

By: Representatives Hines, Clark, Johnson

To: Banking and Financial  
Services

## HOUSE BILL NO. 935

1 AN ACT TO ESTABLISH THE HOMEOWNER'S EMERGENCY MORTGAGE  
2 ASSISTANCE PROGRAM, WHICH SHALL BE ADMINISTERED BY THE MISSISSIPPI  
3 HOME CORPORATION; TO AUTHORIZE THE CORPORATION TO MAKE LOANS TO  
4 MISSISSIPPI RESIDENTS WHO ARE ELIGIBLE UNDER THE ACT; TO PROVIDE  
5 THAT BEFORE A MORTGAGEE MAY ACCELERATE THE MATURITY OF A MORTGAGE  
6 OBLIGATION COVERED UNDER THE ACT OR BEGIN ANY MORTGAGE  
7 FORECLOSURE, CERTAIN NOTICE MUST BE GIVEN TO THE MORTGAGOR AND A  
8 DETERMINATION MUST HAVE BEEN MADE ON THE MORTGAGOR'S APPLICATION  
9 FOR EMERGENCY MORTGAGE ASSISTANCE PAYMENTS; TO PROVIDE THAT  
10 FORECLOSURE ACTIONS ON MORTGAGES COVERED UNDER THE ACT SHALL BE  
11 TEMPORARILY STAYED; TO SPECIFY THE REQUIREMENTS FOR GIVING NOTICE  
12 TO THE MORTGAGOR; TO SPECIFY THE REQUIREMENTS FOR ELIGIBILITY FOR  
13 ASSISTANCE WITH RESPECT TO A MORTGAGE UNDER THE ACT; TO PROVIDE  
14 THAT THE CORPORATION SHALL PAY TO A MORTGAGEE THE FULL AMOUNT DUE  
15 UNDER THE TERMS OF A MORTGAGE OF A MORTGAGOR WHO IS ELIGIBLE FOR  
16 ASSISTANCE UNDER THE ACT; TO PROVIDE THAT THE CORPORATION SHALL  
17 ENTER INTO AGREEMENTS WITH MORTGAGORS WHO RECEIVE ASSISTANCE UNDER  
18 THE ACT FOR THE REPAYMENT OF THAT ASSISTANCE; TO REQUIRE ALL  
19 MORTGAGORS WHO RECEIVE ASSISTANCE UNDER THE ACT TO RECEIVE  
20 CONSUMER CREDIT COUNSELING; TO CREATE THE HOMEOWNER'S EMERGENCY  
21 MORTGAGE ASSISTANCE FUND IN THE STATE TREASURY; AND FOR RELATED  
22 PURPOSES.

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

24 **SECTION 1.** (1) The Legislature finds that:

25 (a) The State of Mississippi is facing a large number  
26 of homeowners behind on their mortgage payments and facing  
27 mortgage foreclosure;

28 (b) As a result of these adverse economic conditions,  
29 the capacity of many homeowners to continue to make mortgage  
30 payments has deteriorated and may further deteriorate in the  
31 months ahead, leading to the possibility of widespread mortgage  
32 foreclosures and distress sales of homes;

33 (c) Many of these homeowners could retain their homes  
34 if they received temporary financial assistance until economic  
35 conditions improve; and



36 (d) A program is needed to prevent similar emergencies  
37 in the future.

38 (2) It is the purpose of this act to improve notice  
39 requirements and to establish a program that will, through  
40 emergency mortgage assistance payments, prevent widespread  
41 mortgage foreclosures and distress sales of homes that result from  
42 default caused by circumstances beyond a homeowner's control.

43 **SECTION 2.** (1) There is established the Homeowner's  
44 Emergency Mortgage Assistance Program. Under the program, the  
45 Mississippi Home Corporation, hereinafter referred to as the  
46 "agency," may make loans secured by liens on residential real  
47 property located in Mississippi to residents of Mississippi  
48 eligible for those loans as described in this act.

