, the equity purchaser must fully assume or discharge any lien in foreclosure as well as any prior liens that will not be extinguished by the foreclosure.

(5) If the homeowner has the right to repurchase the residential real property, the equity purchaser must verify and be able to demonstrate that the homeowner has or will have a reasonable ability to make the required payments to exercise the option to repurchase under the written agreement. For purposes of this subsection, there is a rebuttable presumption that the homeowner has a reasonable ability to make the payments required to repurchase the property if the homeowner's monthly payments for primary housing expenses and regular monthly principal and interest payments on other personal debt do not exceed sixty percent (60%) of the homeowner's monthly gross income.

(6) If the homeowner has the right to repurchase the residential real property, the price the homeowner pays may not be
unconscionable, unfair, or commercially unreasonable. A rebuttable presumption, solely between the equity purchaser and the homeowner, arises that the foreclosure-rescue transaction was unconscionable if the homeowner's repurchase price is greater than seventeen percent (17%) per annum more than the total amount paid by the equity purchaser to acquire, improve, maintain, and hold the property. Unless the repurchase agreement or a memorandum of the repurchase agreement is recorded in accordance with state law, the presumption arising under this subsection shall not apply against creditors or subsequent purchasers for a valuable consideration and without notice.

SECTION 7. (1) Any foreclosure-rescue transaction involving a lease option or other repurchase agreement creates a rebuttable presumption, solely between the equity purchaser and the homeowner, that the transaction is a loan transaction and the conveyance from the homeowner to the equity purchaser is a mortgage. Unless the lease option or other repurchase agreement, or a memorandum of the lease option or other repurchase agreement, is recorded in accordance with state law, the presumption created under this subsection shall not apply against creditors or later purchasers for a valuable consideration and without notice.

(2) For the purpose of this section, a mortgage is all conveyances, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether the instrument is from the debtor to the creditor or from the debtor to some third person in trust for the creditor.

(3) However, no such conveyance shall be deemed or held to be a mortgage, as against a bona fide purchaser or mortgagee, for value without notice, holding under the grantee.

SECTION 8. A person who violates any provision of this act commits an unfair and deceptive trade practice as defined in
Section 75-24-1 et seq. Violators are subject to the penalties and remedies provided in Section 75-24-1 et seq. including, but not limited to, a monetary penalty not to exceed Fifteen Thousand Dollars ($15,000.00) per violation.

SECTION 9. The provisions of this act shall be codified in Chapter 24 of Title 75, Mississippi Code of 1972.

SECTION 10. This act shall take effect and be in force from and after July 1, 2012.