February 14, 2011

SENATE BILL No. 582

DIGEST OF SB 582 (Updated February 14, 2011 2:23 pm - DI 106)

Citations Affected: IC 5-14; IC 5-20; IC 32-30; IC 33-37.

Synopsis: Settlement conferences in residential foreclosures. Amends the definition of "mortgage" in the statute concerning foreclosure prevention agreements for residential mortgages to: (1) specify that the term does not include a land contract. Provides that in a residential foreclosure action filed after June 30, 2011, the creditor shall include with the complaint filed with the court the most recent contact information for the debtor that the creditor has available or on file, including: (1) all telephone numbers and electronic mail addresses used by the debtor; and (2) any mailing address for the debtor other than the address of the mortgaged property. Specifies that the debtor's contact information is confidential. Provides that in a residential foreclosure action, any: (1) court costs associated with a settlement conference; or (2) attorney's fees incurred by a creditor in connection with a settlement conference; may not be charged to or collected from the debtor. Provides that during the pendency of a residential foreclosure action filed after June 30, 2011, if the debtor continues to occupy the mortgaged dwelling, the court may issue an order requiring the debtor to continue to make monthly payments with respect to the mortgage on which the action is based. Provides that the court shall determine the amount of the payment, which: (1) may be based on debtor's ability to

(Continued next page)

Effective: Upon passage; July 1, 2011.

Tallian, Bray

January 20, 2011, read first time and referred to Committee on Judiciary.
February 14, 2011, amended, reported favorably — Do Pass.

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Digest Continued

pay; and (2) may not exceed the debtor's monthly obligation under the mortgage. Provides that any payments made: (1) shall by held in trust for the parties by the clerk of the court or in an attorney trust account; and (2) may be disbursed only upon order of the court. Provides that any payments held shall be credited: (1) to the debtor if the parties subsequently enter into a foreclosure prevention agreement; or (2) against the amount of the judgment entered or the amount owed if a judgment of foreclosure is subsequently entered. In a residential foreclosure action, provides that a court may impose sanctions, including a civil penalty, on any party for a violation of: (1) the statute concerning foreclosure prevention agreements for residential mortgages; or (2) a court order or rule relating to an action subject to the statute. Provides that any civil penalties collected shall be deposited in the home ownership education account to support programs conducted by specified entities to facilitate settlement conferences in residential foreclosure actions. Makes conforming changes.

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February 14, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 582

A BILL FOR AN ACT to amend the Indiana Code concerning property.

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

SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.94-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

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

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

(4) Records containing trade secrets.

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

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

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

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

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

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(13) Contact information relating to a defendant in a mortgage foreclosure action under IC 32-30-10.5-8.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the

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Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

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(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

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

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

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

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) intelligence assessments;

(G) domestic preparedness strategies;

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

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

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

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

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

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

This subdivision does not apply to a record or portion of a record

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pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

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

(A) Telephone number.

(B) Address.

(C) Social Security number.

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

(A) Telephone number.

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

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

(23) Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) the victim of a crime; or

(iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

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

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

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

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

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

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

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 2. IC 5-20-1-4, AS AMENDED BY P.L.105-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The authority has all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the power:

(1) to make or participate in the making of construction loans for multiple family residential housing under terms that are approved by the authority;

(2) to make or participate in the making of mortgage loans for multiple family residential housing under terms that are approved by the authority;

(3) to purchase or participate in the purchase from mortgage lenders of mortgage loans made to persons of low and moderate income for residential housing;

(4) to make loans to mortgage lenders for the purpose of furnishing funds to such mortgage lenders to be used for making mortgage loans for persons and families of low and moderate income. However, the obligation to repay loans to mortgage lenders shall be general obligations of the respective mortgage lenders and shall bear such date or dates, shall mature at such time or times, shall be evidenced by such note, bond, or other certificate of indebtedness, shall be subject to prepayment, and shall contain such other provisions consistent with the purposes of this chapter as the authority shall by rule or resolution determine;

(5) to collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) to acquire real property, or any interest in real property, by