49 (2) The agency shall carry out the Homeowner's Emergency  
50 Mortgage Assistance Program established by this act. Within sixty  
51 (60) days after the effective date of this act, the agency shall  
52 adopt program guidelines for the implementation of this act. The  
53 agency shall report annually to the Legislature on the  
54 effectiveness of the program in accomplishing the purposes of this  
55 act.

56 (3) The agency shall develop uniform notices and rules and  
57 regulations in order to implement the provisions of this act.

58 (4) The agency shall designate and approve nonprofit  
59 consumer credit counseling agencies in each county to be available  
60 to assist the agency in implementing the provisions of this act  
61 including, but not limited to, mandated counseling. A "consumer  
62 credit counseling agency" shall be defined for the purpose of this  
63 act as a nonprofit consumer credit counseling agency located in  
64 Mississippi that is approved by the agency or a housing counseling  
65 agency certified by the United States Department of Housing and  
66 Urban Development.

67 **SECTION 3.** (1) Before any mortgagee may accelerate the  
68 maturity of any mortgage obligation covered under this act, begin



69 any legal action including mortgage foreclosure to recover under  
70 that obligation, or take possession of any security of the  
71 mortgage debtor for that mortgage obligation, the mortgagee shall  
72 give the mortgagor notice as described in Section 4 of this act.  
73 The notice shall be given in a form and manner prescribed by the  
74 agency.

75 (2) A mortgagee shall not accelerate the maturity of any  
76 mortgage obligation covered under this act, begin legal action  
77 including mortgage foreclosure to recover under that obligation,  
78 or take possession of any security of the mortgage debtor for that  
79 mortgage obligation until a determination has been made on a  
80 mortgagor's application for emergency mortgage assistance  
81 payments, or the applicable time periods provided for in Section 4  
82 of this act have expired, whichever is earlier.

83 (3) All pending foreclosure actions by mortgagees or  
84 mortgages covered under this act in which foreclosure sales have  
85 not been consummated on the effective date of this act shall be  
86 temporarily stayed. The notice provided in Section 4 of this act  
87 shall be given to all mortgagors against whom those foreclosure  
88 actions are pending on the effective date of this act. The stay  
89 shall extend until the applicable time limits provided for in  
90 Section 4 of this act have expired or a mortgagor's request for  
91 assistance has been denied by the agency, whichever is earlier.

92 **SECTION 4.** (1) Any mortgagee who desires to foreclose upon  
93 a mortgage shall send by registered mail to the mortgagor at his  
94 or her last-known address the two (2) notices provided in  
95 subsection (2).

96 (2) The agency shall prepare uniform notices for purposes of  
97 this section as follows:

98 (a) When the mortgagor first enters default, the  
99 mortgagee shall send to the mortgagor a notice of default, which  
100 advises the mortgagor of his delinquency or other default under  
101 the mortgage and includes the following:



102 (i) A statement advising the mortgagor of his  
103 delinquency or other default under the mortgage and information  
104 about the nature of the default, when and how to cure the default,  
105 and what will happen if the mortgagor does not cure the default.

106 (ii) Notice that the mortgagor should contact the  
107 mortgagee who sent the notice or a consumer credit counseling  
108 agency to attempt to resolve the delinquency or default by  
109 restructuring the loan payment schedule or otherwise.

110 (iii) Contact information for the mortgagee's  
111 individual and/or department with authority to design a loss  
112 mitigation option for that mortgagor.

113 (iv) A list of consumer credit counseling agencies  
114 with the phone number, mailing address and physical address of  
115 each.

116 (v) A list of services available to help the  
117 mortgagor avoid foreclosure, including loss mitigation options and  
118 counseling.

