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# HOUSE BILL No. 1439

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-29-7-3; IC 33-19.

**Synopsis:** Sheriff's fees. Increases certain fees for service of process by a sheriff. Increases the county contribution to the sheriff's department pension trust for service of certain legal documents by a county sheriff.

**Effective:** July 1, 2004.

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**Alderman, Thomas**

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January 20, 2004, read first time and referred to Committee on Ways and Means.

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Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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**HOUSE BILL No. 1439**



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 32-29-7-3, AS ADDED BY P.L.2-2002, SECTION  
2 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2004]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage  
4 executed on real estate, process may not issue for the execution of a  
5 judgment or decree of sale for a period of three (3) months after the  
6 filing of a complaint in the proceeding. However:

7 (1) the period shall be:

8 (A) twelve (12) months in a proceeding for the foreclosure of  
9 a mortgage executed before January 1, 1958; and  
10 (B) six (6) months in a proceeding for the foreclosure of a  
11 mortgage executed after December 31, 1957, but before July  
12 1, 1975; and

13 (2) if the court finds that the mortgaged real estate is residential  
14 real estate and has been abandoned, a judgment or decree of sale  
15 may be executed on the date the judgment of foreclosure or  
16 decree of sale is entered, regardless of the date the mortgage is  
17 executed.



1 (b) A judgment and decree in a proceeding to foreclose a mortgage  
 2 that is entered by a court having jurisdiction may be filed with the clerk  
 3 in any county as provided in IC 33-17-2-3. After the period set forth in  
 4 subsection (a) expires, a person who may enforce the judgment and  
 5 decree may file a praecipe with the clerk in any county where the  
 6 judgment and decree is filed, and the clerk shall promptly issue and  
 7 certify to the sheriff of that county a copy of the judgment and decree  
 8 under the seal of the court.

9 (c) Upon receiving a certified judgment under subsection (b), the  
 10 sheriff shall, subject to section 4 of this chapter, sell the mortgaged  
 11 premises or as much of the mortgaged premises as necessary to satisfy  
 12 the judgment, interest, and costs at public auction at the office of the  
 13 sheriff or at another location that is reasonably likely to attract higher  
 14 competitive bids. The sheriff shall schedule the date and time of the  
 15 sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m.  
 16 on any day of the week except Sunday.

17 (d) Before selling mortgaged property, the sheriff must advertise the  
 18 sale by publication once each week for three (3) successive weeks in  
 19 a daily or weekly newspaper of general circulation. The sheriff shall  
 20 publish the advertisement in at least one (1) newspaper published and  
 21 circulated in each county where the real estate is situated. The first  
 22 publication shall be made at least thirty (30) days before the date of  
 23 sale. At the time of placing the first advertisement by publication, the  
 24 sheriff shall also serve a copy of the written or printed notice of sale  
 25 upon each owner of the real estate. Service of the written notice shall  
 26 be made as provided in the Indiana Rules of Trial Procedure governing  
 27 service of process upon a person. The sheriff shall charge a fee of ~~ten~~  
 28 **fifty dollars (\$50)** to one (1) owner and ~~three ten~~ **dollars (\$3**  
 29 **\$10)** to each additional owner for service of written notice under this  
 30 subsection. The fee is:

- 31 (1) a cost of the proceeding;  
 32 (2) to be collected as other costs of the proceeding are collected;  
 33 and  
 34 (3) to be deposited in the county general fund for appropriation  
 35 for operating expenses of the sheriff's department.

36 (e) The sheriff also shall post written or printed notices of the sale  
 37 in at least three (3) public places in each township in which the real  
 38 estate is situated and at the door of the courthouse of each county in  
 39 which the real estate is located.

40 (f) If the sheriff is unable to procure the publication of a notice  
 41 within the county, the sheriff may dispense with publication. However,  
 42 the sheriff shall state that the sheriff was not able to procure the

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1 publication and explain the reason why publication was not possible.  
 2 (g) Notices under subsections (d) and (e) must contain a statement,  
 3 for informational purposes only, of the location of each property by  
 4 street address, if any, or other common description of the property other  
 5 than legal description. A misstatement in the informational statement  
 6 under this subsection does not invalidate an otherwise valid sale.  
 7 SECTION 2. IC 33-19-6-15 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In addition to  
 9 any other fee for service of process, if:  
 10 (1) a person files a civil action outside Indiana; and  
 11 (2) a sheriff in Indiana is requested to perform a service of  
 12 process:  
 13 (A) associated with the civil action; and  
 14 (B) in Indiana;  
 15 the sheriff shall collect from the person who filed the civil action a  
 16 service of process fee of ~~forty fifty~~ dollars (~~\$40~~) (**\$50**).  
 17 (b) A sheriff shall transfer fees collected under this section to the  
 18 county auditor of the county in which the sheriff has jurisdiction to be  
 19 deposited:  
 20 (1) in the pension trust established by the county under  
 21 IC 36-8-10-12; or  
 22 (2) if the county has not established a pension trust under  
 23 IC 36-8-10-12, in the county general fund.  
 24 SECTION 3. IC 33-19-7-7 IS AMENDED TO READ AS  
 25 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) This section  
 26 applies to a county in which there is established a pension trust under  
 27 IC 36-8-10-12.  
 28 (b) From the county share distributed under section 2 of this chapter  
 29 and deposited into the county general fund, the county fiscal body shall  
 30 appropriate ~~twelve twenty-five~~ dollars (~~\$12~~) (**\$25**) for each verified  
 31 claim presented by the sheriff to the fiscal body under subsection (c).  
 32 Amounts appropriated under this subsection shall be deposited by the  
 33 county auditor into the pension trust established under IC 36-8-10-12.  
 34 (c) For each service of a writ, order, process, notice, tax warrant, or  
 35 other paper completed by the sheriff, the sheriff shall submit to the  
 36 county fiscal body a verified claim of service.

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