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conveyance, including purchase in lieu of foreclosure, or foreclosure, to own, manage, operate, hold, clear, improve, and rehabilitate such real property and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purposes of the authority;

(7) to sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction loan, a land development loan, a mortgage loan, or a loan of any type permitted by this chapter;

(8) to procure insurance against any loss in connection with its operations in such amounts and from such insurers as it may deem necessary or desirable;

(9) to consent, subject to the provisions of any contract with noteholders or bondholders which may then exist, whenever it deems it necessary or desirable in the fulfillment of its purposes to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, loan to lender, or contract or agreement of any kind to which the authority is a party;

(10) to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing;

(11) to include in any borrowing such amounts as may be deemed necessary by the authority to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time thereafter or if the housing is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;

(12) to make and publish rules respecting its lending programs and such other rules as are necessary to effectuate the purposes of this chapter;

(13) to provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents and potential residents, including housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;

(14) to promote research and development in scientific methods

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of constructing low cost residential housing of high durability;
(15) to encourage community organizations to participate in residential housing development;
(16) to make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, limited liability company, or other organization or entity necessary or convenient to accomplish the purposes of this chapter;
(17) to accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
(18) to sue and be sued in its own name, plead and be impleaded;
(19) to maintain an office in the city of Indianapolis and at such other place or places as it may determine;
(20) to adopt an official seal and alter the same at pleasure;
(21) to adopt and from time to time amend and repeal bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties;
(22) to employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;
(23) notwithstanding IC 5-13, but subject to the requirements of any trust agreement entered into by the authority, to invest:
(A) the authority's money, funds, and accounts;
(B) any money, funds, and accounts in the authority's custody; and
(C) proceeds of bonds or notes;
in the manner provided by an investment policy established by resolution of the authority;
(24) to make or participate in the making of construction loans, mortgage loans, or both, to individuals, partnerships, limited liability companies, corporations, and organizations for the construction of residential facilities for individuals with a developmental disability or for individuals with a mental illness or for the acquisition or renovation, or both, of a facility to make it suitable for use as a new residential facility for individuals with a developmental disability or for individuals with a mental illness;
(25) to make or participate in the making of construction and

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mortgage loans to individuals, partnerships, corporations, limited liability companies, and organizations for the construction, rehabilitation, or acquisition of residential facilities for children;

(26) to purchase or participate in the purchase of mortgage loans from:

(A) public utilities (as defined in IC 8-1-2-1); or

(B) municipally owned gas utility systems organized under IC 8-1.5;

if those mortgage loans were made for the purpose of insulating and otherwise weatherizing single family residences in order to conserve energy used to heat and cool those residences;

(27) to provide financial assistance to mutual housing associations (IC 5-20-3) in the form of grants, loans, or a combination of grants and loans for the development of housing for low and moderate income families;

(28) to service mortgage loans made or acquired by the authority and to impose and collect reasonable fees and charges in connection with such servicing;

(29) subject to the authority's investment policy, to enter into swap agreements (as defined in IC 8-9.5-9-4) in accordance with IC 8-9.5-9-5 and IC 8-9.5-9-7;

(30) to promote and foster community revitalization through community services and real estate development;

(31) to coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low income individuals and families, including individuals or families facing or experiencing homelessness;

(32) to cooperate with local housing officials and plan commissions in the development of projects that the officials or commissions have under consideration;

(33) to develop a list of documents that a creditor and debtor are required to exchange before attending a settlement conference under IC 32-30-10.5-10;

~~(33)~~ **(34)** to take actions necessary to implement its powers that the authority determines to be appropriate and necessary to ensure the availability of state or federal financial assistance; and

~~(34)~~ **(35)** to administer any program or money designated by the state or available from the federal government or other sources that is consistent with the authority's powers and duties.

