

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

Your Committee on Financial Institutions, to which was referred Senate Bill 492, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning trade
- 3 regulation, property, and courts and court officers.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 24-5-26 IS ADDED TO THE INDIANA CODE AS
- 6 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2009]:
- 8 **Chapter 26. Gift Cards**
- 9 **Sec. 1. (a) As used in this chapter, "gift card" means a record**
- 10 **evidencing a promise, made for consideration by the seller or**
- 11 **issuer of the record, that goods or services will be provided to the**
- 12 **holder of the record for the value shown in the record.**
- 13 **(b) The term includes the following:**
- 14 **(1) A gift certificate.**
- 15 **(2) A stored value card or certificate.**

1 **(3) An online gift account.**

2 **(c) The term does not include a prepaid calling card used to**
3 **make telephone calls.**

4 **Sec. 2. As used in this chapter, "person" means an individual, a**
5 **corporation, the state or its subdivisions or agencies, a business**
6 **trust, an estate, a trust, a partnership, an association, a**
7 **cooperative, or any other legal entity.**

8 **Sec. 3. (a) Except as provided in this section, this chapter applies**
9 **to gift cards that are issued after June 30, 2009.**

10 **(b) Section 4 of this chapter does not apply to the following:**

11 **(1) A gift card issued without consideration by a person under**
12 **an awards, loyalty, or promotional program.**

13 **(2) A gift card issued by either of the following:**

14 **(A) A financial institution (as defined in IC 22-2-4-1).**

15 **(B) A person licensed by the department of financial**
16 **institutions under IC 28-8-4.**

17 **(3) A gift card issued for less than face value to:**

18 **(A) an employer;**

19 **(B) a charitable organization exempt from federal taxation**
20 **under Section 501 of the Internal Revenue Code; or**

21 **(C) a nonprofit organization.**

22 **(4) A gift card that is sold by:**

23 **(A) a charitable organization exempt from federal taxation**
24 **under Section 501 of the Internal Revenue Code; or**

25 **(B) a nonprofit organization.**

26 **(5) A gift card that an employer issues to an employee in**
27 **recognition of services performed by the employee.**

28 **Sec. 4. (a) A person may not issue a gift card that is subject to:**

29 **(1) an expiration date; or**

30 **(2) a fee, including a service fee, maintenance fee, dormancy**
31 **charge, or inactivity charge.**

32 **(b) A gift card may be subject to an initial fee at the time the gift**
33 **card is issued.**

34 **Sec. 5. A provision in an agreement creating a gift card that**
35 **conflicts with this chapter is void.**

36 SECTION 2. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007,
37 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3-1**, this article does not

1 apply to the following:

- 2 (1) A person organized or chartered under the laws of this state,
 3 any other state, or the United States that relate to a bank, a trust
 4 company, a savings association, a savings bank, a credit union, or
 5 an industrial loan and investment company.
 6 (2) The Federal National Mortgage Association, the Federal
 7 Home Loan Mortgage Corporation, or a Federal Home Loan
 8 Bank.
 9 (3) A department or agency of the United States or of Indiana.
 10 (4) A person that is servicing or enforcing a loan that it owns.
 11 (5) A person that is servicing a loan:
 12 (A) for a person described in subdivisions (1) through (4); ~~of~~
 13 ~~this section~~; or
 14 (B) insured by the Department of Housing and Urban
 15 Development or guaranteed by the Veterans Administration.
 16 (6) An attorney licensed to practice law in Indiana who is
 17 representing a mortgagor.

18 SECTION 3. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007,
 19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2009]: Sec. 1. In addition to any other notice required by law,
 21 a mortgagee, or the mortgagee's assignee, that proceeds under
 22 IC 32-30-10 to foreclose a mortgage or deed of trust shall, ~~at the time~~
 23 ~~of not later than thirty (30) days before~~ filing the complaint in the
 24 action, provide the following written notice, **on a form prescribed by**
 25 **the Indiana housing and community development authority under**
 26 **IC 32-30-10.5-9(a)**, to the mortgagor in a statement printed in at least
 27 14 point boldface type:

28 "NOTICE REQUIRED BY STATE LAW

29 Mortgage foreclosure is a complex process. People may
 30 approach you about "saving" your home. You should be
 31 careful about any such promises. There are government
 32 agencies and nonprofit organizations you may contact for
 33 helpful information about the foreclosure process. For the
 34 name and telephone number of an organization near you,
 35 please call the Indiana housing and community development
 36 authority."

