

HOUSE BILL No. 1097

DIGEST OF INTRODUCED BILL

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

Synopsis: Foreclosure counseling and education fee. Extends from July 1, 2017, to July 1, 2019, the date for the expiration of the \$50 mortgage foreclosure counseling and education fee that must be paid by a party filing an action to foreclose a mortgage. Makes conforming amendments.

Effective: Upon passage.

Burton

January 5, 2017, read first time and referred to Committee on Ways and Means.



First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1097

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.72-2016,
2 SECTION 5, 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.



- 1 The account is administered by the authority.
- 2 (b) The home ownership education account consists of:
- 3 (1) court fees collected under IC 33-37-5-33; (before its
- 4 expiration on July 1, ~~2017~~; **2019**);
- 5 (2) civil penalties imposed and collected under:
- 6 (A) IC 6-1.1-12-43(g)(2)(B); or
- 7 (B) IC 27-7-3-15.5(f); and
- 8 (3) 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 (c) The expenses of administering the home ownership education
- 12 account shall be paid from money in the account.
- 13 (d) The treasurer of state shall invest the money in the home
- 14 ownership education account not currently needed to meet the
- 15 obligations of the account in the same manner as other public money
- 16 may be invested.
- 17 SECTION 2. IC 5-20-6-3, AS AMENDED BY P.L.72-2016,
- 18 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 19 UPON PASSAGE]: Sec. 3. In addition to using money provided for the
- 20 program from:
- 21 (1) court fees under IC 33-37-5-33; (before its expiration on July
- 22 1, ~~2017~~; **2019**);
- 23 (2) civil penalties imposed and collected under:
- 24 (A) IC 6-1.1-12-43(g)(2)(B); or
- 25 (B) IC 27-7-3-15.5(f); and
- 26 (3) any civil penalties imposed and collected by a court for a
- 27 violation of a court order in a foreclosure action under
- 28 IC 32-30-10.5;
- 29 the authority may solicit contributions and grants from the private
- 30 sector, nonprofit entities, and the federal government to assist in
- 31 carrying out the purposes of this chapter.
- 32 SECTION 3. IC 33-37-4-4, AS AMENDED BY P.L.247-2015,
- 33 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 34 UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee
- 35 of one hundred dollars (\$100) from a party filing a civil action. This
- 36 subsection does not apply to the following civil actions:
- 37 (1) Proceedings to enforce a statute defining an infraction under
- 38 IC 34-28-5 (or IC 34-4-32 before its repeal).
- 39 (2) Proceedings to enforce an ordinance under IC 34-28-5 (or
- 40 IC 34-4-32 before its repeal).
- 41 (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
- 42 (4) Proceedings in paternity under IC 31-14.



1 (5) Proceedings in small claims court under IC 33-34.

2 (6) Proceedings in actions described in section 7 of this chapter.

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

6 (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or
7 IC 33-37-5-4).

8 (2) A support and maintenance fee (IC 33-37-5-6).

9 (3) A document storage fee (IC 33-37-5-20).

10 (4) An automated record keeping fee (IC 33-37-5-21).

11 (5) A public defense administration fee (IC 33-37-5-21.2).

12 (6) A judicial insurance adjustment fee (IC 33-37-5-25).

13 (7) A judicial salaries fee (IC 33-37-5-26).

14 (8) A court administration fee (IC 33-37-5-27).

15 (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).

16 (10) A garnishee service fee (IC 33-37-5-28(b)(3) or
17 IC 33-37-5-28(b)(4)).

18 (11) For a mortgage foreclosure action, a mortgage foreclosure
19 counseling and education fee (IC 33-37-5-33) (before its
20 expiration on July 1, ~~2017~~: **2019**).

21 (12) Before July 1, 2017, a pro bono legal services fee
22 (IC 33-37-5-31).

23 SECTION 4. IC 33-37-5-33, AS ADDED BY P.L.247-2015,
24 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 UPON PASSAGE]: Sec. 33. (a) This section applies to a civil action in
26 which the clerk is required to collect a civil costs fee under
27 IC 33-37-4-4. The clerk shall collect a fifty dollar (\$50) mortgage
28 foreclosure counseling and education fee from a party filing an action
29 to foreclose a mortgage.

30 (b) This section expires July 1, ~~2017~~: **2019**.

