



February 5, 2013

HOUSE BILL No. 1308

DIGEST OF HB 1308 (Updated February 4, 2013 2:33 pm - DI 107)

Citations Affected: IC 5-20; IC 33-37.

Synopsis: Mortgage foreclosure counseling and education fee. Requires a clerk of a court who must collect a civil costs fee from a party filing a civil action to also collect a \$50 mortgage foreclosure counseling and education fee from a party filing a civil action to foreclose a mortgage. Requires that mortgage foreclosure counseling and education fees collected by a clerk must be deposited in the home ownership education account.

Effective: Upon passage.

Burton

January 14, 2013, read first time and referred to Committee on Judiciary.
February 5, 2013, amended, reported — Do Pass.

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HB 1308—LS 7046/DI 69+



February 5, 2013

First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1308

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.170-2011,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 27. (a) The home ownership education
4 account within the state general fund is established to support:
5 (1) home ownership education programs established under section
6 4(d) of this chapter;
7 (2) mortgage foreclosure counseling and education programs
8 established under IC 5-20-6-2; and
9 (3) programs conducted by one (1) or a combination of the
10 following to facilitate settlement conferences in residential
11 foreclosure actions under IC 32-30-10.5:
12 (A) The judiciary.
13 (B) Pro bono legal services agencies.
14 (C) Mortgage foreclosure counselors (as defined in
15 IC 32-30-10.5-6).
16 (D) Other nonprofit entities certified by the authority under
17 section 4(d) of this chapter.

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- 1 The account is administered by the authority.
- 2 (b) The home ownership education account consists of:
- 3 (1) court fees collected under ~~IC 33-37-5-30 (before its expiration~~
- 4 ~~on January 1, 2013);~~ **IC 33-37-5-32 (before its expiration on**
- 5 **January 1, 2015);**
- 6 (2) civil penalties imposed and collected under:
- 7 (A) IC 6-1.1-12-43(g)(2)(B); or
- 8 (B) IC 27-7-3-15.5(e); and
- 9 (3) any civil penalties imposed and collected by a court for a
- 10 violation of a court order in a foreclosure action under
- 11 IC 32-30-10.5.

12 (c) The expenses of administering the home ownership education
 13 account shall be paid from money in the account.

14 (d) The treasurer of state shall invest the money in the home
 15 ownership education account not currently needed to meet the
 16 obligations of the account in the same manner as other public money
 17 may be invested.

18 SECTION 2. IC 5-20-6-3, AS AMENDED BY P.L.170-2011,
 19 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 UPON PASSAGE]: Sec. 3. In addition to using money provided for the
 21 program from:

- 22 (1) court fees under ~~IC 33-37-5-30 (before its expiration on~~
- 23 ~~January 1, 2013);~~ **IC 33-37-5-32 (before its expiration on**
- 24 **January 1, 2015);**
- 25 (2) civil penalties imposed and collected under:
- 26 (A) IC 6-1.1-12-43(g)(2)(B); or
- 27 (B) IC 27-7-3-15.5(e); and
- 28 (3) any civil penalties imposed and collected by a court for a
- 29 violation of a court order in a foreclosure action under
- 30 IC 32-30-10.5;

31 the authority may solicit contributions and grants from the private
 32 sector, nonprofit entities, and the federal government to assist in
 33 carrying out the purposes of this chapter.

34 SECTION 3. IC 33-37-4-4, AS AMENDED BY P.L.136-2012,
 35 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee
 37 of one hundred dollars (\$100) from a party filing a civil action. This
 38 subsection does not apply to the following civil actions:

- 39 (1) Proceedings to enforce a statute defining an infraction under
- 40 IC 34-28-5 (or IC 34-4-32 before its repeal).
- 41 (2) Proceedings to enforce an ordinance under IC 34-28-5 (or
- 42 IC 34-4-32 before its repeal).

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- 1 (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
- 2 (4) Proceedings in paternity under IC 31-14.
- 3 (5) Proceedings in small claims court under IC 33-34.
- 4 (6) Proceedings in actions described in section 7 of this chapter.

