

By: Senator(s) Frazier

To: Housing; Appropriations

SENATE BILL NO. 2251

1 AN ACT TO PROVIDE A PROGRAM FOR HOMEOWNER'S 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 HOMEOWNER'S EMERGENCY MORTGAGE
 10 ASSISTANCE FUND; TO AUTHORIZE APPROPRIATION INTO THE FUND TO
 11 PROVIDE START-UP 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 homeowner's 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 Homeowner's Emergency
42 Mortgage Assistance Loan Program in accomplishing the purposes of
43 this 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 of this act. Such notice shall be given in a form and manner
63 prescribed by the agency.



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

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

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

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

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

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

95 (ii) Notice that such mortgagor should contact the
96 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
101 loss-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 (60) days contractually delinquent in his mortgage payments
109 or be 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 Homeowner's
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 Homeowner's Emergency
128 Mortgage Assistance Loan Program.



129 (iii) A list of consumer credit counseling
130 agencies.

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

134 (v) A list of services available in addition to
135 the Homeowner's Emergency Mortgage Assistance Loan Program to help
136 the mortgagor avoid foreclosure, including loss-mitigation
137 options, counseling programs, and other existing default loan
138 programs.

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

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

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

149 (4) If the mortgagor meets with a consumer credit counseling
150 agency, the consumer credit counseling agency shall promptly
151 notify all of the mortgagees secured by the mortgagor's real
152 property, and no mortgagee so notified shall commence any
153 foreclosure action against the mortgagor's real property for a
154 period not to exceed thirty (30) calendar days from the date that
155 the mortgagee first meets with the consumer credit counseling
156 agency. If the mortgagor applies for mortgage assistance
157 payments, the agency shall promptly notify all of the mortgagees
158 secured by the mortgagor's real property. The agency shall make a
159 determination of eligibility within sixty (60) calendar days of
160 receipt of the mortgagor's application. During the time that the



161 application is pending, no mortgagee may commence foreclosure
162 action to foreclose upon its mortgage with the mortgagor.

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

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

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

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

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

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

192 (d) The agency has determined that there is a
193 reasonable prospect that the mortgagor will be able to resume full



194 mortgage payments after the assistance payment(s) are provided
195 under this act.

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

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

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

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

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



227 (j) For purposes of this section, in order to determine
228 whether the financial hardship is due to circumstances beyond the
229 mortgagor's control, the agency may consider information regarding
230 the mortgagor's employment record, credit history and current
231 income.

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

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

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

251 **SECTION 6. Assistance payments.** (1) If the agency
252 determines that a mortgagor is eligible for assistance under this
253 act, the agency shall pay directly to each mortgagee secured by
254 the mortgagor's real estate payments on behalf of the mortgagor.
255 The agency shall pay to each mortgagee the full amount then due to
256 that mortgagee pursuant to the terms of the mortgage without
257 regard to any acceleration under the mortgage, or the full amount
258 of any alternate mortgage payments agreed to by the mortgagee and
259 mortgagor. This amount shall include, but not be limited to, the



260 amount of principal, interest, taxes, assessments, ground rents,
261 hazard insurance, any mortgage insurance or credit insurance
262 premiums. The payment made by the agency to each mortgagee shall
263 be an amount which makes each mortgage current and pays reasonable
264 costs and reasonable attorneys' fees already incurred by such
265 mortgagee. If the mortgagor is receiving emergency mortgage
266 assistance under a program other than that established in this
267 act, the amount of the payment he or she is required to make to
268 the agency under this act shall take into consideration the amount
269 of assistance he is receiving under such other programs.

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

288 **SECTION 7. Repayment.** Upon approval of mortgage assistance,
289 the agency shall enter into an agreement with the mortgagor for
290 repayment of the mortgage assistance made by the agency. All
291 mortgage assistance shall be in the form of a no interest,
292 deferred, forgivable second mortgage loan with a three-year term



293 which requires the mortgagor to maintain the property as his/her
294 principal residence, to participate in required counseling, and to
295 comply with the other requirements of the agreement. If the
296 mortgagor defaults on the loan, the mortgagor will be required to
297 repay a portion of the loan amount.

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

307 **SECTION 9. Homeowner's Emergency Mortgage Assistance Fund.**
308 The Homeowner's Emergency Mortgage Assistance Fund is hereby
309 created as a separate account within the agency for the sole
310 purpose of implementing the provisions of this act. No other
311 agency funds, monies or interest earnings shall be utilized for
312 the purposes of this act. The Homeowner's Emergency Mortgage
313 Assistance Fund shall only be utilized by the agency whenever
314 funds are specifically authorized and appropriated by the
315 Legislature pursuant to Section 11 of this act for the purposes
316 provided for in this act.

317 **SECTION 10. Insufficient funds.** The provisions of Sections
318 5 through 9 of this act shall not be applicable to any mortgage
319 which becomes delinquent at any time when the agency does not have
320 money currently available in the Homeowner's Emergency Mortgage
321 Assistance Fund to approve applications for emergency mortgage
322 assistance or to continue making assistance payments on behalf of
323 mortgagors previously approved. The State Treasurer shall have
324 the duty to advise the agency not less frequently than once each
325 calendar quarter of the amount available for the purposes of this



326 act. In the event that the funds available to the agency in the
327 Homeowner's Emergency Mortgage Assistance Fund for purposes of
328 this act become insufficient to approve application for emergency
329 mortgage assistance, or to continue making assistance payments on
330 behalf of mortgagors previously approved, the agency shall
331 immediately publish an announcement to that effect.

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

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

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

344 **SECTION 14.** This act shall take effect immediately upon the
345 initial provision of money to the Homeowner's Emergency Mortgage
346 Assistance Fund through appropriations by the Legislature.

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