119 (b) If the mortgagor is at least sixty (60) days  
120 contractually delinquent in his mortgage payments or is in  
121 violation of any other provision of the mortgage, the mortgagee  
122 shall send a notice of intention to foreclose to the mortgagor at  
123 least ninety (90) days before the scheduled foreclosure sale. The  
124 notice to the mortgagor shall include:

125 (i) A statement advising the mortgagor of his  
126 delinquency or other default under the mortgage and that the  
127 mortgagor has thirty (30) days to have a face-to-face meeting with  
128 the mortgagee who sent the notice or a consumer credit counseling  
129 agency to attempt to resolve the delinquency or default by  
130 restructuring the loan payment schedule or otherwise.

131 (ii) A statement that if the mortgagor is unable  
132 to resolve the delinquency or default within thirty (30) calendar  
133 days of the mortgagor's first contract with either the mortgagee  
134 or a consumer credit counseling agency, and unless the agency has



135 published notice that there are no funds in the homeowner's  
136 emergency mortgage assistance fund, notice that the mortgagor may  
137 apply to the agency or its duly authorized agent at the address  
138 and phone number listed in the notice in order to obtain an  
139 application and information regarding the homeowner's emergency  
140 mortgage assistance program.

141 (iii) A list of consumer credit counseling  
142 agencies.

143 (iv) Information about the nature of the default,  
144 when and how to cure the default and what will happen if the  
145 mortgagor does not cure the default.

146 (v) A list of services available in addition to  
147 the homeowner's emergency mortgage assistance program to help the  
148 mortgagor avoid foreclosure, including loss mitigation options,  
149 counseling programs, and other existing default loan programs.

150 (vi) Contact information for the mortgagee's  
151 individual and/or department with authority to design a loss  
152 mitigation option for that mortgagor.

153 (vii) Details of the scheduled foreclosure sale,  
154 including the date, time and location of the sale.

155 (3) At least ninety (90) days before the scheduled  
156 foreclosure sale, the mortgagee must send a notice of intention to  
157 foreclose to all lienholders, cosigners and tenants of the subject  
158 property by registered mail to the address(es) of those parties.

159 (4) If the mortgagor meets with a consumer credit counseling  
160 agency, the consumer credit counseling agency shall promptly  
161 notify all of the mortgagees secured by the mortgagor's real  
162 property, and no mortgagee so notified shall commence any  
163 foreclosure action against the mortgagor's real property for a  
164 period not to exceed thirty (30) calendar days from the date that  
165 the mortgagee first meets with the consumer credit counseling  
166 agency. If the mortgagor applies for mortgage assistance  
167 payments, the agency shall promptly notify all of the mortgagees



168 secured by the mortgagor's real property. The agency shall make a  
169 determination of eligibility within sixty (60) calendar days of  
170 receipt of the mortgagor's application. During the time that the  
171 application is pending, no mortgagee may commence foreclosure  
172 action to foreclose upon its mortgage with the mortgagor.

173 (5) After the notice of intent to foreclose is sent, if the  
174 mortgagor fails to meet with the mortgagee or consumer credit  
175 counseling agency or meet any of the time limitations specified in  
176 the notices, or if the mortgagor's application for mortgage  
177 assistance payments is denied, the mortgagee may at any time  
178 thereafter take any legal action to enforce the mortgage without  
179 any further restriction or requirements under this act. Financial  
180 institutions shall not be the duly authorized agents of the agency  
181 and shall not make the decision on the approval of assistance  
182 under this act.

183 **SECTION 5.** (1) No assistance may be made with respect to a  
184 mortgage under this act unless all of the following are  
185 established and documented:

186 (a) The property securing the mortgage, or other  
187 security interest in the case of units in cooperative or  
188 condominium projects, is a one-family residence, or two-family  
189 owner-occupied residence including one-family units in a  
190 condominium project or a membership interest and occupancy  
191 agreement in a cooperative housing project, is the principal  
192 residence of the mortgagor and is located in this state.

193 (b) (i) Any mortgagee has indicated to the mortgagor  
194 its intention to foreclose; or

195 (ii) Payments under any mortgage have been  
196 contractually delinquent for at least sixty (60) days.