31 SECTION 5. IC 33-37-7-2, AS AMENDED BY THE TECHNICAL
32 CORRECTIONS BILL OF THE 2017 GENERAL ASSEMBLY, IS
33 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
34 PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall distribute
35 semiannually to the auditor of state as the state share for deposit in the
36 homeowner protection unit account established by IC 4-6-12-9 one
37 hundred percent (100%) of the automated record keeping fees collected
38 under IC 33-37-5-21 with respect to actions resulting in the accused
39 person entering into a pretrial diversion program agreement under
40 IC 33-39-1-8 or a deferral program agreement under IC 34-28-5-1 and
41 for deposit in the state general fund seventy percent (70%) of the
42 amount of fees collected under the following:



- 1 (1) IC 33-37-4-1(a) (criminal costs fees).
 2 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
 3 (3) IC 33-37-4-3(a) (juvenile costs fees).
 4 (4) IC 33-37-4-4(a) (civil costs fees).
 5 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
 6 (6) IC 33-37-4-7(a) (probate costs fees).
 7 (7) IC 33-37-5-17 (deferred prosecution fees).
 8 (b) The clerk of a circuit court shall distribute semiannually to the
 9 auditor of state for deposit in the state user fee fund established in
 10 IC 33-37-9-2 the following:
 11 (1) Twenty-five percent (25%) of the drug abuse, prosecution,
 12 interdiction, and correction fees collected under
 13 IC 33-37-4-1(b)(5).
 14 (2) Twenty-five percent (25%) of the alcohol and drug
 15 countermeasures fees collected under IC 33-37-4-1(b)(6),
 16 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
 17 (3) One hundred percent (100%) of the child abuse prevention
 18 fees collected under IC 33-37-4-1(b)(7).
 19 (4) One hundred percent (100%) of the domestic violence
 20 prevention and treatment fees collected under IC 33-37-4-1(b)(8).
 21 (5) One hundred percent (100%) of the highway ~~work~~ **worksite**
 22 zone fees collected under IC 33-37-4-1(b)(9) and
 23 IC 33-37-4-2(b)(5).
 24 (6) One hundred percent (100%) of the safe schools fee collected
 25 under IC 33-37-5-18.
 26 (7) One hundred percent (100%) of the automated record keeping
 27 fee collected under IC 33-37-5-21 not distributed under
 28 subsection (a).
 29 (c) The clerk of a circuit court shall distribute monthly to the county
 30 auditor the following:
 31 (1) Seventy-five percent (75%) of the drug abuse, prosecution,
 32 interdiction, and correction fees collected under
 33 IC 33-37-4-1(b)(5).
 34 (2) Seventy-five percent (75%) of the alcohol and drug
 35 countermeasures fees collected under IC 33-37-4-1(b)(6),
 36 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
 37 The county auditor shall deposit fees distributed by a clerk under this
 38 subsection into the county drug free community fund established under
 39 IC 5-2-11.
 40 (d) The clerk of a circuit court shall distribute monthly to the county
 41 auditor one hundred percent (100%) of the late payment fees collected
 42 under IC 33-37-5-22. The county auditor shall deposit fees distributed



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



1 of state for deposit in the state general fund one hundred percent
2 (100%) of the following:

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

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

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

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

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

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

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

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

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

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

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

32 (l) The clerk of the circuit court shall distribute semiannually to the
33 auditor of state for deposit in the home ownership education account
34 established by IC 5-20-1-27 one hundred percent (100%) of the
35 following:

36 (1) The mortgage foreclosure counseling and education fees
37 collected under IC 33-37-5-33 (before its expiration on July 1,
38 ~~2017~~: **2019**).

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

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



1 auditor of state one hundred percent (100%) of the pro bono legal
2 services fees collected before July 1, 2017, under IC 33-37-5-31. The
3 auditor of state shall transfer semiannually the pro bono legal services
4 fees to the Indiana Bar Foundation (or a successor entity) as the entity
5 designated to organize and administer the interest on lawyers trust
6 accounts (IOLTA) program under Rule 1.15 of the Rules of
7 Professional Conduct of the Indiana supreme court. The Indiana Bar
8 Foundation shall:

9 (1) deposit in an appropriate account and otherwise manage the
10 fees the Indiana Bar Foundation receives under this subsection in
11 the same manner the Indiana Bar Foundation deposits and
12 manages the net earnings the Indiana Bar Foundation receives
13 from IOLTA accounts; and

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

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

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