37 Service of the written notice required by this chapter shall be made as
 38 provided in the Indiana Rules of Trial Procedure governing service of

1 process upon a person.

2 SECTION 4. IC 24-5.5-5-7.2 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2009]: **Sec. 7.2. A foreclosure consultant shall**
5 **retain all records and documents, including the foreclosure**
6 **consultant contract, related to services performed on behalf of a**
7 **homeowner for at least three (3) years after the termination or**
8 **conclusion of the foreclosure consultant contract entered into by**
9 **the foreclosure consultant and the homeowner.**

10 SECTION 5. IC 24-9-1-1, AS AMENDED BY P.L.181-2006,
11 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2009]: Sec. 1. Except for ~~IC 24-9-3-7(3)~~ **IC 24-9-3-7(c)(3)**
13 **and IC 24-9-3-7(c)(4)**, this article does not apply to:

14 (1) a loan made or acquired by a person organized or chartered
15 under the laws of this state, any other state, or the United States
16 relating to banks, trust companies, savings associations, savings
17 banks, credit unions, or industrial loan and investment companies;
18 or

19 (2) a loan:

20 (A) that can be purchased by the Federal National Mortgage
21 Association, the Federal Home Loan Mortgage Association, or
22 the Federal Home Loan Bank;

23 (B) to be insured by the United States Department of Housing
24 and Urban Development;

25 (C) to be guaranteed by the United States Department of
26 Veterans Affairs;

27 (D) to be made or guaranteed by the United States Department
28 of Agriculture Rural Housing Service;

29 (E) to be funded by the Indiana housing and community
30 development authority; or

31 (F) with a principal amount that exceeds the conforming loan
32 size limit for a single family dwelling as established by the
33 Federal National Mortgage Association.

34 SECTION 6. IC 24-9-3-7, AS AMENDED BY P.L.141-2005,
35 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2009]: Sec. 7. **(a) As used in this section, "mortgage**
37 **transaction" includes the following:**

38 **(1) A home loan subject to this article.**

1 **(2) A loan described in IC 24-9-1-1 that is secured by a**
 2 **mortgage or deed of trust on real estate in Indiana on which**
 3 **there is located or will be located a structure or structures:**

4 **(A) designed primarily for occupancy of one (1) to four (4)**
 5 **families; and**

6 **(B) that is or will be occupied by a borrower as the**
 7 **borrower's principal dwelling.**

8 **(3) A first lien mortgage transaction (as defined in**
 9 **IC 24-4.4-1-301) subject to IC 24-4.4.**

10 **(4) A consumer credit sale subject to IC 24-4.5-2 in which a**
 11 **mortgage, deed of trust, or land contract that constitutes a**
 12 **lien is created or retained against land upon which there is a**
 13 **dwelling that is or will be used by the debtor primarily for**
 14 **personal, family, or household purposes.**

15 **(5) A consumer credit loan subject to IC 24-4.5-3 in which a**
 16 **mortgage, deed of trust, or land contract that constitutes a**
 17 **lien is created or retained against land upon which there is a**
 18 **dwelling that is or will be used by the debtor primarily for**
 19 **personal, family, or household purposes.**

20 **(6) A loan in which a mortgage, deed of trust, or land contract**
 21 **that constitutes a lien is created or retained against land:**

22 **(A) that is located in Indiana;**

23 **(B) upon which there is a dwelling that is not or will not be**
 24 **used by the borrower primarily for personal, family, or**
 25 **household purposes; and**

26 **(C) that is classified as residential for property tax**
 27 **purposes.**

28 **The term includes a loan that is secured by land in Indiana**
 29 **upon which there is a dwelling that is purchased by or**
 30 **through the borrower for investment or other business**
 31 **purposes.**

32 **(7) A reverse mortgage transaction that is secured by real**
 33 **estate in Indiana on which there is located a structure that is**
 34 **occupied by a borrower as the borrower's principal dwelling.**

35 **(b) As used in this section, "real estate transaction" means the**
 36 **sale or lease of any legal or equitable interest in real estate:**

