

Adopted	Rejected
---------	----------

COMMITTEE REPORT

YES:	7
NO:	0

MR. SPEAKER:

*Your Committee on Financial Institutions, to which was referred House Bill 1181, 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 Replace the effective date in SECTION 1 with "[EFFECTIVE
- 2 UPON PASSAGE]".
- 3 Page 1, between the enacting clause and line 1, begin a new
- 4 paragraph and insert:
- 5 "SECTION 1. IC 2-5-30.5 IS ADDED TO THE INDIANA CODE
- 6 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 7 UPON PASSAGE]:
- 8 **Chapter 30.5. Interim Study Committee on Nonjudicial**
- 9 **Foreclosures**
- 10 **Sec. 1. As used in this chapter, "committee" refers to the**
- 11 **interim study committee on nonjudicial foreclosures established by**
- 12 **section 2 of this chapter.**
- 13 **Sec. 2. The interim study committee on nonjudicial foreclosures**
- 14 **is established. In appointing members to the committee, the**

1 legislative council shall appoint members from those standing
2 committees of the house of representatives and the senate that have
3 subject matter jurisdiction relating to mortgage lending and
4 mortgage foreclosures.

5 Sec. 3. The committee shall operate under the policies governing
6 study committees adopted by the legislative council.

7 Sec. 4. The affirmative votes of a majority of the voting
8 members appointed to the committee are required for the
9 committee to take action on any measure, including final reports.

10 Sec. 5. (a) The committee shall study and make
11 recommendations to the legislative council concerning the
12 following:

13 (1) The experiences of other states that have:

14 (A) enacted the Uniform Nonjudicial Foreclosure Act
15 adopted by the National Conference of Commissioners on
16 Uniform State Laws; or

17 (B) otherwise adopted a nonjudicial mortgage foreclosure
18 process.

19 (2) The feasibility of Indiana adopting a nonjudicial mortgage
20 foreclosure process, including any efforts needed to transition
21 from the existing judicial foreclosure process to a nonjudicial
22 foreclosure process.

23 (3) Any other topic relating to nonjudicial foreclosures
24 assigned by the legislative council or as directed by the
25 committee chair.

26 (b) The committee may recommend for introduction in the
27 general assembly proposed legislation to establish a nonjudicial
28 foreclosure process in Indiana.

29 (c) In conducting the study required by this section, the
30 committee may consult with or solicit testimony from the
31 following:

32 (1) The office of the attorney general, the department of
33 financial institutions, the Indiana housing and community
34 development authority, the chief justice of the Indiana
35 supreme court, the division of state court administration, any
36 judicial officer or other court personnel of a circuit or
37 superior court, or any officer or employee of the executive or
38 judicial branch.

1 **(2) Creditors in mortgage transactions and attorneys who**
 2 **represent creditors in mortgage foreclosure actions.**

3 **(3) Debtors in mortgage transactions and attorneys who**
 4 **represent debtors in mortgage foreclosure actions.**

5 **(4) Mortgage foreclosure counselors.**

6 **(5) Academics.**

7 **(6) Officials from other states.**

8 **(7) Any other person whom the committee chair determines**
 9 **to have appropriate expertise.**

10 **Sec. 6. Not later than November 1, 2011, the committee shall**
 11 **issue a final report to the legislative council containing the findings**
 12 **and recommendations of the committee.**

13 **Sec. 7. This chapter expires December 31, 2011.**

14 SECTION 2. IC 5-14-3-4, AS AMENDED BY P.L.94-2010,
 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 UPON PASSAGE]: Sec. 4. (a) The following public records are
 17 excepted from section 3 of this chapter and may not be disclosed by a
 18 public agency, unless access to the records is specifically required by
 19 a state or federal statute or is ordered by a court under the rules of
 20 discovery:

21 (1) Those declared confidential by state statute.

22 (2) Those declared confidential by rule adopted by a public
 23 agency under specific authority to classify public records as
 24 confidential granted to the public agency by statute.

25 (3) Those required to be kept confidential by federal law.

26 (4) Records containing trade secrets.

27 (5) Confidential financial information obtained, upon request,
 28 from a person. However, this does not include information that is
 29 filed with or received by a public agency pursuant to state statute.

30 (6) Information concerning research, including actual research
 31 documents, conducted under the auspices of a state educational
 32 institution, including information:

33 (A) concerning any negotiations made with respect to the
 34 research; and

35 (B) received from another party involved in the research.

36 (7) Grade transcripts and license examination scores obtained as
 37 part of a licensure process.