5 (b) In addition to the civil costs fee collected under this section, the
 6 clerk shall collect the following fees, if they are required under
 7 IC 33-37-5:

- 8 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or
 9 IC 33-37-5-4).
- 10 (2) A support and maintenance fee (IC 33-37-5-6).
- 11 (3) A document storage fee (IC 33-37-5-20).
- 12 (4) An automated record keeping fee (IC 33-37-5-21).
- 13 (5) A public defense administration fee (IC 33-37-5-21.2).
- 14 (6) A judicial insurance adjustment fee (IC 33-37-5-25).
- 15 (7) A judicial salaries fee (IC 33-37-5-26).
- 16 (8) A court administration fee (IC 33-37-5-27).
- 17 (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).
- 18 (10) A garnishee service fee (IC 33-37-5-28(b)(3) or
 19 IC 33-37-5-28(b)(4)).
- 20 (11) For a mortgage foreclosure action, ~~filed after June 30, 2009;~~
 21 ~~and before January 1, 2013;~~ a mortgage foreclosure counseling
 22 and education fee ~~(IC 33-37-5-30 (before its expiration on~~
 23 ~~January 1, 2013)). (IC 33-37-5-32) (before its expiration on~~
 24 **January 1, 2015).**
- 25 (12) Before July 1, 2017, a pro bono legal services fee
 26 (IC 33-37-5-31).

27 SECTION 4. IC 33-37-5-32 IS ADDED TO THE INDIANA CODE
 28 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**
 29 **UPON PASSAGE]: Sec. 32. (a) This section applies to a civil action**
 30 **in which the clerk is required to collect a civil costs fee under**
 31 **IC 33-37-4-4(a). The clerk shall collect a fifty dollar (\$50) mortgage**
 32 **foreclosure counseling and education fee from a party filing an**
 33 **action to foreclose a mortgage.**

34 **(b) This section expires January 1, 2015.**

35 SECTION 5. IC 33-37-7-2, AS AMENDED BY P.L.136-2012,
 36 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall
 38 distribute semiannually to the auditor of state as the state share for
 39 deposit in the homeowner protection unit account established by
 40 IC 4-6-12-9 one hundred percent (100%) of the automated record
 41 keeping fees collected under IC 33-37-5-21 with respect to actions
 42 resulting in the accused person entering into a pretrial diversion

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1 program agreement under IC 33-39-1-8 or a deferral program
 2 agreement under IC 34-28-5-1 and for deposit in the state general fund
 3 seventy percent (70%) of the amount of fees collected under the
 4 following:

- 5 (1) IC 33-37-4-1(a) (criminal costs fees).
- 6 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- 7 (3) IC 33-37-4-3(a) (juvenile costs fees).
- 8 (4) IC 33-37-4-4(a) (civil costs fees).
- 9 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- 10 (6) IC 33-37-4-7(a) (probate costs fees).
- 11 (7) IC 33-37-5-17 (deferred prosecution fees).

12 (b) The clerk of a circuit court shall distribute semiannually to the
 13 auditor of state for deposit in the state user fee fund established in
 14 IC 33-37-9-2 the following:

- 15 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
 16 interdiction, and correction fees collected under
 17 IC 33-37-4-1(b)(5).
- 18 (2) Twenty-five percent (25%) of the alcohol and drug
 19 countermeasures fees collected under IC 33-37-4-1(b)(6),
 20 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- 21 (3) One hundred percent (100%) of the child abuse prevention
 22 fees collected under IC 33-37-4-1(b)(7).
- 23 (4) One hundred percent (100%) of the domestic violence
 24 prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- 25 (5) One hundred percent (100%) of the highway work zone fees
 26 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- 27 (6) One hundred percent (100%) of the safe schools fee collected
 28 under IC 33-37-5-18.
- 29 (7) The following:

- 30 (A) For a county operating under the state's automated judicial
 31 system, one hundred percent (100%) of the automated record
 32 keeping fee (IC 33-37-5-21) not distributed under subsection
 33 (a).
- 34 (B) For a county not operating under the state's automated
 35 judicial system, eighty percent (80%) of the automated record
 36 keeping fee (IC 33-37-5-21) not distributed under subsection
 37 (a).

