

By: Senator(s) Jackson (11th)

To: Housing; Finance

SENATE BILL NO. 2498

1 AN ACT TO PROVIDE A PROGRAM FOR HOMEOWNERS' EMERGENCY
2 ASSISTANCE ADMINISTERED BY THE MISSISSIPPI HOME CORPORATION; TO
3 AUTHORIZE THE MISSISSIPPI HOME CORPORATION TO ADMINISTER THE
4 PROGRAM; TO PROVIDE FOR ELIGIBILITY FOR SUCH LOANS BY NOTICE AND
5 INSTITUTION OF FORECLOSURE PROCEEDINGS; TO PRESCRIBE ELIGIBILITY
6 REQUIREMENTS FOR ASSISTANCE; TO PROVIDE FOR MAKING OF ASSISTANCE
7 PAYMENTS TO THE MORTGAGEE ON BEHALF OF THE MORTGAGOR; TO PROVIDE
8 FOR AGREEMENTS FOR REPAYMENT; TO PROVIDE FOR POST-ASSISTANCE
9 COUNSELING; TO CREATE THE HOMEOWNERS' EMERGENCY MORTGAGE
10 ASSISTANCE FUND; TO AUTHORIZE APPROPRIATION INTO THE FUND TO
11 PROVIDE STARTUP COSTS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) **Findings.** The Legislature finds that:

14 (a) The State of Mississippi is facing a large number
15 of homeowners behind on their mortgage payments and facing
16 mortgage foreclosure;

17 (b) As a result of these adverse economic conditions
18 the capacity of many homeowners to continue to make mortgage
19 payments has deteriorated and may further deteriorate in the
20 months ahead, leading to the possibility of widespread mortgage
21 foreclosures and distress sales of homes;

22 (c) Many of these homeowners could retain their homes
23 if they received temporary financial assistance until economic
24 conditions improve; and

25 (d) A program is needed to prevent similar emergencies
26 in the future.

27 (2) **Purpose.** It is the purpose of this act to improve
28 notice requirements and to establish a program which will, through
29 emergency mortgage assistance payments, prevent widespread
30 mortgage foreclosures and distress sales of homes which result
31 from default caused by circumstances beyond a homeowners' control.



32 **SECTION 2. General authority.** (1) The Mississippi Home

33 Corporation, hereinafter referred to as the "agency" may make
34 loans secured by liens on residential real property located in
35 Mississippi to residents of Mississippi eligible for such loans as
36 described in this act.

37 (2) The agency shall carry out the program established by
38 this act. Within sixty (60) days of the effective date of this
39 act, the agency shall adopt program guidelines for the
40 implementation of this act. The agency shall report annually to
41 the Legislature on the effectiveness of the Homeowners' Emergency
42 Mortgage Assistance Program in accomplishing the purposes of this
43 act.

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

46 (4) The agency shall designate and approve nonprofit
47 consumer credit counseling agencies in each county to be available
48 to assist the agency in implementing the provisions of this act,
49 including, but not limited to, mandated counseling. A "consumer
50 credit counseling agency" shall be defined for the purpose of this
51 act as a nonprofit consumer credit counseling agency located in
52 Mississippi which is approved by the agency or a housing
53 counseling agency certified by the United States Department of
54 Housing and Urban Development.

55 **SECTION 3. Notice and institution of foreclosure**

56 **proceedings.** (1) Before any mortgagee may accelerate the
57 maturity of any mortgage obligation covered under this act,
58 commence any legal action, including mortgage foreclosure to
59 recover under such obligation, or take possession of any security
60 of the mortgage debtor for such mortgage obligation, such
61 mortgagee shall give the mortgagor notice as described in Section
62 4. Such notice shall be given in a form and manner prescribed by
63 the agency.



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

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

SECTION 4. Notice requirements. (1) Any mortgagee who desires to foreclose upon a mortgage shall send by registered mail to such mortgagor at his or her last known address the two (2) notices provided in subsection (2).

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

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

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

(ii) Notice that such mortgagor should contact the mortgagee who sent the notice or a consumer credit counseling



97 agency to attempt to resolve the delinquency or default by
98 restructuring the loan payment schedule or otherwise.

