

By: Senator(s) Dawkins

To: Business and Financial  
Institutions

SENATE BILL NO. 3048

1 AN ACT TO PROHIBIT FORECLOSURE ON RESIDENTIAL PROPERTY UNLESS  
2 THE MORTGAGEE OR HOLDER OF THE MORTGAGE GIVES THE MORTGAGOR  
3 90-DAYS' WRITTEN NOTICE; TO PRESCRIBE THE CONTENTS OF THE NOTICE  
4 TO FORECLOSE; TO REQUIRE THE MORTGAGEE TO NOTIFY THE COMMISSIONER  
5 OF BANKING AND CONSUMER FINANCE OF THE DATE OF THE FORECLOSURE  
6 SALE, THE PURCHASE PRICE OBTAINED AT THE SALE, AND A COPY OF THE  
7 NOTICE TO FORECLOSE; TO REQUIRE THE COMMISSIONER OF BANKING AND  
8 CONSUMER FINANCE TO MAINTAIN A DATABASE OF CERTAIN FORECLOSURE  
9 ACTIVITY INFORMATION; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** (1) After a breach of condition of a mortgage  
12 loan secured by residential property in the State of Mississippi,  
13 a mortgagee or holder of the mortgage shall not proceed against  
14 the mortgaged premises under a power of sale unless the mortgagee  
15 or holder of the mortgage gives the mortgagor the notice described  
16 in this section.

17 (2) The notice shall be in writing and shall be mailed,  
18 postage prepaid, by certified mail with return receipt requested,  
19 to the mortgagor at his last address then known to the mortgagee,  
20 at least ninety (90) days before exercising any rights under a  
21 power of sale.

22 (3) The notice shall conspicuously state the rights of the  
23 mortgagor upon default in substantially the following form:

24 The heading shall read: "Notice of Intent To Foreclose and  
25 Right to Cure." The body of the notice shall read: "You are now  
26 in default on a mortgage loan transaction dated \_\_\_\_\_. This  
27 mortgage loan is secured by property located at \_\_\_\_\_. This  
28 loan was originated by (name of mortgagee), assigned to \_\_\_\_\_  
29 (if applicable) and is being serviced by \_\_\_\_\_ (if applicable).

30 The mortgage broker/mortgage originator for this mortgage loan



31 transaction was \_\_\_\_\_. You may cure your default by paying all  
32 sums due on the mortgage loan on or before (a date which is at  
33 least ninety (90) days after the notice has been mailed). If you  
34 pay this amount within the time allowed, you are no longer in  
35 default and may continue on with the transaction as though the  
36 default had not occurred. You may contact the mortgagee or  
37 mortgagee's agent at (telephone number of mortgagee or mortgagee's  
38 agent) in order to obtain the amount due to cure the default on  
39 your mortgage loan.

40 If you do not cure your default by the date stated above,  
41 (name of mortgagee) may be in foreclosure proceedings against you,  
42 and you could lose your home."

43 (4) A copy of the notice described in this section shall be  
44 filed with the Commissioner of Banking and Consumer Finance and  
45 shall include the rate of interest on the loan and whether it was  
46 a variable or fixed rate of interest. The filing fee for the  
47 notice shall be in an amount determined by the commissioner.

48 (5) No attorney's fees or other fees or charges other than  
49 per diem interest may be charged to the mortgagor during the  
50 mortgagor's ninety-day right to cure.

51 (6) If, after receiving a Notice of Intent to Foreclose and  
52 Right to Cure from the mortgagee under this section, the mortgagor  
53 fails to cure a default on a mortgage loan secured by residential  
54 property within the time permitted by the notice (which shall be  
55 at least ninety (90) days after the notice has been mailed), the  
56 mortgagee may do all acts authorized or required under the power  
57 of sale. If the residential property securing the mortgage loan  
58 is sold at a foreclosure sale, the mortgagee shall notify the  
59 commissioner in writing of the date of the foreclosure sale, the  
60 purchase price obtained at the sale, and shall include a copy of  
61 the notice required under this section.

62 (7) For the purposes of this section, the following terms  
63 shall have the following meanings:



64 (a) "Commissioner" means the Commissioner of Banking  
65 and Consumer Finance of the State of Mississippi.

66 (b) "Default" means a condition in which a homeowner is  
67 one or more months in arrears on the mortgage payments.

68 (c) "Purchaser" means any person who acquires title to  
69 residential property.

70 (d) "Transfer of title" means the transfer of a  
71 mortgagor's interest to a purchaser by purchase agreement, option  
72 to purchase, lease or any other means, or by the creation of a  
73 mortgage or other lien or encumbrance that allows the purchaser to  
74 obtain legal or equitable title to all or part of the property.

75 (8) The transfer of title to residential property by a  
76 mortgagor who is in default or foreclosure during the time of  
77 default or foreclosure, made in contemplation of a subsequent  
78 conveyance of an interest back to the mortgagor by the purchaser,  
79 that allows the homeowner to regain possession of the residential  
80 property is prohibited unless the purchaser is a spouse, parent,  
81 grandparent, child, grandchild, sibling, aunt or uncle of the  
82 mortgagor.

83 (9) The commissioner shall maintain a foreclosure database  
84 that shall include, but not be limited to, foreclosure activity by  
85 mortgage lenders, mortgage holders and mortgage servicers, as well  
86 as the mortgage brokers and loan originators who placed these  
87 mortgage loans in the state, including information relative to the  
88 original mortgagee, and any subsequent assignee. Based on the  
89 information received, the commissioner shall produce a report at  
90 least annually to track developments and trends of mortgage  
91 foreclosure on residential property in the commonwealth including,  
92 but not limited to, an analysis of the pre-foreclosure notices  
93 submitted to the commissioner compared to the final foreclosure  
94 notices, any trends or patterns relative to the geographic  
95 location of the residential properties, and interest rates. The  
96 report shall be available to the public upon request, and the



97 commissioner shall make it available in any other manner that he  
98 may choose.

99           **SECTION 2.** This act shall take effect and be in force from  
100 and after July 1, 2010.