38 (8) Those declared confidential by or under rules adopted by the

- 1 supreme court of Indiana.
- 2 (9) Patient medical records and charts created by a provider,
3 unless the patient gives written consent under IC 16-39 or as
4 provided under IC 16-41-8.
- 5 (10) Application information declared confidential by the board
6 of the Indiana economic development corporation under
7 IC 5-28-16.
- 8 (11) A photograph, a video recording, or an audio recording of an
9 autopsy, except as provided in IC 36-2-14-10.
- 10 (12) A Social Security number contained in the records of a
11 public agency.
- 12 **(13) The following information that is part of a foreclosure**
13 **action subject to IC 32-30-10.5:**
- 14 **(A) Contact information for a debtor, as described in**
15 **IC 32-30-10.5-8(d)(2)(B).**
- 16 **(B) Any document submitted to the court as part of the**
17 **debtor's loss mitigation package under**
18 **IC 32-30-10.5-10(a)(3).**
- 19 (b) Except as otherwise provided by subsection (a), the following
20 public records shall be excepted from section 3 of this chapter at the
21 discretion of a public agency:
- 22 (1) Investigatory records of law enforcement agencies. However,
23 certain law enforcement records must be made available for
24 inspection and copying as provided in section 5 of this chapter.
- 25 (2) The work product of an attorney representing, pursuant to
26 state employment or an appointment by a public agency:
- 27 (A) a public agency;
28 (B) the state; or
29 (C) an individual.
- 30 (3) Test questions, scoring keys, and other examination data used
31 in administering a licensing examination, examination for
32 employment, or academic examination before the examination is
33 given or if it is to be given again.
- 34 (4) Scores of tests if the person is identified by name and has not
35 consented to the release of the person's scores.
- 36 (5) The following:
- 37 (A) Records relating to negotiations between the Indiana
38 economic development corporation, the ports of Indiana, the

- 1 Indiana state department of agriculture, the Indiana finance
 2 authority, an economic development commission, a local
 3 economic development organization (as defined in
 4 IC 5-28-11-2(3)), or a governing body of a political
 5 subdivision with industrial, research, or commercial prospects,
 6 if the records are created while negotiations are in progress.
- 7 (B) Notwithstanding clause (A), the terms of the final offer of
 8 public financial resources communicated by the Indiana
 9 economic development corporation, the ports of Indiana, the
 10 Indiana finance authority, an economic development
 11 commission, or a governing body of a political subdivision to
 12 an industrial, a research, or a commercial prospect shall be
 13 available for inspection and copying under section 3 of this
 14 chapter after negotiations with that prospect have terminated.
- 15 (C) When disclosing a final offer under clause (B), the Indiana
 16 economic development corporation shall certify that the
 17 information being disclosed accurately and completely
 18 represents the terms of the final offer.
- 19 (6) Records that are intra-agency or interagency advisory or
 20 deliberative material, including material developed by a private
 21 contractor under a contract with a public agency, that are
 22 expressions of opinion or are of a speculative nature, and that are
 23 communicated for the purpose of decision making.
- 24 (7) Diaries, journals, or other personal notes serving as the
 25 functional equivalent of a diary or journal.
- 26 (8) Personnel files of public employees and files of applicants for
 27 public employment, except for:
- 28 (A) the name, compensation, job title, business address,
 29 business telephone number, job description, education and
 30 training background, previous work experience, or dates of
 31 first and last employment of present or former officers or
 32 employees of the agency;
- 33 (B) information relating to the status of any formal charges
 34 against the employee; and
- 35 (C) the factual basis for a disciplinary action in which final
 36 action has been taken and that resulted in the employee being
 37 suspended, demoted, or discharged.
- 38 However, all personnel file information shall be made available

- 1 to the affected employee or the employee's representative. This
 2 subdivision does not apply to disclosure of personnel information
 3 generally on all employees or for groups of employees without the
 4 request being particularized by employee name.
- 5 (9) Minutes or records of hospital medical staff meetings.
- 6 (10) Administrative or technical information that would
 7 jeopardize a record keeping or security system.
- 8 (11) Computer programs, computer codes, computer filing
 9 systems, and other software that are owned by the public agency
 10 or entrusted to it and portions of electronic maps entrusted to a
 11 public agency by a utility.
- 12 (12) Records specifically prepared for discussion or developed
 13 during discussion in an executive session under IC 5-14-1.5-6.1.
 14 However, this subdivision does not apply to that information
 15 required to be available for inspection and copying under
 16 subdivision (8).
- 17 (13) The work product of the legislative services agency under
 18 personnel rules approved by the legislative council.
- 19 (14) The work product of individual members and the partisan
 20 staffs of the general assembly.
- 21 (15) The identity of a donor of a gift made to a public agency if:
 22 (A) the donor requires nondisclosure of the donor's identity as
 23 a condition of making the gift; or
 24 (B) after the gift is made, the donor or a member of the donor's
 25 family requests nondisclosure.
- 26 (16) Library or archival records:
 27 (A) which can be used to identify any library patron; or
 28 (B) deposited with or acquired by a library upon a condition
 29 that the records be disclosed only:
 30 (i) to qualified researchers;
 31 (ii) after the passing of a period of years that is specified in
 32 the documents under which the deposit or acquisition is
 33 made; or
 34 (iii) after the death of persons specified at the time of the
 35 acquisition or deposit.
- 36 However, nothing in this subdivision shall limit or affect contracts
 37 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 38 (17) The identity of any person who contacts the bureau of motor

1 vehicles concerning the ability of a driver to operate a motor
2 vehicle safely and the medical records and evaluations made by
3 the bureau of motor vehicles staff or members of the driver
4 licensing medical advisory board regarding the ability of a driver
5 to operate a motor vehicle safely. However, upon written request
6 to the commissioner of the bureau of motor vehicles, the driver
7 must be given copies of the driver's medical records and
8 evaluations.

9 (18) School safety and security measures, plans, and systems,
10 including emergency preparedness plans developed under 511
11 IAC 6.1-2-2.5.