The omission of a power from the list in this subsection does not imply that the authority lacks that power. The authority may exercise any power that is not listed in this subsection but is consistent with the

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powers listed in this subsection to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(b) The authority shall ensure that a mortgage loan acquired by the authority under subsection (a)(3) or made by a mortgage lender with funds provided by the authority under subsection (a)(4) is not knowingly made to a person whose adjusted family income, as determined by the authority, exceeds one hundred twenty-five percent (125%) of the median income for the geographic area involved. However, if the authority determines that additional encouragement is needed for the development of the geographic area involved, a mortgage loan acquired or made under subsection (a)(3) or (a)(4) may be made to a person whose adjusted family income, as determined by the authority, does not exceed one hundred forty percent (140%) of the median income for the geographic area involved. The authority shall establish procedures that the authority determines are appropriate to structure and administer any program conducted under subsection (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans to persons of low or moderate income. In determining what constitutes low income, moderate income, or median income for purposes of any program conducted under subsection (a)(3) or (a)(4), the authority shall consider:

(1) the appropriate geographic area in which to measure income levels; and

(2) the appropriate method of calculating low income, moderate income, or median income levels including:

(A) sources of;

(B) exclusions from; and

(C) adjustments to;

income.

(c) The authority, when directed by the governor, shall administer programs and funds under 42 U.S.C. 1437 et seq.

(d) The authority shall identify, promote, assist, and fund:

(1) home ownership education programs; and

(2) mortgage foreclosure counseling and education programs under IC 5-20-6;

conducted throughout Indiana by nonprofit counseling agencies that the authority has certified, or by any other public, private, or nonprofit entity in partnership with a nonprofit agency that the authority has certified, using funds appropriated under section 27 of this chapter. The attorney general and the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with the authority in implementing

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this subsection.

(e) The authority shall:

(1) oversee and encourage a regional homeless delivery system that:

(A) considers the need for housing and support services;

(B) implements strategies to respond to gaps in the delivery system; and

(C) ensures individuals and families are matched with optimal housing solutions;

(2) facilitate the dissemination of information to assist individuals and families accessing local resources, programs, and services related to homelessness, housing, and community development; and

(3) each year, estimate and reasonably determine the number of the following:

(A) Individuals in Indiana who are homeless.

(B) Individuals in Indiana who are homeless and less than eighteen (18) years of age.

(C) Individuals in Indiana who are homeless and not residents of Indiana.

SECTION 3. IC 5-20-1-27, AS AMENDED BY P.L.105-2009, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. (a) The home ownership education account within the state general fund is established to support:

(1) home ownership education programs established under section 4(d) of this chapter; ~~and~~

(2) mortgage foreclosure counseling and education programs established under IC 5-20-6-2; **and**

(3) programs conducted by one (1) or a combination of the following to facilitate settlement conferences in residential foreclosure actions under IC 32-30-10.5:

(A) The judiciary.

(B) Pro bono legal services agencies.

(C) Mortgage foreclosure counselors (as defined in IC 32-30-10.5-6).

(D) Other nonprofit entities certified by the authority under section 4(d) of this chapter.

The account is administered by the authority.

(b) The home ownership education account consists of:

(1) court fees collected under IC 33-37-5-30 (before its expiration on January 1, 2013); ~~and~~

(2) civil penalties imposed and collected under:

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(A) IC 6-1.1-12-43(g)(2)(B); or

(B) IC 27-7-3-15.5(e); **and**

(3) civil penalties imposed and collected by a court under IC 32-30-10.5-10(j).

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

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

SECTION 4. IC 5-20-6-3, AS AMENDED BY P.L.105-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. In addition to using money provided for the program from:

(1) court fees under IC 33-37-5-30 (before its expiration on January 1, 2013); **and**

(2) civil penalties imposed and collected by a court under IC 32-30-10.5-10(j);

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

SECTION 5. IC 32-30-10.5-5, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. As used in this chapter, "mortgage" means a loan in which a first mortgage~~, or a land contract that constitutes a first lien,~~ is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. **The term does not include a land contract or similar agreement in which the debtor does not possess a deed.**

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

(1) Inform the debtor ~~that:~~ **of the following:**

(A) **That** the debtor is in default.

(B) **That** the debtor is encouraged to obtain assistance from a

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mortgage foreclosure counselor. ~~and~~

(C) That, subject to section 9(b) of this chapter, if the creditor proceeds to file a foreclosure action:

(i) a settlement conference between the debtor and creditor will be scheduled by the court under section 10 of this chapter; and

(ii) the foreclosure action may not proceed until the settlement conference has taken place, subject to the debtor's right to opt out of the settlement conference under section 10(b)(2) of this chapter.