197 (c) The mortgagor is a permanent resident of this state  
198 and is suffering financial hardship due to circumstances beyond  
199 the mortgagor's control that render the mortgagor unable to



200 correct the delinquency or delinquencies within a reasonable time  
201 and make full mortgage payments.

202 (d) The agency has determined that there is a  
203 reasonable prospect that the mortgagor will be able to resume full  
204 mortgage payments after the assistance payment(s) are provided  
205 under this act.

206 (e) The mortgagor has applied to the agency for  
207 assistance on an application form prescribed by the agency for  
208 this use that includes a financial statement disclosing all assets  
209 and liabilities of the mortgagor, whether singly or jointly held,  
210 and all household income regardless of source. Any applicant who  
211 intentionally misrepresents any financial information in  
212 conjunction with the filing of an application for assistance under  
213 this act may be denied assistance or required to immediately repay  
214 any amount of assistance made as a result of that  
215 misrepresentation and the mortgagee may at any time thereafter  
216 take any legal action to enforce the mortgage without any further  
217 restrictions or requirements under this act.

218 (f) The mortgagor's household income is one hundred  
219 twenty percent (120%) or less of the area median income, as  
220 defined by the United States Department of Housing and Urban  
221 Development.

222 (g) The mortgagee is not prevented by law from  
223 foreclosing upon the mortgage.

224 (h) The agency has determined, based on the mortgagor's  
225 financial statement, that the mortgagor has insufficient household  
226 income or net worth to correct the delinquency or delinquencies  
227 within a reasonable period of time and make full mortgage  
228 payments.

229 (i) Except for the current delinquency, the mortgagor  
230 shall have had a favorable residential mortgage credit history for  
231 the previous three (3) years. This requirement shall mean that if  
232 the mortgagor has been more than three (3) consecutive months in



233 arrears on a residential mortgage within the previous three (3)  
234 years, he shall be ineligible for assistance. Unless the  
235 mortgagor can demonstrate that the prior delinquency was the  
236 result of financial hardship due to circumstances beyond his  
237 control.

238 (j) For purposes of this section, in order to determine  
239 whether the financial hardship is due to circumstances beyond the  
240 mortgagor's control, the agency may consider information regarding  
241 the mortgagor's employment record, credit history and current  
242 income.

243 (k) The mortgagor agrees to participate in required  
244 homeowner counseling.

245 (l) The mortgagor meets any other procedural  
246 requirements established by the agency.

247 (2) Upon a determination that the conditions of eligibility  
248 described in subsection (1) have been met by a mortgagor and money  
249 is available in the Homeowner's Emergency Mortgage Assistance  
250 fund, the mortgagor shall become eligible for the assistance  
251 described in Section 6 of this act. If the agency determines that  
252 a mortgagor has not met the conditions of eligibility described in  
253 subsection (1), the mortgagor shall be prohibited from reapplying  
254 for assistance under this act for a period of six (6) months from  
255 the date of that determination unless there is a material change  
256 in circumstances. However, nothing in this subsection shall  
257 prohibit any mortgagee from beginning foreclosure action to  
258 enforce the mortgage without any further restriction or  
259 requirement under this act whenever the agency determines that the  
260 mortgagor is ineligible for assistance as provided in this  
261 section.

262 **SECTION 6.** (1) If the agency determines that a mortgagor is  
263 eligible for assistance under this act, the agency shall pay  
264 directly to each mortgagee secured by the mortgagor's real estate  
265 payments on behalf of the mortgagor. The agency shall pay to each





266 mortgagee the full amount then due to that mortgagee under the  
267 terms of the mortgage without regard to any acceleration under the  
268 mortgage, or the full amount of any alternate mortgage payments  
269 agreed to by the mortgagee and mortgagor. This amount shall  
270 include, but not be limited to, the amount of principal, interest,  
271 taxes, assessment, ground rents, hazard insurance, any mortgage  
272 insurance or credit insurance premiums. The payment made by the  
273 agency to each mortgagee shall be an amount that makes each  
274 mortgage current and pays reasonable costs and reasonable  
275 attorney's fees already incurred by the mortgagee. If the  
276 mortgagor is receiving emergency mortgage assistance under a  
277 program other than that established in this act, the amount of the  
278 payment that he or she is required to make to the agency under  
279 this act shall take into consideration the amount of assistance  
280 that he or she is receiving under those other programs.