12 (19) A record or a part of a record, the public disclosure of which
13 would have a reasonable likelihood of threatening public safety
14 by exposing a vulnerability to terrorist attack. A record described
15 under this subdivision includes:

16 (A) a record assembled, prepared, or maintained to prevent,
17 mitigate, or respond to an act of terrorism under IC 35-47-12-1
18 or an act of agricultural terrorism under IC 35-47-12-2;

19 (B) vulnerability assessments;

20 (C) risk planning documents;

21 (D) needs assessments;

22 (E) threat assessments;

23 (F) intelligence assessments;

24 (G) domestic preparedness strategies;

25 (H) the location of community drinking water wells and
26 surface water intakes;

27 (I) the emergency contact information of emergency
28 responders and volunteers;

29 (J) infrastructure records that disclose the configuration of
30 critical systems such as communication, electrical, ventilation,
31 water, and wastewater systems; and

32 (K) detailed drawings or specifications of structural elements,
33 floor plans, and operating, utility, or security systems, whether
34 in paper or electronic form, of any building or facility located
35 on an airport (as defined in IC 8-21-1-1) that is owned,
36 occupied, leased, or maintained by a public agency. A record
37 described in this clause may not be released for public
38 inspection by any public agency without the prior approval of

1 the public agency that owns, occupies, leases, or maintains the
 2 airport. The public agency that owns, occupies, leases, or
 3 maintains the airport:

4 (i) is responsible for determining whether the public
 5 disclosure of a record or a part of a record has a reasonable
 6 likelihood of threatening public safety by exposing a
 7 vulnerability to terrorist attack; and

8 (ii) must identify a record described under item (i) and
 9 clearly mark the record as "confidential and not subject to
 10 public disclosure under IC 5-14-3-4(b)(19)(J) without
 11 approval of (insert name of submitting public agency)".

12 This subdivision does not apply to a record or portion of a record
 13 pertaining to a location or structure owned or protected by a
 14 public agency in the event that an act of terrorism under
 15 IC 35-47-12-1 or an act of agricultural terrorism under
 16 IC 35-47-12-2 has occurred at that location or structure, unless
 17 release of the record or portion of the record would have a
 18 reasonable likelihood of threatening public safety by exposing a
 19 vulnerability of other locations or structures to terrorist attack.

20 (20) The following personal information concerning a customer
 21 of a municipally owned utility (as defined in IC 8-1-2-1):

22 (A) Telephone number.

23 (B) Address.

24 (C) Social Security number.

25 (21) The following personal information about a complainant
 26 contained in records of a law enforcement agency:

27 (A) Telephone number.

28 (B) The complainant's address. However, if the complainant's
 29 address is the location of the suspected crime, infraction,
 30 accident, or complaint reported, the address shall be made
 31 available for public inspection and copying.

32 (22) Notwithstanding subdivision (8)(A), the name,
 33 compensation, job title, business address, business telephone
 34 number, job description, education and training background,
 35 previous work experience, or dates of first employment of a law
 36 enforcement officer who is operating in an undercover capacity.

37 (23) Records requested by an offender that:

38 (A) contain personal information relating to:

- 1 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 2 (ii) the victim of a crime; or
 3 (iii) a family member of a correctional officer or the victim
 4 of a crime; or
 5 (B) concern or could affect the security of a jail or correctional
 6 facility.

7 (c) Nothing contained in subsection (b) shall limit or affect the right
 8 of a person to inspect and copy a public record required or directed to
 9 be made by any statute or by any rule of a public agency.

10 (d) Notwithstanding any other law, a public record that is classified
 11 as confidential, other than a record concerning an adoption or patient
 12 medical records, shall be made available for inspection and copying
 13 seventy-five (75) years after the creation of that record.

14 (e) Only the content of a public record may form the basis for the
 15 adoption by any public agency of a rule or procedure creating an
 16 exception from disclosure under this section.

17 (f) Except as provided by law, a public agency may not adopt a rule
 18 or procedure that creates an exception from disclosure under this
 19 section based upon whether a public record is stored or accessed using
 20 paper, electronic media, magnetic media, optical media, or other
 21 information storage technology.

22 (g) Except as provided by law, a public agency may not adopt a rule
 23 or procedure nor impose any costs or liabilities that impede or restrict
 24 the reproduction or dissemination of any public record.

25 (h) Notwithstanding subsection (d) and section 7 of this chapter:

- 26 (1) public records subject to IC 5-15 may be destroyed only in
 27 accordance with record retention schedules under IC 5-15; or
 28 (2) public records not subject to IC 5-15 may be destroyed in the
 29 ordinary course of business.

30 SECTION 3. IC 32-30-10.5-1.2 IS ADDED TO THE INDIANA
 31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE UPON PASSAGE]: **Sec. 1.2. As used in this chapter,**
 33 **"authority" refers to the Indiana housing and community**
 34 **development authority created by IC 5-20-1-3.**

35 SECTION 4. IC 32-30-10.5-4.7 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE UPON PASSAGE]: **Sec. 4.7. As used in this chapter,**
 38 **"loss mitigation package" means a set of documents, the**

- 1 **components of which:**
 2 **(1) are specified by the authority under section 10(i) of this**
 3 **chapter;**
 4 **(2) provide information about a debtor's present and**
 5 **projected future income, expenses, assets, and liabilities; and**
 6 **(3) are necessary for a creditor to make underwriting**
 7 **decisions or other determinations in connection with a**
 8 **potential foreclosure prevention agreement with the debtor to**
 9 **whom the documents apply."**