The information required to be provided under this clause applies to a foreclosure action filed after June 30, 2011. The Indiana housing and community development authority shall, not later than June 1, 2011, update the presuit notice form the authority is required to prescribe under this subsection to include the information described in this clause.

~~(C)~~ **(D) That** if the creditor proceeds to file a foreclosure action and obtains a foreclosure judgment, the debtor has a right to do the following before a sheriff's sale is conducted:

(i) Appeal a finding of abandonment by a court under IC 32-29-7-3(a)(2).

(ii) Redeem the real estate from the judgment under IC 32-29-7-7.

(iii) Retain possession of the property under IC 32-29-7-11(b), subject to the conditions set forth in IC 32-29-7-11(b).

(2) Provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Include the following statement printed in at least 14 point boldface type:

"NOTICE REQUIRED BY STATE LAW

Mortgage foreclosure is a complex process. People may approach you about "saving" your home. You should be careful about any such promises. There are government agencies and nonprofit organizations you may contact for helpful information about the foreclosure process. For the name and telephone number of an organization near you, please call the Indiana Foreclosure Prevention Network.".

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

(1) the address of the mortgaged property; or

(2) the last known mailing address of the debtor if the creditor's

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records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

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

(c) Except as provided in subsection (e) and section ~~10(g)~~ **10(h)** of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor ~~of the debtor's~~ **that, for a foreclosure action filed after June 30, 2009, but before July 1, 2011, the debtor has the** right to participate in a settlement conference, **subject to section 9(b) of this chapter.** The notice must be in a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice **required by this subsection** is served, of the debtor's intent to participate in a settlement conference.

(d) ~~In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009,~~ **If a creditor files an action to foreclose a mortgage,** the creditor shall ~~attach to~~ **include with** the complaint filed with the court:

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

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

(A) Except as provided in subsection (e) and section 10(h) of this chapter, a copy of the notices sent to the debtor under subsections (a) and (c).

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

(i) all telephone numbers and electronic mail addresses used by the debtor; and

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

Notices and debtor contact information required to be included with a complaint under this subsection are confidential.

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

(1) the mortgage is secured by a dwelling that is not the debtor's primary residence;

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

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

(f) This section does not apply if a creditor is not required under subsection (e) to send the notices described in this section. As soon as practicable after a creditor files an action to foreclose a mortgage, the court shall send a notice informing the defendant that:

(1) a settlement conference between the defendant and plaintiff will be scheduled by the court under section 10 of this chapter; and

(2) the foreclosure action may not proceed until the settlement conference has taken place, subject to the defendant's right to opt out of the settlement conference under section 10(b)(2) of this chapter subject to section 9(b) of this chapter.

SECTION 7. IC 32-30-10.5-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.5. (a) This section applies to the following:**

(1) A mortgage foreclosure action with respect to which:

(A) the creditor has filed the complaint in the proceeding before July 1, 2011;

(B) the debtor has contacted the court under section 8(c)(1) of this chapter or under section 11(b) of this chapter to schedule a settlement conference under this chapter; and

(C) the court having jurisdiction over the action has not:

(i) issued a stay in the foreclosure proceedings pending the conclusion of the settlement conference under this chapter;

(ii) issued a default judgment against the debtor in the action; or

(iii) rendered a judgment of foreclosure in the action.

(2) A mortgage foreclosure action that is filed after June 30, 2011.

(b) In a mortgage foreclosure action to which this section applies, the court, notwithstanding Indiana Trial Rule 56, stay the granting of any dispositive motion until one (1) of the following occurs, subject to the court's right under section 10(c) of this

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chapter to order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered:

(1) The court receives notice of the debtor's election to opt out of a settlement conference under section 10(b)(2) of this chapter, in the case of a mortgage foreclosure action filed after June 30, 2011.