37 **(1) that is located in Indiana;**

38 **(2) upon which there is a dwelling; and**

- 1 **(3) that is classified as residential for property tax purposes.**
 2 **(c) A person may not:**
 3 (1) divide a loan transaction into separate parts with the intent of
 4 evading a provision of this article;
 5 (2) structure a home loan transaction as an open-end loan with the
 6 intent of evading the provisions of this article if the loan would be
 7 a high cost home loan if the home loan had been structured as a
 8 closed-end loan; or
 9 (3) engage in, a ~~deceptive act in connection with a:~~ ~~(A) home~~
 10 ~~loan; or (B) loan described in IC 24-9-1-1.~~ **or solicit to engage in,**
 11 **a real estate transaction or a mortgage transaction without a**
 12 **permit or license required by law; or**
 13 **(4) with respect to a real estate transaction or a mortgage**
 14 **transaction, represent that:**
 15 **(A) the transaction has:**
 16 **(i) certain characteristics, terms, or benefits; or**
 17 **(ii) the sponsorship or approval of a particular person or**
 18 **entity;**
 19 **that it does not have and that the person knows or**
 20 **reasonably should know it does not have; or**
 21 **(B) the real estate or property that is the subject of the**
 22 **transaction has any improvements, appurtenances, uses,**
 23 **characteristics, or associated benefits that it does not have**
 24 **and that the person knows or reasonably should know it**
 25 **does not have.**
 26 SECTION 7. IC 25-1-11-17 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. **(a) Except as**
 28 **provided in subsection (b),** a practitioner may petition the board to
 29 accept the surrender of the practitioner's license instead of having a
 30 hearing before the board. The practitioner may not surrender the
 31 practitioner's license without the written approval of the board, and the
 32 board may impose any conditions appropriate to the surrender or
 33 reinstatement of a surrendered license.
 34 **(b) The board may not approve the surrender of a practitioner's**
 35 **license under subsection (a) if the office of the attorney general:**
 36 **(1) has filed an administrative complaint concerning the**
 37 **practitioner's license; and**
 38 **(2) opposes the surrender of the practitioner's license.**

1 SECTION 8. IC 25-1-11-18, AS AMENDED BY P.L.194-2005,
 2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to
 4 disciplinary sanctions may be required by a board to pay the costs of
 5 the proceeding. The practitioner's ability to pay shall be considered
 6 when costs are assessed. If the practitioner fails to pay the costs, a
 7 suspension may not be imposed solely upon the practitioner's inability
 8 to pay the amount assessed. These costs are limited to costs for the
 9 following:

- 10 (1) Court reporters.
- 11 (2) Transcripts.
- 12 (3) Certification of documents.
- 13 (4) Photo duplication.
- 14 (5) Witness attendance and mileage fees.
- 15 (6) Postage.
- 16 (7) Expert witnesses.
- 17 (8) Depositions.
- 18 (9) Notarizations.
- 19 (10) Administrative law judges.

20 **(11) Real estate review appraisals, if applicable.**

21 SECTION 9. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS
 23 [EFFECTIVE JULY 1, 2009]: **Sec. 2.5. (a) A violation of:**

- 24 **(1) IC 24-5-15; or**
- 25 **(2) IC 24-5.5;**

26 **by a person licensed or required to be licensed under this article is**
 27 **a violation of this article.**

28 **(b) A person who commits a violation described in subsection (a)**
 29 **commits a Class A infraction and is subject to:**

- 30 **(1) the enforcement procedures described in section 2 of this**
 31 **chapter; and**
- 32 **(2) any sanction that may be imposed by the commission**
 33 **under IC 25-1-11-12 for an act described in IC 25-1-11-11.**

34 SECTION 10. IC 27-7-3-15.5, AS ADDED BY P.L.145-2008,
 35 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JANUARY 1, 2010]: Sec. 15.5. (a) This section applies to a transaction
 37 that:

- 38 (1) is a single family residential:

- 1 (A) first lien purchase money mortgage transaction; or
 2 (B) refinancing transaction; and
 3 (2) is closed after December 31, 2009.
- 4 (b) Not later than September 1, 2009, the department shall establish
 5 and maintain an electronic system for the collection and storage of the
 6 following information concerning any of the following persons that
 7 have participated in or assisted with a transaction to which this section
 8 applies, or that will participate in or assist with a transaction to which
 9 this section applies:
- 10 (1) The name and license number (under IC 23-2-5) of each loan
 11 brokerage business involved in the transaction.
- 12 (2) The name and registration number (under IC 23-2-5) of each
 13 originator involved in the transaction.
- 14 (3) The name and license number (under IC 25-34.1) of each:
 15 (A) principal broker; and
 16 (B) salesperson or broker-salesperson, if any;
 17 involved in the transaction.
- 18 (4) The:
 19 (A) name of; and
 20 (B) code assigned by the National Association of Insurance
 21 Commissioners (NAIC) to;
 22 each title insurance underwriter involved in the transaction.
- 23 (5) The name and license number (under IC 27-1-15.6) of each
 24 title insurance agency and agent involved in the transaction as a
 25 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- 26 (6) The name and:
 27 (A) license or certificate number (under IC 25-34.1-3-8) of
 28 each licensed or certified real estate appraiser; or
 29 (B) license number (under IC 25-34.1) of each broker;
 30 who appraises the property that is the subject of the transaction.
- 31 (7) The name of the mortgagee and, if the mortgagee is required
 32 to be licensed under:
 33 (A) IC 24-4.4; or
 34 (B) IC 24-4.5-3-502;
 35 the license number of the mortgagee.
- 36 **(8) In the case of a first lien purchase money mortgage**
 37 **transaction, the name of the seller of the property that is the**
 38 **subject of the transaction.**