10 Page 1, delete lines 13 through 17, begin a new paragraph and
 11 insert:

12 "SECTION 6. IC 32-30-10.5-8, AS AMENDED BY P.L.68-2010,
 13 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 UPON PASSAGE]: Sec. 8. (a) This section applies to a foreclosure
 15 action that is filed after June 30, 2009. Except as provided in
 16 subsection (e) and section 10(g) of this chapter, not later than thirty
 17 (30) days before a creditor files an action for foreclosure, the creditor
 18 shall send to the debtor by certified mail a presuit notice on a form
 19 prescribed by the ~~Indiana housing and community development~~
 20 ~~authority. created by IC 5-20-1-3.~~ The notice required by this
 21 subsection must do the following:

- 22 (1) Inform the debtor that:
 23 (A) the debtor is in default;
 24 (B) the debtor is encouraged to obtain assistance from a
 25 mortgage foreclosure counselor; and
 26 (C) if the creditor proceeds to file a foreclosure action and
 27 obtains a foreclosure judgment, the debtor has a right to do the
 28 following before a sheriff's sale is conducted:
 29 (i) Appeal a finding of abandonment by a court under
 30 IC 32-29-7-3(a)(2).
 31 (ii) Redeem the real estate from the judgment under
 32 IC 32-29-7-7.
 33 (iii) Retain possession of the property under
 34 IC 32-29-7-11(b), subject to the conditions set forth in
 35 IC 32-29-7-11(b).
 36 (2) Provide the contact information for the Indiana Foreclosure
 37 Prevention Network.
 38 (3) Include the following statement printed in at least 14 point

1 boldface type:
 2 "NOTICE REQUIRED BY STATE LAW
 3 Mortgage foreclosure is a complex process. People may
 4 approach you about "saving" your home. You should be
 5 careful about any such promises. There are government
 6 agencies and nonprofit organizations you may contact for
 7 helpful information about the foreclosure process. For the
 8 name and telephone number of an organization near you,
 9 please call the Indiana Foreclosure Prevention Network."

- 10 (b) The notice required by subsection (a) shall be sent to:
 11 (1) the address of the mortgaged property; or
 12 (2) the last known mailing address of the debtor if the creditor's
 13 records indicate that the mailing address of the debtor is other
 14 than the address of the mortgaged property.

15 If the creditor provides evidence that the notice required by subsection
 16 (a) was sent by certified mail, return receipt requested, and ~~as~~
 17 **prescribed by in accordance with** this subsection, it is not necessary
 18 that the debtor accept receipt of the notice for an action to proceed as
 19 allowed under this chapter.

20 (c) Except as provided in subsection (e) and section 10(g) of this
 21 chapter, if a creditor files an action to foreclose a mortgage, the creditor
 22 shall:

- 23 **(1) in the case of a foreclosure action filed after June 30, 2009,**
 24 **but before July 1, 2011, include with the complaint served on the**
 25 **debtor, on a form prescribed by the authority; and**
 26 **(2) subject to subsection (f), in the case of a foreclosure action**
 27 **filed after June 30, 2011, include in the first paragraph of the**
 28 **complaint served on the debtor and filed with the court;**

29 a notice that informs the debtor of the debtor's right to participate in a
 30 settlement conference, **subject to section 9(b) of this chapter. The**
 31 **notice must be in a form prescribed by the Indiana housing and**
 32 **community development authority created by IC 5-20-1-3. The notice**
 33 **under subdivision (1) or (2) must inform the debtor that the debtor**
 34 **may schedule a settlement conference by notifying the court, not later**
 35 **than thirty (30) days after the notice complaint is served on the**
 36 **debtor, of the debtor's intent to participate in a settlement conference.**

37 (d) ~~In a foreclosure action filed under IC 32-30-10-3 after June 30,~~
 38 **2009; If a creditor files an action to foreclose a mortgage, the**

1 creditor shall ~~attach to~~ **include with** the complaint filed with the court:

2 **(1) except as provided in subsection (e) and section 10(g) of**
 3 **this chapter, a copy of the notices sent to the debtor under**
 4 **subsections (a) and (c), if the foreclosure action is filed after**
 5 **June 30, 2009, but before July 1, 2011; or**

6 **(2) the following, if the foreclosure action is filed after June**
 7 **30, 2011:**

8 **(A) Except as provided in subsection (e) and section 10(g)**
 9 **of this chapter, a copy of the notice sent to the debtor**
 10 **under subsection (a).**

11 **(B) The most recent contact information for the debtor**
 12 **that the creditor has available or on file, including:**

13 **(i) all telephone numbers and electronic mail addresses**
 14 **for the debtor; and**

15 **(ii) any mailing address described in subsection (b)(2).**

16 **The contact information provided under this clause is**
 17 **confidential under IC 5-14-3-4(a)(13).**