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

102 (iv) A list of consumer credit counseling agencies
103 with phone number, mailing address and physical address of each.

104 (v) A list of services available to help the
105 mortgagor avoid foreclosure, including loss mitigation options and
106 counseling.

107 (b) Provided that such mortgagor shall be at least
108 sixty days contractually delinquent in his mortgage payments or be
109 in violation of any other provision of such mortgage, the
110 mortgagee shall send a notice of intention to foreclose to the
111 mortgagor at least ninety (90) days prior to the scheduled
112 foreclosure sale. Such notice to the mortgagor shall include:

113 (i) Statement advising the mortgagor of his
114 delinquency or other default under the mortgage and that such
115 mortgagor has thirty (30) days to have a face-to-face meeting with
116 the mortgagee who sent the notice or a consumer credit counseling
117 agency to attempt to resolve the delinquency or default by
118 restructuring the loan payment schedule or otherwise.

119 (ii) Statement that if the mortgagor is unable to
120 resolve the delinquency or default within thirty (30) calendar
121 days of the mortgagor's first contact with either the mortgagee or
122 a consumer credit counseling agency, and unless the agency has
123 published notice that there are no funds in the Homeowners'
124 Emergency Mortgage Assistance Fund, notice that the mortgagor may
125 apply to the agency or its duly authorized agent at the address
126 and phone number listed in the notice in order to obtain an
127 application and information regarding the Homeowners' Emergency
128 Mortgage Assistance Program.



(iii) A list of consumer credit counseling agencies.

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

(v) A list of services available in addition to the Homeowners' Emergency Mortgage Assistance Program to help the mortgagor avoid foreclosure, including loss mitigation options, counseling programs, and other existing default loan programs.

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

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

(3) At least ninety (90) days prior to the scheduled foreclosure sale, the mortgagee must send a notice of intention to foreclose to all lienholders, co-signers, and tenants of the subject property by registered mail to the address(es) of such parties.

(4) If the mortgagor meets with a consumer credit counseling agency, the consumer credit counseling agency shall promptly notify all of the mortgagees secured by the mortgagor's real property, and no mortgagee so notified shall commence any foreclosure action against the mortgagor's real property for a period not to exceed thirty (30) calendar days from the date that the mortgagee first meets with the consumer credit counseling agency. If the mortgagor applies for mortgage assistance payments, the agency shall promptly notify all of the mortgagees secured by the mortgagor's real property. The agency shall make a determination of eligibility within sixty (60) calendar days of receipt of the mortgagor's application. During the time that the application is pending, no mortgagee may commence foreclosure action to foreclose upon its mortgage with the mortgagor.



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

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

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

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

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

(c) The mortgagor is a permanent resident of this state and is suffering financial hardship due to circumstances beyond the mortgagor's control which render the mortgagor unable to correct the delinquency or delinquencies within a reasonable time and make full mortgage payments.

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



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

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

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

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

(i) Except for the current delinquency, the mortgagor shall have had a favorable residential mortgage credit history for the previous three (3) years. This requirement shall mean that if the mortgagor has been more than three (3) consecutive months in arrears on a residential mortgage within the previous three (3) years he shall be ineligible for assistance, unless the mortgagor can demonstrate that the prior delinquency was the result of financial hardship due to circumstances beyond his control.

(j) For purposes of this section, in order to determine whether the financial hardship is due to circumstances beyond the mortgagor's control, the agency may consider information regarding



the mortgagor's employment record, credit history and current income.

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

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

(2) Upon a determination that the conditions of eligibility described in subsection (1) have been met by a mortgagor and money is available in the Homeowners' Emergency Mortgage Assistance Fund, the mortgagor shall become eligible for the assistance described in Section 6. If the agency determines that a mortgagor has not met the conditions of eligibility described in subsection (1), the mortgagor shall be prohibited from reapplying for assistance under this act for a period of six (6) months from the date of such determination unless there is a material change in circumstances; provided, however, that nothing in this subsection shall prohibit any mortgagee from commencing foreclosure action to enforce the mortgage without any further restriction or requirement under this act whenever the agency determines that the mortgagor is ineligible for assistance as provided in this section.