1 **(9) In the case of a first lien purchase money mortgage**
 2 **transaction, the name of the buyer of the property that is the**
 3 **subject of the transaction.**

4 **(10) The:**

5 **(A) name; and**

6 **(B) license number, certificate number, registration**
 7 **number, or other code, as appropriate;**

8 **of any other person that participates in or assists with a**
 9 **transaction to which this section applies, as the department**
 10 **may prescribe.**

11 (c) The system established by the department under this section
 12 must include a form that:

13 (1) is uniformly accessible in an electronic format to the closing
 14 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

15 (2) allows the closing agent to do the following:

16 (A) Input information identifying the property that is the
 17 subject of the transaction by lot or parcel number, street
 18 address, or some other means of identification that the
 19 department determines:

20 (i) is sufficient to identify the property; and

21 (ii) is determinable by the closing agent.

22 (B) Subject to subsection (d) and to the extent determinable,
 23 input the information described in subsection (b) with respect
 24 to each person described in subsection (b) that participates in
 25 or assists with the transaction.

26 (C) Respond to the following questions:

27 (i) "On what date did you receive the closing instructions
 28 from the creditor in the transaction?".

29 (ii) "On what date did the transaction close?".

30 (D) Submit the form electronically to a data base maintained
 31 by the department.

32 (d) Not later than the time of the closing, each person described in
 33 subsection (b), **other than a person described in subsection (b)(8) or**
 34 **(b)(9)**, shall provide to the closing agent in the transaction the person's:

35 (1) legal name; and

36 (2) license number, certificate number, registration number, or
 37 NAIC code, as appropriate;

38 to allow the closing agent to comply with subsection (c)(2)(B). A

1 person described in subsection (b)(7) shall provide the information
 2 required by this subsection for any person described in subsection
 3 (b)(6) that appraises the property that is the subject of the transaction
 4 on behalf of the person described in subsection (b)(7). A person
 5 described in subsection (b)(3)(B) who is involved in the transaction
 6 may provide the information required by this subsection for a person
 7 described in subsection (b)(3)(A) that serves as the principal broker for
 8 the person described in subsection (b)(3)(B). **In the case of a first lien**
 9 **purchase money mortgage transaction, the closing agent shall**
 10 **determine the information described in subsection (b)(8) and (b)(9)**
 11 **from the HUD-1 settlement statement.**

12 (e) **Except for a person described in subsection (b)(8) or (b)(9),**
 13 a person described in subsection (b) who fails to comply with
 14 subsection (d) is subject to a civil penalty of one hundred dollars
 15 (\$100) for each closing with respect to which the person fails to comply
 16 with subsection (d). The penalty:

- 17 (1) may be enforced by the state agency that has administrative
 18 jurisdiction over the person in the same manner that the agency
 19 enforces the payment of fees or other penalties payable to the
 20 agency; and
 21 (2) shall be paid into the home ownership education account
 22 established by IC 5-20-1-27.

23 (f) Subject to subsection (g), the department shall make the
 24 information stored in the data base described in subsection (c)(2)(D)
 25 accessible to:

- 26 (1) each entity described in IC 4-6-12-4; and
 27 (2) the homeowner protection unit established under IC 4-6-12-2.

28 (g) The department, a closing agent who submits a form under
 29 subsection (c), each entity described in IC 4-6-12-4, and the
 30 homeowner protection unit established under IC 4-6-12-2 shall exercise
 31 all necessary caution to avoid disclosure of any information:

- 32 (1) concerning a person described in subsection (b), including the
 33 person's license, registration, or certificate number; and
 34 (2) contained in the data base described in subsection (c)(2)(D);
 35 except to the extent required or authorized by state or federal law.