18 **Subject to section 9(b) of this chapter, in the case of a foreclosure**
 19 **action filed after June 30, 2011, upon the filing of the complaint by**
 20 **the creditor, the court shall send to the debtor, by United States**
 21 **mail and to the address of the mortgaged property, or to an**
 22 **address for the debtor provided by the creditor under subdivision**
 23 **(2)(B)(ii), if applicable, a notice that informs the debtor of the**
 24 **debtor's right to participate in a settlement conference. The court's**
 25 **notice must inform the debtor that the debtor may schedule a**
 26 **settlement conference by notifying the court of the debtor's intent**
 27 **to participate in a settlement conference. The court's notice must**
 28 **specify a date by which the debtor must request a settlement**
 29 **conference, which date must be the date that is thirty (30) days**
 30 **after the date of the creditor's service of the complaint on the**
 31 **debtor under subsection (c), as determined by the court from the**
 32 **service list included with the complaint filed with the court. The**
 33 **court may not delegate the duty to send the notice the court is**
 34 **required to provide under this subsection to the creditor or to any**
 35 **other person.**

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

38 **(1) the mortgage is secured by a dwelling that is not the debtor's**

1 primary residence;

2 (2) the mortgage has been the subject of a prior foreclosure
3 prevention agreement under this chapter and the debtor has
4 defaulted with respect to the terms of that foreclosure prevention
5 agreement; or

6 (3) bankruptcy law prohibits the creditor from participating in a
7 settlement conference under this chapter with respect to the
8 mortgage.

9 **(f) Not later than June 1, 2011, the authority, in consultation**
10 **with the division of state court administration, shall prescribe**
11 **language for the notice required under subsection (c)(2) to be**
12 **included in the first paragraph of the complaint in a foreclosure**
13 **action filed after June 30, 2011. The language must convey the**
14 **same information as the form prescribed by the authority under**
15 **subsection (c)(1) for foreclosure actions filed after June 30, 2009,**
16 **but before July 1, 2011. The authority shall make the language**
17 **prescribed under this subsection available on the authority's**
18 **Internet web site. A creditor complies with subsection (c)(2) in a**
19 **foreclosure action filed after June 30, 2011, if the creditor includes**
20 **in the first paragraph of the creditor's complaint:**

21 (1) the language that is prescribed by the authority under this
22 subsection and made available on the authority's Internet web
23 site; or

24 (2) language that conveys the same information as the
25 language that is prescribed by the authority under this
26 subsection and made available on the authority's Internet web
27 site.

28 SECTION 7. IC 32-30-10.5-9, AS ADDED BY P.L.105-2009,
29 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 UPON PASSAGE]: Sec. 9. (a) Except as provided in subsection (b),
31 after June 30, 2009, a court may not issue a judgment of foreclosure
32 under IC 32-30-10 on a mortgage subject to this chapter unless all of
33 the following apply:

34 (1) The creditor has given the notice required under section 8(c)
35 of this chapter.

36 (2) ~~The debtor either:~~ **One (1) of the following applies:**

37 (A) **The debtor** does not contact the court within the thirty
38 (30) day period described in section 8(c) of this chapter to

1 schedule a settlement conference under ~~section 8(c)~~ of this
2 chapter. ~~or~~

3 (B) **The debtor** contacts the court within the thirty (30) day
4 period described in section 8(c) of this chapter to schedule a
5 **settlement** conference under ~~section 8(c)~~ of this chapter and,
6 upon conclusion of the **settlement** conference, the parties are
7 unable to reach agreement on the terms of a foreclosure
8 prevention agreement.

9 **(C) In a foreclosure action filed after June 30, 2011, the**
10 **debtor:**

11 **(i) contacts the court within the thirty (30) day period**
12 **described in section 8(c) of this chapter to schedule a**
13 **settlement conference under this chapter; but**

14 **(ii) does not provide to the creditor and the court at least**
15 **one (1) of the documents required as part of the debtor's**
16 **loss mitigation package, as specified by the authority in**
17 **the listing developed under section 10 (i) of this chapter**
18 **and included with the court's notice under section**
19 **10(a)(8) of this chapter, within the time specified in the**
20 **court's notice under section 10(a)(3)(A) of this chapter.**

21 (3) At least sixty (60) days have elapsed since the date the notice
22 required by section 8(a) of this chapter was sent, unless the
23 mortgaged property is abandoned.

24 (b) If the court finds that a settlement conference would be of
25 limited value based on the result of a prior loss mitigation effort
26 between the creditor and the debtor:

- 27 (1) a settlement conference is not required under this chapter; and
- 28 (2) the conditions set forth in subsection (a) do not apply, and the
- 29 foreclosure action may proceed as otherwise allowed by law.

30 SECTION 8. IC 32-30-10.5-10, AS ADDED BY P.L.105-2009,
31 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 UPON PASSAGE]: Sec. 10. (a) Unless a settlement conference is not
33 required under this chapter, the court shall issue a notice of a
34 settlement conference if the debtor contacts the court to schedule a
35 settlement conference as described in section 8(c) of this chapter. The
36 court's notice of a settlement conference must do the following:

- 37 (1) Order the creditor and the debtor to conduct a settlement
- 38 conference on or before a date and time specified in the notice,

1 which date:

2 (A) must not be earlier than twenty-five (25) days after the
 3 date of the notice **under this section** or later than sixty (60)
 4 days after the date of the notice **under this section, in the case**
 5 **of a foreclosure action filed after June 30, 2009, but before**
 6 **July 1, 2011; and**

7 (B) must not be earlier than forty (40) days after the date
 8 of the notice **under this section** or later than sixty (60) days
 9 **after the date of the notice under this section, in the case of**
 10 **a foreclosure action filed after June 30, 2011;**

11 for the purpose of attempting to negotiate a foreclosure prevention
 12 agreement.

