

By: Senator(s) Frazier

To: Housing; Appropriations

SENATE BILL NO. 2138

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 of this act 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 of this act  
76 shall be given to all mortgagors against whom such foreclosure  
77 actions are pending on the effective date of this act. Such stay  
78 shall extend until the applicable time limits provided for in  
79 Section 4 of this act have expired or a mortgagor's request for  
80 assistance has been denied by 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) of this section.

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