36 (h) The department may adopt rules under IC 4-22-2 to implement
 37 this section. Rules adopted by the department under this subsection
 38 may establish procedures for the department to:

- 1 (1) establish;
 - 2 (2) collect; and
 - 3 (3) change as necessary;
- 4 an administrative fee to cover the department's expenses in establishing
5 and maintaining the electronic system required by this section.

6 (i) If the department adopts a rule under IC 4-22-2 to establish an
7 administrative fee to cover the department's expenses in establishing
8 and maintaining the electronic system required by this section, as
9 allowed under subsection (h), the department may:

- 10 (1) require the fee to be paid:
 - 11 (A) to the closing agent responsible for inputting the
 - 12 information and submitting the form described in subsection
 - 13 (c)(2); and
 - 14 (B) by the borrower in the transaction;
- 15 (2) allow the closing agent described in subdivision (1)(A) to
- 16 retain a part of the fee collected to cover the closing agent's costs
- 17 in inputting the information and submitting the form described in
- 18 subsection (c)(2); and
- 19 (3) require the closing agent to pay the remainder of the fee
- 20 collected to the department for deposit in the title insurance
- 21 enforcement fund established by IC 27-7-3.6-1, for the
- 22 department's use in establishing and maintaining the electronic
- 23 system required by this section.

24 SECTION 11. IC 32-29-7-10 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. Immediately after
26 a foreclosure sale under this chapter, the sheriff shall:

- 27 (1) execute and deliver to the purchaser; **and**
- 28 (2) **record with the recorder of the county in which the**
- 29 **premises are located;**

30 a deed of conveyance for the premises, which must be valid to convey
31 all the right, title, and interest held or claimed by all of the parties to
32 the action and all persons claiming under them. The sheriff shall file a
33 return with the clerk of the court.

34 SECTION 12. IC 32-30-10-3 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Subject to**
36 **IC 32-30-10.5 with respect to mortgage transactions described in**
37 **IC 32-30-10.5-5**, if a mortgagor defaults in the performance of any
38 condition contained in a mortgage, the mortgagee or the mortgagee's

1 assigns may proceed in the circuit court of the county where the real
2 estate is located to foreclose the equity of redemption contained in the
3 mortgage.

4 (b) If the real estate is located in more than one (1) county, the
5 circuit court of any county in which the real estate is located has
6 jurisdiction for an action for the foreclosure of the equity of redemption
7 contained in the mortgage.

8 SECTION 13. IC 32-30-10-10 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

- 10 (1) proceed to foreclose the mortgagee's mortgage:
 - 11 (A) while the plaintiff is prosecuting any other action for the
 - 12 same debt or matter that is secured by the mortgage; ~~or~~
 - 13 (B) while the plaintiff is seeking to obtain execution of any
 - 14 judgment in any other action; or
 - 15 (C) **until the notice under IC 32-30-10.5-9(a) has been sent,**
 - 16 **if required, in the case of a mortgage transaction described**
 - 17 **in IC 32-30-10.5-5; or**

18 (2) prosecute any other action for the same matter while the
19 plaintiff is foreclosing the mortgagee's mortgage or prosecuting
20 a judgment of foreclosure.

21 SECTION 14. IC 32-30-10.5 IS ADDED TO THE INDIANA
22 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2009]:

24 **Chapter 10.5. Foreclosure Prevention Agreements for**
25 **Residential Mortgages**

26 **Sec. 1. (a) The general assembly makes the following findings:**

- 27 (1) **Indiana faces a serious threat to its state economy and to**
- 28 **the economies of its political subdivisions because of Indiana's**
- 29 **high rate of residential mortgage foreclosures, which**
- 30 **constitutes an emergency.**
- 31 (2) **Indiana's high rate of residential mortgage foreclosures**
- 32 **has adversely affected property values in Indiana, and may**
- 33 **have an even greater adverse effect on property values if the**
- 34 **foreclosure rate continues to rise.**
- 35 (3) **It is in the public interest for the state to modify the**
- 36 **foreclosure process to encourage mortgage modification**
- 37 **alternatives.**

38 (b) **The purpose of this chapter is to avoid unnecessary**

1 **foreclosures of residential properties and thereby provide stability**
 2 **to Indiana's statewide and local economies by:**

- 3 **(1) requiring early contact and communications among**
 4 **creditors, their authorized agents, and debtors in order to**
 5 **engage in negotiations that could avoid foreclosure; and**
 6 **(2) facilitating the modification of residential mortgages in**
 7 **appropriate circumstances.**