13 (2) Encourage the debtor to contact a mortgage foreclosure
 14 counselor before the date of the settlement conference. The notice
 15 must provide the contact information for the Indiana Foreclosure
 16 Prevention Network.

17 (3) Require the debtor to bring to the settlement conference the
 18 following documents needed to engage in good faith negotiations
 19 with the creditor: (A) Documentation of the debtor's present and
 20 projected future income, expenses, assets, and liabilities,
 21 including documentation of the debtor's employment history. (B)
 22 Any other documentation or information that the court determines
 23 is needed for the debtor to engage in good faith negotiations with
 24 the creditor. The court shall identify any documents required
 25 under this clause with enough specificity to allow the debtor to
 26 obtain the documents before the scheduled settlement conference.

27 **do the following:**

28 (A) In the case of a foreclosure action filed after June 30,
 29 2011, provide, not later than a date specified in the order,
 30 which date must be the date that is thirty (30) days before
 31 the date of the settlement conference specified by the court
 32 under subdivision (1), a copy of the debtor's loss mitigation
 33 package to the following:

34 (i) The creditor's attorney, as identified by the creditor
 35 in the complaint, at the address specified in the
 36 complaint.

37 (ii) The court, at an address specified by the court.

38 **In setting forth the requirement described in this clause,**

1 the court shall reference the listing that must be included
 2 as an attachment to the notice under subdivision (8), and
 3 shall direct the debtor to consult the attachment in
 4 compiling the debtor's loss mitigation package.

5 **(B) Bring the following to the settlement conference:**

6 (i) In the case of a foreclosure action filed after June 30,
 7 2009, but before July 1, 2011, documents needed to
 8 engage in good faith negotiations with the creditor,
 9 including documentation of the debtor's present and
 10 projected future income, expenses, assets, and liabilities
 11 (including documentation of the debtor's employment
 12 history), and any other documentation or information
 13 that the court determines is needed for the debtor to
 14 engage in good faith negotiations with the creditor. The
 15 court shall identify any documents required under this
 16 item with enough specificity to allow the debtor to obtain
 17 the documents before the scheduled settlement
 18 conference.

19 (ii) In the case of a foreclosure action filed after June 30,
 20 2011, the debtor's loss mitigation package.

21 Any document submitted to the court under this subdivision
 22 as part of the debtor's loss mitigation package is confidential
 23 under IC 5-14-3-4(a)(13).

24 (4) Require the creditor to do the following:

25 (A) In the case of a foreclosure action filed after June 30,
 26 2011, send to the debtor, by certified mail and not later
 27 than a date specified in the order, which date must be the
 28 date that is thirty (30) days before the date of the
 29 settlement conference specified by the court under
 30 subdivision (1), the following transaction history for the
 31 mortgage:

32 (i) A payment record substantiating the default, such as
 33 a payment history.

34 (ii) An itemization of all amounts claimed by the creditor
 35 as being owed on the mortgage, such as an account
 36 payoff statement.

37 If the creditor provides evidence that the transaction
 38 history required by this clause was sent by certified mail,

- 1 **return receipt requested, it is not necessary that the debtor**
 2 **accept receipt of the transaction history for an action to**
 3 **proceed as allowed under this chapter.**
 4 **(B) Bring the following** to the settlement conference: ~~the~~
 5 ~~following transaction history for the mortgage:~~
 6 ~~(A)~~ **(i)** A copy of the original note and mortgage.
 7 ~~(B)~~ **(ii)** A payment record substantiating the default, **such as**
 8 **a payment history.**
 9 ~~(C)~~ **(iii)** An itemization of all amounts claimed by the
 10 creditor as being owed on the mortgage, **such as an account**
 11 **payoff statement.**
 12 ~~(D)~~ **(iv)** Any other documentation that the court determines
 13 is needed.
- 14 (5) Inform the parties that:
 15 (A) each party has the right to be represented by an attorney or
 16 assisted by a mortgage foreclosure counselor at the settlement
 17 conference; and
 18 (B) **subject to subsection (b)**, an attorney or a mortgage
 19 foreclosure counselor may participate in the settlement
 20 conference in person or by telephone.
- 21 (6) Inform the parties that the settlement conference will be
 22 conducted at the county courthouse, or at another place
 23 designated by the court, on the date and time specified in the
 24 notice under subdivision (1) unless the parties submit to the court
 25 a stipulation to:
 26 (A) modify the date, time, and place of the settlement
 27 conference; or
 28 (B) hold the settlement conference by telephone at a date and
 29 time agreed to by the parties.
- 30 **(7) In the case of a foreclosure action filed after June 30, 2011,**
 31 **inform the parties of the following:**
 32 **(A) That if the parties stipulate under subdivision (6) to**
 33 **modify the date of the settlement conference:**
 34 **(i) the debtor must provide the debtor's loss mitigation**
 35 **package to the creditor and to the court, as described in**
 36 **subdivision (3), at least thirty (30) days before the**
 37 **settlement conference date, as modified by the parties;**
 38 **and**

1 (ii) the creditor must send to the debtor, by certified
2 mail, the transaction history described in subdivision
3 (4)(A) at least thirty (30) days before the settlement
4 conference date, as modified by the parties.