38 (c) The clerk of a circuit court shall distribute monthly to the county
 39 auditor the following:

- 40 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
 41 interdiction, and correction fees collected under
 42 IC 33-37-4-1(b)(5).

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1 (2) Seventy-five percent (75%) of the alcohol and drug
2 countermeasures fees collected under IC 33-37-4-1(b)(6),
3 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
4 The county auditor shall deposit fees distributed by a clerk under this
5 subsection into the county drug free community fund established under
6 IC 5-2-11.
7 (d) The clerk of a circuit court shall distribute monthly to the county
8 auditor one hundred percent (100%) of the late payment fees collected
9 under IC 33-37-5-22. The county auditor shall deposit fees distributed
10 by a clerk under this subsection as follows:
11 (1) If directed to do so by an ordinance adopted by the county
12 fiscal body, the county auditor shall deposit forty percent (40%)
13 of the fees in the clerk's record perpetuation fund established
14 under IC 33-37-5-2 and sixty percent (60%) of the fees in the
15 county general fund.
16 (2) If the county fiscal body has not adopted an ordinance
17 described in subdivision (1), the county auditor shall deposit all
18 the fees in the county general fund.
19 (e) The clerk of the circuit court shall distribute semiannually to the
20 auditor of state for deposit in the sexual assault victims assistance
21 account established by IC 5-2-6-23(h) one hundred percent (100%) of
22 the sexual assault victims assistance fees collected under
23 IC 33-37-5-23.
24 (f) The clerk of a circuit court shall distribute monthly to the county
25 auditor the following:
26 (1) One hundred percent (100%) of the support and maintenance
27 fees for cases designated as non-Title IV-D child support cases in
28 the Indiana support enforcement tracking system (ISETS) or the
29 successor statewide automated support enforcement system
30 collected under IC 33-37-5-6.
31 (2) The percentage share of the support and maintenance fees for
32 cases designated as Title IV-D child support cases in ISETS or the
33 successor statewide automated support enforcement system
34 collected under IC 33-37-5-6 that is reimbursable to the county at
35 the federal financial participation rate.
36 The county clerk shall distribute monthly to the department of child
37 services the percentage share of the support and maintenance fees for
38 cases designated as Title IV-D child support cases in ISETS, or the
39 successor statewide automated support enforcement system, collected
40 under IC 33-37-5-6 that is not reimbursable to the county at the
41 applicable federal financial participation rate.
42 (g) The clerk of a circuit court shall distribute monthly to the county

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1 auditor the following:

2 (1) One hundred percent (100%) of the small claims service fee
3 under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in
4 the county general fund.

5 (2) One hundred percent (100%) of the small claims garnishee
6 service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for
7 deposit in the county general fund.

8 (h) This subsection does not apply to court administration fees
9 collected in small claims actions filed in a court described in IC 33-34.
10 The clerk of a circuit court shall semiannually distribute to the auditor
11 of state for deposit in the state general fund one hundred percent
12 (100%) of the following:

13 (1) The public defense administration fee collected under
14 IC 33-37-5-21.2.

15 (2) The judicial salaries fees collected under IC 33-37-5-26.

16 (3) The DNA sample processing fees collected under
17 IC 33-37-5-26.2.

18 (4) The court administration fees collected under IC 33-37-5-27.

19 (i) The clerk of a circuit court shall semiannually distribute to the
20 auditor of state for deposit in the judicial branch insurance adjustment
21 account established by IC 33-38-5-8.2 one hundred percent (100%) of
22 the judicial insurance adjustment fee collected under IC 33-37-5-25.