8 **Sec. 2. (a) As used in this chapter, "creditor" means a person:**

- 9 **(1) that regularly engages in the extension of mortgages that**
 10 **are subject to a credit service charge or loan finance charge,**
 11 **as applicable, or are payable by written agreement in more**
 12 **than four (4) installments (not including a down payment);**
 13 **and**
 14 **(2) to which the obligation is initially payable, either on the**
 15 **face of the note or contract, or by agreement if there is not a**
 16 **note or contract.**

17 **(b) The term includes a mortgage servicer.**

18 **(c) The term does not include a person that closes mortgages**
 19 **that:**

- 20 **(1) are made in the person's own name with funds provided by**
 21 **one (1) or more other persons; and**
 22 **(2) are assigned simultaneously to the persons providing the**
 23 **funding not later than one (1) business day after the funding**
 24 **of the transaction.**

25 **Sec. 3. As used in this chapter, "debtor" refers to a person**
 26 **obligated to repay a mortgage.**

27 **Sec. 4. As used in this chapter, "foreclosure prevention**
 28 **agreement" means a written agreement that:**

- 29 **(1) is executed by both the creditor and the debtor; and**
 30 **(2) offers the debtor an individualized plan that may include:**
 31 **(A) a temporary forbearance with respect to the mortgage;**
 32 **(B) a reduction of any arrearage owed by the debtor;**
 33 **(C) a reduction of the interest rate that applies to the**
 34 **mortgage;**
 35 **(D) a repayment plan;**
 36 **(E) a deed in lieu of foreclosure;**
 37 **(F) reinstatement of the mortgage upon the debtor's**
 38 **payment of any arrearage;**

- 1 **(G) a sale of the property; or**
 2 **(H) any loss mitigation arrangement or debtor relief plan**
 3 **established by federal law.**

4 **Sec. 5. As used in this chapter, "mortgage" means a loan in**
 5 **which a first mortgage, or a land contract that constitutes a first**
 6 **lien, is created or retained against land upon which there is a**
 7 **dwelling that is or will be used by the debtor primarily for**
 8 **personal, family, or household purposes.**

9 **Sec. 6. As used in this chapter, "mortgage foreclosure**
 10 **counselor" means a foreclosure prevention counselor who is part**
 11 **of, or has been trained or certified by, the Indiana Foreclosure**
 12 **Prevention Network.**

13 **Sec. 7. As used in this chapter, "mortgage servicer" means the**
 14 **last person to whom:**

- 15 **(1) a debtor in a mortgage; or**
 16 **(2) the debtor's successor in interest;**
 17 **has been instructed to send payments on the mortgage.**

18 **Sec. 8. As used in this chapter, "reporting agency" means the**
 19 **Indiana housing and community development authority created by**
 20 **IC 5-20-1-3.**

21 **Sec. 9. (a) This section applies to a foreclosure action that is filed**
 22 **after June 30, 2009. Except as provided in subsection (e) and**
 23 **section 11(g) of this chapter, not later than thirty (30) days before**
 24 **a creditor files an action for foreclosure, the creditor shall send to**
 25 **the debtor by certified mail, return receipt requested, a presuit**
 26 **notice on a form prescribed by the Indiana housing and community**
 27 **development authority created by IC 5-20-1-3. In prescribing the**
 28 **form required by this section, the Indiana housing and community**
 29 **development authority shall include in the notice the statement set**
 30 **forth in IC 24-5.5-3-1. In addition, the notice required by this**
 31 **subsection must:**

- 32 **(1) inform the debtor that:**
 33 **(A) the debtor is in default; and**
 34 **(B) the debtor is encouraged to obtain assistance from a**
 35 **mortgage foreclosure counselor; and**
 36 **(2) provide the contact information for the Indiana**
 37 **Foreclosure Prevention Network.**

38 **(b) The notice required by subsection (a) shall be sent to:**

- 1 **(1) the address of the mortgaged property; or**
 2 **(2) the last known mailing address of the debtor if the**
 3 **creditor's records indicate that the mailing address of the**
 4 **debtor is other than the address of the mortgaged property.**