5 (B) That if the parties stipulate under clause ~~(B)~~ subdivision
6 (6)(B) to conduct the settlement conference by telephone, the
7 parties shall ensure the availability of any technology needed
8 to allow simultaneous participation in the settlement
9 conference by all participants.

10 (8) In the case of a foreclosure action filed after June 30, 2011,
11 include as an attachment the loss mitigation package listing
12 prescribed by the authority under subsection (i).

13 (b) An attorney for the creditor shall attend the settlement
14 conference, and an authorized representative of the creditor shall be
15 available by telephone during the settlement conference. In addition,
16 the court may require any person that is a party to the foreclosure
17 action to appear at or participate in a settlement conference held under
18 this ~~section~~; ~~chapter~~, and, for cause shown, the court may order the
19 creditor and the debtor to reconvene a settlement conference at any
20 time before judgment is entered. **However, in the case of a**
21 **foreclosure action filed after June 30, 2011, the court may not**
22 **order the creditor and debtor to convene a settlement conference**
23 **if the debtor:**

24 (1) contacts the court within the thirty (30) day period
25 described in section 8(c) of this chapter to schedule a
26 settlement conference under this chapter; but

27 (2) does not provide to the creditor and the court at least one
28 (1) of the documents required as part of the debtor's loss
29 mitigation package, as specified by the authority in the listing
30 developed under subsection (i) and included with the court's
31 notice under subsection (a)(8), within the time specified in the
32 court's notice under subsection (a)(3)(A).

33 (c) At the court's discretion, a settlement conference may or may not
34 be attended by a judicial officer.

35 (d) The creditor shall ensure that any person representing the
36 creditor:

37 (1) at a settlement conference scheduled under ~~subsection (a)~~;
38 **this section**; or

1 (2) in any negotiations with the debtor designed to reach
 2 agreement on the terms of a foreclosure prevention agreement;
 3 has authority to represent the creditor in negotiating a foreclosure
 4 prevention agreement with the debtor.

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

14 (f) If, as a result of a settlement conference held under this section,
 15 the debtor and the creditor are unable to agree on the terms of a
 16 foreclosure prevention agreement:

17 (1) the creditor shall, not later than seven (7) business days after
 18 the conclusion of the settlement conference, file with the court a
 19 notice indicating that the settlement conference held under this
 20 section has concluded and a foreclosure prevention agreement
 21 was not reached; and

22 (2) the foreclosure action filed by the creditor may proceed as
 23 otherwise allowed by law.

24 (g) If:

25 (1) a foreclosure is dismissed by the creditor under subsection (e)
 26 after a foreclosure prevention agreement is reached; and

27 (2) a default in the terms of the foreclosure prevention agreement
 28 later occurs;

29 the creditor or its assigns may bring a foreclosure action under
 30 IC 32-30-10-3 without sending the notices described in section 8 of this
 31 chapter.

32 (h) Participation in a settlement conference under this section
 33 satisfies any mediation or alternative dispute resolution requirement
 34 established by court rule.

35 **(i) Not later than June 1, 2011, the authority shall prescribe a**
 36 **list of documents that must be included as part of a debtor's loss**
 37 **mitigation package in a foreclosure action filed after June 30, 2011.**
 38 **In prescribing the list of documents required by this subsection, the**

1 **authority:**

2 **(1) shall require those documents that:**

3 **(A) provide information about a debtor's present and**
 4 **projected future income, expenses, assets, and liabilities;**
 5 **and**

6 **(B) are necessary for a creditor to make underwriting**
 7 **decisions or other determinations in connection with a**
 8 **potential foreclosure prevention agreement with the debtor**
 9 **to whom the documents apply; and**

10 **(2) may amend the list:**

11 **(A) in response to changes in any federal loan modification**
 12 **programs; or**

13 **(B) as otherwise determined to be necessary by the**
 14 **authority.**

15 **The authority shall make the list prescribed under this subsection**
 16 **available on the authority's Internet web site. The division of state**
 17 **court administration shall make the list prescribed under this**
 18 **subsection available on the Internet web site maintained by the**
 19 **state's judicial branch. If the authority determines that an**
 20 **amendment to the list is necessary under subdivision (2), the**
 21 **authority shall notify the division of state court administration of**
 22 **the amendment as soon as practicable before the amendment takes**
 23 **effect and shall update the list on the authority's Internet web site**
 24 **not later than the effective date of the amendment. Upon receiving**
 25 **notice of an amendment to the list from the authority, the division**
 26 **of state court administration shall update the list on the Internet**
 27 **web site maintained by the state's judicial branch not later than the**
 28 **effect date of the amendment.**

29 SECTION 9. IC 32-29-12 IS ADDED TO THE INDIANA CODE
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2011]:

32 **Chapter 12. Mortgaged Property Suspected to Be Vacant or**
 33 **Abandoned**

34 **Sec. 1. As used in this chapter, "enforcement authority" has the**
 35 **meaning set forth in IC 36-7-9-2.**

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

37 **(1) that regularly engages in Indiana in the extension of**
 38 **mortgages that are subject to a credit service charge or loan**

1 **finance charge, as applicable, or are payable by written**
 2 **agreement in more than four (4) installments (not including**
 3 **a down payment); and**

4 **(2) to whom the obligation arising from a mortgage is initially**
 5 **payable, either on the face of the note or contract, or by**
 6 **agreement if there is not a note or contract.**