23 (j) The proceeds of the service fee collected under
24 IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as
25 follows:

26 (1) The clerk shall distribute one hundred percent (100%) of the
27 service fees collected in a circuit, superior, county, or probate
28 court to the county auditor for deposit in the county general fund.

29 (2) The clerk shall distribute one hundred percent (100%) of the
30 service fees collected in a city or town court to the city or town
31 fiscal officer for deposit in the city or town general fund.

32 (k) The proceeds of the garnishee service fee collected under
33 IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as
34 follows:

35 (1) The clerk shall distribute one hundred percent (100%) of the
36 garnishee service fees collected in a circuit, superior, county, or
37 probate court to the county auditor for deposit in the county
38 general fund.

39 (2) The clerk shall distribute one hundred percent (100%) of the
40 garnishee service fees collected in a city or town court to the city
41 or town fiscal officer for deposit in the city or town general fund.

42 (l) The clerk of the circuit court shall distribute semiannually to the

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1 auditor of state for deposit in the home ownership education account
 2 established by IC 5-20-1-27 one hundred percent (100%) of the
 3 following:

4 (1) The mortgage foreclosure counseling and education fees
 5 collected under ~~IC 33-37-5-30 (before its expiration on January~~
 6 ~~1, 2013)~~. **IC 33-37-5-32 (before its expiration on January 1,**
 7 **2015).**

8 (2) Any civil penalties imposed and collected by a court for a
 9 violation of a court order in a foreclosure action under
 10 IC 32-30-10.5.

11 (m) This subsection applies to a county that is not operating under
 12 the state's automated judicial system. The clerk of a circuit court shall
 13 distribute monthly to the county auditor twenty percent (20%) of the
 14 automated record keeping fee (IC 33-37-5-21) not distributed under
 15 subsection (a) for deposit in the clerk's record perpetuation fund.

16 (n) The clerk of a circuit court shall distribute semiannually to the
 17 auditor of state one hundred percent (100%) of the pro bono legal
 18 services fees collected before July 1, 2017, under IC 33-37-5-31. The
 19 auditor of state shall transfer semiannually the pro bono legal services
 20 fees to the Indiana Bar Foundation (or a successor entity) as the entity
 21 designated to organize and administer the interest on lawyers trust
 22 accounts (IOLTA) program under Rule 1.15 of the Rules of
 23 Professional Conduct of the Indiana supreme court. The Indiana Bar
 24 Foundation shall:

25 (1) deposit in an appropriate account and otherwise manage the
 26 fees the Indiana Bar Foundation receives under this subsection in
 27 the same manner the Indiana Bar Foundation deposits and
 28 manages the net earnings the Indiana Bar Foundation receives
 29 from IOLTA accounts; and

30 (2) use the fees the Indiana Bar Foundation receives under this
 31 subsection to assist or establish approved pro bono legal services
 32 programs.

33 The handling and expenditure of the pro bono legal services fees
 34 received under this section by the Indiana Bar Foundation (or its
 35 successor entity) are subject to audit by the state board of accounts. The
 36 amounts necessary to make the transfers required by this subsection are
 37 appropriated from the state general fund.

38 **SECTION 6. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1308, 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:

Page 2, line 4, delete "IC 33-37-5-32;" and insert "**IC 33-37-5-32 (before its expiration on January 1, 2015);**".

Page 2, line 22, delete "IC 33-37-5-32;" and insert "**IC 33-37-5-32 (before its expiration on January 1, 2015);**".

Page 3, line 21, delete "(IC 33-37-5-32)." and insert "**(IC 33-37-5-32) (before its expiration on January 1, 2015).**".

Page 3, line 26, after "32." insert "**(a)**".

Page 3, between lines 30 and 31, begin a new paragraph and insert: "**(b) This section expires January 1, 2015.**".

Page 7, line 2, delete "IC 33-37-5-32." and insert "**IC 33-37-5-32 (before its expiration on January 1, 2015).**".

and when so amended that said bill do pass.

(Reference is to HB 1308 as introduced.)

STEUERWALD, Chair

Committee Vote: yeas 8, nays 2.

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