

**AMENDMENT TO H.R. 1728, AS REPORTED
OFFERED BY Ms. MOORE OF WISCONSIN AND Ms.
MATSUI OF CALIFORNIA**

Add at the end the following new title (and conform
the table of contents accordingly):

1 **TITLE VIII—MORTGAGE**
2 **FORECLOSURE RESCUE FRAUD**

3 **SEC. 801. FTC RULEMAKING AUTHORITY ON UNFAIR AND**
4 **DECEPTIVE INVOLVING MORTGAGE FORE-**
5 **CLOSURE RESCUE SCAMS.**

6 (a) **RULEMAKING.—**

7 (1) **IN GENERAL.—**The Federal Trade Commis-
8 sion shall conduct a rulemaking proceeding, begin-
9 ning no later than 90 days after the date of the en-
10 actment of this Act, with respect to unfair or decep-
11 tive acts or practices involving mortgage foreclosure
12 rescue, in accordance with section 553 of title 5,
13 United States Code.

14 (2) **EXCLUSION.—**A rule described in para-
15 graph (1) shall not apply to an entity that is not
16 subject to enforcement by the Commission under the
17 Federal Trade Commission Act.

18 (3) **ENFORCEMENT.—**

1 (A) VIOLATIONS.—Any violation of a rule
2 prescribed under this subsection shall be treat-
3 ed as a violation of a rule under section 18 of
4 the Federal Trade Commission Act (15 U.S.C.
5 57a) regarding unfair or deceptive acts or prac-
6 tices.

7 (B) POWERS AND MANNER OF ENFORCE-
8 MENT.—The Federal Trade Commission shall
9 enforce any rule prescribed under this sub-
10 section in the same manner, by the same
11 means, and with the same jurisdiction, powers,
12 and duties as though all applicable terms and
13 provisions of the Federal Trade Commission
14 Act were incorporated into and made part of
15 this section.

16 (4) CONTRACT DISCLOSURES.—The Federal
17 Trade Commission shall include in the rule pre-
18 scribed under this subsection the following disclosure
19 requirements:

20 (A) NATURE OF CONTRACT AND SERV-
21 ICES.—Any foreclosure rescue service related to
22 the foreclosure of residential real property may
23 be provided to a homeowner only pursuant to a
24 written contract that contains clear disclosure

1 regarding the nature of the contract and the
2 total amount and terms of compensation.

3 (B) RIGHT TO CANCEL CONTRACT.—Any
4 contract referred to in subparagraph (A) shall
5 contain a clearly disclosed right for the home-
6 owner to cancel within 3 business days with no
7 penalty or obligation.

8 (5) NO PREEMPTION.—No rule prescribed
9 under this subsection may be construed as pre-
10 empting any provision of the law of any State.

11 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
12 ERAL.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (6), a State, as *parens patriae*, may bring a
15 civil action on behalf of its residents in an appro-
16 priate State or district court of the United States to
17 enforce the provisions of the rule prescribed under
18 subsection (a) to obtain penalties and relief provided
19 under such subsection whenever the attorney general
20 of the State has reason to believe that the interests
21 of the residents of the State have been or are being
22 threatened or adversely affected by a violation of the
23 rule promulgated under subsection (a).

24 (2) NOTICE.—

1 (A) NOTICE TO COMMISSION.—The State
2 shall serve written notice to the Commission of
3 any civil action under paragraph (1) at least 60
4 days prior to initiating such civil action.

5 (B) COPY OF COMPLAINT.—The notice
6 served under subparagraph (A) shall include a
7 copy of the complaint to be filed to initiate such
8 civil action, except that if it is not feasible for
9 the State to provide such prior notice, the State
10 shall provide notice immediately upon insti-
11 tuting such civil action.

12 (3) INTERVENTION BY FTC.—Upon receiving
13 the notice required by paragraph (2), the Commis-
14 sion may intervene in such civil action and upon in-
15 tervening—

16 (A) be heard on all matters arising in such
17 civil action;

18 (B) remove the action to the appropriate
19 United States district court; and

20 (C) file petitions for appeal of a decision in
21 such civil action.

22 (4) SAVINGS CLAUSE.—No provision of this sec-
23 tion shall be construed as—

24 (A) preventing the attorney general of a
25 State from exercising the powers conferred on

1 the attorney general by the laws of such State
2 to conduct investigations or to administer oaths
3 or affirmations or to compel the attendance of
4 witnesses or the production of documentary and
5 other evidence; or

6 (B) prohibiting the attorney general of a
7 State, or other authorized State officer, from
8 proceeding in State or Federal court on the
9 basis of an alleged violation of any civil or
10 criminal statute of that State.

11 (5) VENUE; SERVICE OF PROCESS; JOINDER.—

12 In a civil action brought under paragraph (1)—

13 (A) the venue shall be a judicial district in
14 which the lender or a related party operates or
15 is authorized to do business;

16 (B) process may be served without regard
17 to the territorial limits of the district or of the
18 State in which the civil action is instituted; and

19 (C) a person who participated with a lend-
20 er or related party to an alleged violation that
21 is being litigated in the civil action may be
22 joined in the civil action without regard to the
23 residence of the person.

24 (6) PREEMPTIVE ACTION BY FTC.—Whenever a
25 civil action or an administrative action has been in-

1 stituted by or on behalf of the Commission for viola-
2 tion of any rule described under (1), no State may,
3 during the pendency of such action instituted by or
4 on behalf of the Commission, institute a civil action
5 under paragraph (1) against any defendant named
6 in the complaint in such action for violation of any
7 rule as alleged in such complaint.

8 (7) AWARD OF COSTS AND FEES.—If the attor-
9 ney general of a State prevails in any civil action
10 under paragraph (1), the State may recover reason-
11 able costs and attorney fees from the lender or re-
12 lated party.