7 **(b) The term includes the following:**

8 **(1) A mortgage servicer.**

9 **(2) An agent of a creditor.**

10 **Sec. 3. As used in this chapter, "mortgage" means:**

11 **(1) a loan; or**

12 **(2) a consumer credit sale;**

13 **that is secured by a mortgage (or another equivalent consensual**
 14 **security interest) that constitutes a lien on an interest in real**
 15 **property in Indiana.**

16 **Sec. 4. As used in this chapter, "owner", with respect to real**
 17 **property, has the meaning set forth in IC 36-7-36-4.**

18 **Sec. 5. For purposes of this chapter, real property that is the**
 19 **subject of a mortgage is "vacant or abandoned" if it qualifies, or**
 20 **would potentially qualify, as either:**

21 **(1) a vacant structure under IC 36-7-36-6; or**

22 **(2) an abandoned structure under IC 36-7-36-1.**

23 **Sec. 6. (a) This section applies to a mortgage with respect to**
 24 **which any installment or minimum payment due is delinquent for**
 25 **at least forty-five (45) days.**

26 **(b) A creditor in a mortgage to which this section applies may**
 27 **enter upon the premises of the real property that is the subject of**
 28 **the mortgage to do the following, as long as the entry upon the**
 29 **premises is not barred by an automatic stay issued by a**
 30 **bankruptcy court:**

31 **(1) Without entering any structure located on the real**
 32 **property, visually inspect the real property to determine**
 33 **whether the real property may be vacant or abandoned.**

34 **(2) Perform any of the following actions that the creditor is**
 35 **required to perform to comply with any applicable order,**
 36 **statute, rule, or ordinance:**

37 **(A) Secure the real property.**

38 **(B) Remove trash or debris from the grounds of the real**

1 **property.**
2 **(C) Landscape, maintain, or mow the grounds of the real**
3 **property.**

4 **(c) A creditor that:**
5 **(1) enters upon the premises of the real property to visually**
6 **inspect the property, as permitted under subsection (b)(1);**
7 **and**
8 **(2) after performing the inspection, determines that the real**
9 **property may be vacant or abandoned;**
10 **may notify the appropriate enforcement authority of the suspected**
11 **vacant or abandoned status of the property and request that the**
12 **enforcement authority inspect the property to determine whether**
13 **the property is in fact vacant or abandoned.**

14 **(d) Subject to subsection (e), a creditor that enters upon the**
15 **premises of real property as permitted under this section:**
16 **(1) is immune from civil liability for an act or omission related**
17 **to the entry or to any compliance action described in**
18 **subsection (b)(2), unless the act or omission constitutes gross**
19 **negligence or willful, wanton, or intentional misconduct; and**
20 **(2) shall be held harmless from and against all claims of civil**
21 **or criminal trespass.**

22 **(e) The immunity described in subsection (d) applies to a**
23 **creditor that performs a compliance action described in subsection**
24 **(b)(2) only if the creditor, before performing the action, makes a**
25 **good faith effort to identify the owner and any occupant of the real**
26 **property and to notify the owner and occupant that the compliance**
27 **action is imminent.**

28 SECTION 10. IC 34-30-2-137.2 IS ADDED TO THE INDIANA
29 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
30 [EFFECTIVE JULY 1, 2011]: **Sec. 137.2. IC 32-29-12-6 (Concerning**
31 **a creditor that enters upon the premises of mortgaged real**
32 **property to determine if the property is vacant or abandoned or to**
33 **perform certain actions need to comply with an applicable order,**
34 **statute, rule, or ordinance).**

35 SECTION 11. IC 34-30-26 IS ADDED TO THE INDIANA CODE
36 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2011]:

38 **Chapter 26. Real Property**

1 **Sec. 1. As used in this chapter, "vacant or abandoned property"**
2 **means real property that is an abandoned structure (as defined in**
3 **IC 36-7-36-1) or a vacant structure (as defined in IC 36-7-36-6).**

4 **Sec. 2. A person who gratuitously:**
5 **(1) secures vacant or abandoned property in which the person**
6 **has no direct or indirect interest;**
7 **(2) removes trash or debris from the grounds of vacant or**
8 **abandoned property in which the person has no direct or**
9 **indirect interest; or**
10 **(3) landscapes, maintains, or mows the grounds of vacant or**
11 **abandoned property in which the person has no direct or**
12 **indirect interest;**

13 **is immune from civil liability for an act or omission related to the**
14 **acts described in subdivisions (1) through (3), unless the act or**
15 **omission constitutes gross negligence or willful, wanton, or**
16 **intentional misconduct.**

17 **Sec. 3. For purposes of this chapter, a tax sale certificate holder**
18 **or an applicant for a tax deed who performs an act described in**
19 **section 2 of this chapter:**

20 **(1) does not have a direct or indirect interest in the property**
21 **if the only connection the person has to the property is the tax**
22 **sale certificate or the fact that the person has applied for a tax**
23 **deed; and**
24 **(2) is performing an act described in section 2 of this chapter**
25 **gratuitously if the only consideration the person receives for**
26 **the act is the possibility of receiving a tax deed to the vacant**
27 **or abandoned property in the future.**

28 **SECTION 12. An emergency is declared for this act."**

29 Delete pages 2 through 3.

30 Renumber all SECTIONS consecutively.
(Reference is to HB 1181 as introduced.)

and when so amended that said bill do pass.

Representative Burton