281 (2) The amount paid by the agency to the mortgagee on behalf  
282 of the mortgagor to bring the mortgage current shall be secured by  
283 a mortgage lien on the property and by such other obligation as  
284 the agency may require. The priority of any lien obtained by the  
285 agency under this act shall be determined in the same manner as  
286 the lien of a general secured creditor of the mortgagor. The lien  
287 or other security interest of the agency shall not be deemed to  
288 take priority over any other secured lien or secured interest in  
289 effect against the mortgagor's property on the date assistance  
290 payments begin. The agency may allow subordination of the  
291 mortgage assistance lien if that subordination is necessary to  
292 permit the mortgagor to obtain a home improvement loan for repairs  
293 necessary to preserve the property. In cases of joint mortgagors  
294 who are husband and wife, where only one (1) spouse who is an  
295 occupant of the mortgaged premises makes application for and  
296 receives assistance under this act, the lien to secure repayment  
297 shall be a lien on the property of like, force and effect as a  
298 mechanic's lien.



299           **SECTION 7.** Upon approval of mortgage assistance, the agency  
300 shall enter into an agreement with the mortgagor for repayment of  
301 the mortgage assistance made by the agency. All mortgage  
302 assistance shall be in the form of a no interest, deferred,  
303 forgivable second mortgage loan with a three-year term that  
304 requires the mortgagor to maintain the property as his/her  
305 principal residence, to participate in required counseling, and to  
306 comply with the other requirements of the agreement. If the  
307 mortgagor defaults on the loan, the mortgagor will be required to  
308 repay a portion of the loan amount.

309           **SECTION 8.** All mortgagors who receive emergency mortgage  
310 assistance will be required to meet with a consumer credit  
311 counseling agency approved by the agency for a period of six (6)  
312 months after receiving assistance payment(s) to receive mandated  
313 counseling. That counseling must include budget and credit  
314 counseling and counseling to address the trigger event(s) that  
315 caused the mortgage default. The approved consumer credit  
316 counseling agency shall be paid by the agency for their services.

317           **SECTION 9.** The Homeowner's Emergency Mortgage Assistance  
318 Fund is created as a special fund in the State Treasury for the  
319 sole purpose of implementing the provisions of this act. No other  
320 agency funds, monies or interest earnings shall be used for the  
321 purposes of this act. The Homeowner's Emergency Mortgage  
322 Assistance Fund shall only be used by the agency whenever funds  
323 are specifically authorized and appropriated by the Legislature  
324 for the purposes provided for in this act.

325           **SECTION 10.** The provisions of Sections 5 through 9 of this  
326 act shall not be applicable to any mortgage that becomes  
327 delinquent at any time when the agency does not have money  
328 currently available in the Homeowner's Emergency Mortgage  
329 Assistance Fund to approve applications for emergency mortgage  
330 assistance or to continue making assistance payments on behalf of  
331 mortgagors previously approved. The State Treasurer shall have



332 the duty to advise the agency not less frequently than once each  
333 calendar quarter of the amount available for the purposes of this  
334 act. If the funds available to the agency in the Homeowner's  
335 Emergency Mortgage Assistance Fund for purposes of this act become  
336 insufficient to approve application for emergency mortgage  
337 assistance, or to continue making assistance payments on behalf of  
338 mortgagors previously approved, the agency shall immediately  
339 publish an announcement to that effect.

340 **SECTION 11.** Assistance under this act shall extend to all  
341 mortgagees secured by a mortgage on the subject property.

342 **SECTION 12.** This act shall take effect and be in force from  
343 and after July 1, 2009.

