

By: Representative Hines

To: Banking and Financial
Services

HOUSE BILL NO. 425

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" is defined for the purpose of this act
63 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) of this section.

96 (2) The agency shall prepare uniform notices for the
97 purposes of 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 has had a favorable residential mortgage credit history for the
231 previous three (3) years. This requirement means that if the
232 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 mortgagor
235 can demonstrate that the prior delinquency was the result of
236 financial hardship due to circumstances beyond his control.

237 (j) The mortgagor agrees to participate in required
238 homeowner counseling.

239 (k) The mortgagor meets any other procedural
240 requirements established by the agency.

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

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

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



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

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



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

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

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

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



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

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

341 **SECTION 12.** This act shall take effect and be in force from
342 and after July 1, 2011.