5 **(c) Except as provided in subsection (e) and section 11(h) of this**
 6 **chapter, if a creditor files an action to foreclose a mortgage, the**
 7 **creditor shall include with the complaint served on the debtor a**
 8 **notice that informs the debtor of the debtor's right to participate**
 9 **in a settlement conference. The notice must be in a form prescribed**
 10 **by the Indiana housing and community development authority**
 11 **created by IC 5-20-1-3. The notice must inform the debtor that the**
 12 **debtor may schedule a settlement conference by notifying the**
 13 **court, not later than thirty (30) days after the notice is served, of**
 14 **the debtor's intent to participate in a settlement conference.**

15 **(d) In a foreclosure action filed under IC 32-30-10-3 after June**
 16 **30, 2009, the creditor shall attach to the complaint filed with the**
 17 **court a copy of the notices sent to the debtor under subsections (a)**
 18 **and (c).**

19 **(e) A creditor is not required to send the notices described in**
 20 **this section if:**

- 21 **(1) the loan is secured by a dwelling that is not the debtor's**
 22 **primary residence;**
 23 **(2) the loan has been the subject of a prior foreclosure**
 24 **prevention agreement under this chapter and the debtor has**
 25 **defaulted with respect to the terms of that foreclosure**
 26 **prevention agreement;**
 27 **(3) bankruptcy law prohibits the creditor from participating**
 28 **in a settlement conference under this chapter with respect to**
 29 **the loan; or**
 30 **(4) the court finds that a settlement conference would be of**
 31 **limited value based on the result of a prior loss mitigation**
 32 **effort between the debtor and the creditor, other than a**
 33 **foreclosure prevention agreement under this chapter.**

34 **Sec. 10. After June 30, 2009, a court may not issue a judgment**
 35 **of foreclosure under IC 32-30-10 on a mortgage subject to this**
 36 **chapter unless all of the following apply:**

- 37 **(1) The creditor has given the notice required under section**
 38 **9(c) of this chapter.**

1 **(2) The debtor either:**
2 **(A) does not contact the court within the thirty (30) day**
3 **period described in section 9(c) of this chapter to schedule**
4 **a settlement conference under section 9(c) of this chapter;**
5 **or**
6 **(B) contacts the court within the thirty (30) day period**
7 **described in section 9(c) of this chapter to schedule a**
8 **conference under section 9(c) of this chapter and, upon**
9 **conclusion of the conference, the parties are unable to**
10 **reach agreement on the terms of a foreclosure prevention**
11 **agreement.**

12 **(3) At least sixty (60) days have elapsed since the date the**
13 **notice required by section 9(a) of this chapter was sent, unless**
14 **the mortgaged property is abandoned.**

15 **Sec. 11. (a) Unless a settlement conference is not required under**
16 **this chapter, the court shall issue a notice of a settlement**
17 **conference if the debtor contacts the court to schedule a settlement**
18 **conference as described in section 9(c) of this chapter. The court's**
19 **notice of a settlement conference must do the following:**

20 **(1) Order the creditor and the debtor to conduct a settlement**
21 **conference on or before a date and time specified in the**
22 **notice, which date must not be earlier than twenty-five (25)**
23 **days after the date of the notice or later than sixty (60) days**
24 **after the date of the notice, for the purpose of attempting to**
25 **negotiate a foreclosure prevention agreement.**

26 **(2) Require the debtor to contact a mortgage foreclosure**
27 **counselor before the date of the settlement conference. The**
28 **notice must provide the contact information for the Indiana**
29 **Foreclosure Prevention Network.**

30 **(3) Require the debtor to bring to the settlement conference**
31 **the following documents needed to engage in good faith**
32 **negotiations with the creditor:**

33 **(A) Documentation of the debtor's present and future**
34 **income, expenses, assets, and liabilities, including**
35 **documentation of the debtor's employment history.**

36 **(B) Any other documentation or information that the court**
37 **determines is needed for the debtor to engage in good faith**
38 **negotiations with the creditor. The court shall identify any**