SECTION 6. **Assistance payments.** (1) If the agency determines that a mortgagor is eligible for assistance under this act, the agency shall pay directly to each mortgagee secured by the mortgagor's real estate payments on behalf of the mortgagor. The agency shall pay to each mortgagee the full amount then due to that mortgagee pursuant to the terms of the mortgage without regard to any acceleration under the mortgage, or the full amount of any alternate mortgage payments agreed to by the mortgagee and mortgagor. This amount shall include, but not be limited to, the amount of principal, interest, taxes, assessments, ground rents, hazard insurance any mortgage insurance or credit insurance premiums. The payment made by the agency to each mortgagee shall



be an amount which makes each mortgage current and pays reasonable costs and reasonable attorneys' fees already incurred by such mortgagee. If the mortgagor is receiving emergency mortgage assistance under a program other than that established in this act, the amount of the payment he or she is required to make to the agency under this act shall take into consideration the amount of assistance he is receiving under such other programs.

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

SECTION 7. **Repayment.** Upon approval of mortgage assistance, the agency shall enter into an agreement with the mortgagor for repayment of the mortgage assistance made by the agency. All mortgage assistance shall be in the form of a no interest, deferred, forgivable second mortgage loan with a three-year term which requires the mortgagor to maintain the property as his/her principal residence, to participate in required counseling, and to comply with the other requirements of the agreement. If the



mortgagor defaults on the loan, the mortgagor will be required to repay a portion of the loan amount.

SECTION 8. Post-assistance counseling. All mortgagors who receive emergency mortgage assistance will be required to meet with a consumer credit counseling agency approved by the agency for a period of six (6) months after receiving assistance payment(s) to receive mandated counseling. Such counseling must include budget and credit counseling and counseling to address the trigger event(s) which caused the mortgage default. The approved consumer credit counseling agency will be paid by the agency for their services.

SECTION 9. Homeowners' Emergency Mortgage Assistance Fund. The Homeowners' Emergency Mortgage Assistance Fund is hereby created as a separate account within the agency for the sole purpose of implementing the provisions of this act. No other agency funds, monies or interest earnings shall be utilized for the purposes of this act. The Homeowners' Emergency Mortgage Assistance Fund shall only be utilized by the agency whenever funds are specifically authorized and appropriated by the Legislature pursuant to Section 11 of this act for the purposes provided for in this act.

SECTION 10. Insufficient funds. The provisions of Sections 5 through 9 of this act shall not be applicable to any mortgage which becomes delinquent at any time when the agency does not have money currently available in the Homeowners' Emergency Mortgage Assistance Fund to approve applications for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved. The State Treasurer shall have the duty to advise the agency not less frequently than once each calendar quarter of the amount available for the purposes of this act. In the event that the funds available to the agency in the Homeowners' Emergency Mortgage Assistance Fund for purposes of this act become insufficient to approve application for emergency



327 mortgage assistance, or to continue making assistance payments on
328 behalf of mortgagors previously approved, the agency shall
329 immediately publish an announcement to that effect.

330 **SECTION 11. Funding.** The Legislature is authorized to
331 appropriate the sum of One Million Dollars (\$1,000,000.00) or as
332 much as may be necessary from the General Fund to the fund created
333 by Section 9 of this act to provide startup funding for a pilot
334 program for homeowners' emergency assistance.

335 **SECTION 12.** Assistance under this act shall extend to all
336 mortgagees secured by a mortgage on the subject property.

337 **SECTION 13.** This act shall expire three (3) years from the
338 effective date of this act, except that mortgage assistance shall
339 continue to be made available to mortgagors who were deemed
340 eligible for mortgage assistance prior to the expiration of this
341 act in accordance with the terms of this act.

342 **SECTION 14.** This act shall take effect immediately upon the
343 initial provision of money to the Homeowners' Emergency Mortgage
344 Assistance Fund through appropriations by the Legislature.

345 **SECTION 15.** This act shall take effect and be in force from
346 and after its passage.