- 1 documents required under this clause with enough
2 specificity to allow the debtor to obtain the documents
3 before the scheduled settlement conference.
- 4 **(4) Require the creditor to bring to the settlement conference**
5 **a transaction history for the mortgage, including the**
6 **following:**
- 7 **(A) A copy of the original note and mortgage.**
8 **(B) A record of payments made by the borrower.**
9 **(C) An itemization of all amounts claimed by the lender as**
10 **being owed on mortgage.**
11 **(D) Any other documentation that the court determines is**
12 **needed.**
- 13 **(5) Inform the parties that:**
- 14 **(A) each party has the right to be represented by an**
15 **attorney or assisted by a mortgage foreclosure counselor**
16 **at the settlement conference; and**
17 **(B) an attorney or a mortgage foreclosure counselor may**
18 **participate in the settlement conference in person or by**
19 **telephone.**
- 20 **(6) Inform the parties that the settlement conference will be**
21 **conducted at the county courthouse, or at another place**
22 **designated by the court, on the date and time specified in the**
23 **notice under subdivision (1) unless the parties submit to the**
24 **court a stipulation to:**
- 25 **(A) modify the date, time, and place of the settlement**
26 **conference; or**
27 **(B) hold the settlement conference by telephone at a date**
28 **and time agreed to by the parties.**
- 29 **(b) An attorney for the creditor shall attend the settlement**
30 **conference, and an authorized representative of the creditor shall**
31 **be available by telephone during the settlement conference. In**
32 **addition, the court may require any person that is a party to the**
33 **foreclosure action to appear at or participate in a settlement**
34 **conference held under this section, and, for cause shown, the court**
35 **may order the creditor and the debtor to reconvene a settlement**
36 **conference at any time before judgment is entered.**
- 37 **(c) At the court's discretion, a settlement conference may or**
38 **may not be attended by a judicial officer.**

1 **(d) The creditor shall ensure that any person representing the**
 2 **creditor:**

3 **(1) at a settlement conference scheduled under subsection (a);**

4 **or**

5 **(2) in any negotiations with the debtor designed to reach**
 6 **agreement on the terms of a foreclosure prevention**
 7 **agreement;**

8 **has authority to represent the creditor in negotiating a foreclosure**
 9 **prevention agreement with the debtor.**

10 **(e) If, as a result of a settlement conference held under this**
 11 **section, the debtor and the creditor agree to enter into a**
 12 **foreclosure prevention agreement, the agreement shall be reduced**
 13 **to writing and signed by both parties, and each party shall retain**
 14 **a copy of the signed agreement. Not later than seven (7) business**
 15 **days after the signing of the foreclosure prevention agreement, the**
 16 **creditor shall file with the court a copy of the signed agreement. At**
 17 **the election of the creditor, the foreclosure shall be dismissed or**
 18 **stayed for as long as the debtor complies with the terms of the**
 19 **foreclosure prevention agreement.**

20 **(f) If, as a result of a settlement conference held under this**
 21 **section, the debtor and the creditor are unable to agree on the**
 22 **terms of a foreclosure prevention agreement, the creditor shall, not**
 23 **later than seven (7) business days after the date of the settlement**
 24 **conference, file with the court a notice indicating that:**

25 **(1) the settlement conference held under this section has**
 26 **concluded and a foreclosure prevention agreement was not**
 27 **reached; or**

28 **(2) the settlement conference under this section was held but**
 29 **negotiations between the debtor and the creditor are**
 30 **continuing.**

31 **If the settlement conference held under this section results in an**
 32 **outcome described in subdivision (1), the foreclosure action filed by**
 33 **the creditor may proceed as otherwise allowed by law.**

34 **(g) If:**

35 **(1) a foreclosure is dismissed by the creditor under subsection**

36 **(f) after a foreclosure prevention agreement is reached; and**

37 **(2) a default in the terms of the foreclosure prevention**
 38 **agreement later occurs;**

1 the creditor or its assigns may bring a foreclosure action under
 2 **IC 32-30-10-3** without sending the notices described in section 9 of
 3 this chapter.

4 **(h) Participation in a settlement conference under this section**
 5 **satisfies any mediation or alternative dispute resolution**
 6 **requirement established by court rule.**

7 **Sec. 12. (a) This section applies to a mortgage foreclosure action**
 8 **with respect to which the creditor has filed the complaint in the**
 9 **proceeding before July 1, 2009, and the court having jurisdiction**
 10 **over the proceeding has not rendered a judgment of foreclosure**
 11 **before July 1, 2009.**

12 **(b) In a mortgage foreclosure action to which this section**
 13 **applies, the court having jurisdiction of the action shall serve**
 14 **notice of the availability of a settlement conference under section**
 15 **9(c) of this chapter.**

16 SECTION 15. IC 32-30-12-1 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided**
 18 **in IC 32-30-10.5 for mortgage transactions described in**
 19 **IC 32-30-10.5-5**, it is not necessary in any action upon a mortgage or
 20 lien to give time for:

- 21 (1) the payment of money; or
 22 (2) performing any other act.

23 Final judgment may be given in the first instance.

(Reference is to SB 492 as reprinted February 20, 2009.)

and when so amended that said bill do pass.

Representative Bardon