(2) The court receives notice under section 10(f) of this chapter that after the conclusion of a settlement conference held under this chapter:

(A) the debtor and the creditor have agreed to enter into a foreclosure prevention agreement; and

(B) the creditor has elected under section 10(f) of this chapter to dismiss the foreclosure action for as long as the debtor complies with the terms of the foreclosure prevention agreement.

(3) The court receives notice under section 10(g) of this chapter that after the conclusion of a settlement conference held under this chapter, the creditor and the debtor are unable to agree on the terms of a foreclosure prevention agreement.

(c) If the defendant requests a settlement conference under section 9 of this chapter, the court shall treat the request as the entry of an appearance under Indiana Trial Rule 3.1(B).

SECTION 8. IC 32-30-10.5-8.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.6. (a) This section applies to a mortgage foreclosure action that is filed after June 30, 2011.**

(b) During the pendency of an action to which this section applies, regardless of any stay that is issued by the court under section 8.5 of this chapter, if the debtor continues to occupy the dwelling that is the subject of the mortgage upon which the action is based, the court may issue a provisional order that requires the debtor to continue to make monthly payments with respect to the mortgage on which the action is based. The amount of the monthly payment:

(1) shall be determined by the court, which may base its determination on the debtor's ability to pay; and

(2) may not exceed the debtor's monthly obligation under the mortgage at the time the action is filed.

(c) Payments made by a debtor under an order issued by the court under subsection (b) shall be made to:

(1) the clerk of the court, who shall hold the payments in trust

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for the parties; or

(2) an attorney trust account;

as directed by the court. The funds held by the clerk or in an attorney trust account under this subsection may not be disbursed unless the court issues an order for their disbursement.

(d) If the debtor and the creditor agree to enter into a foreclosure prevention agreement under section 10(f) of this chapter at any time after the debtor has made payments under an order issued by the court under subsection (b), the debtor is entitled to a credit of any amounts paid under the order.

(e) In an action to which this section applies, if:

(1) a judgment of foreclosure is issued by the court after the conditions set forth in section 9 of this chapter are met;

(2) the debtor and the creditor agree to a deed in lieu of foreclosure; or

(3) the debtor otherwise forfeits the dwelling that is the subject of the mortgage upon which the action is based;

the debtor is not entitled to a refund of any payments made under an order issued by the court under subsection (b), and any amounts held in trust by the clerk of the court or in an attorney trust fund shall be disbursed to the creditor and credited against the amount of the judgment entered against the debtor or the amount otherwise owed by the debtor.

SECTION 9. IC 32-30-10.5-9, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) Except as provided in subsection (b) **and subject to section 8.5 of this chapter,** after June 30, 2009, a court may not issue a judgment of foreclosure ~~under IC 32-30-10 on~~ **with respect to** a mortgage subject to this chapter unless all of the following apply:

(1) **Except as provided in sections 8(e) and 10(h) of this chapter,** the creditor has given the notice required under section 8(c) of this chapter.

(2) **For a foreclosure action filed after June 30, 2009, but before July 1, 2011,** the debtor either:

(A) does not contact the court within the thirty (30) day period described in section ~~8(c)~~ **8(c)(1)** of this chapter to schedule a settlement conference under ~~section 8(c) of~~ this chapter; or

(B) contacts the court within the thirty (30) day period described in section ~~8(c)~~ **8(c)(1)** of this chapter to schedule a **settlement** conference under ~~section 8(c) of~~ this chapter and, upon conclusion of the **settlement** conference, the parties are

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unable to reach agreement on the terms of a foreclosure prevention agreement.

(3) For a foreclosure action filed after June 30, 2011, either of the following applies:

(A) The court receives notice of the debtor's election to opt out of a settlement conference under section 10(b)(2) of this chapter.

(B) The court receives notice under section 10(g) of this chapter that after the conclusion of a settlement conference held under this chapter, the creditor and the debtor are unable to agree on the terms of a foreclosure prevention agreement.

~~(3)~~ **(4) Except as provided in sections 8(e) and 10(h) of this chapter,** at least sixty (60) days have elapsed since the date the notice required by section 8(a) of this chapter was sent, unless the mortgaged property is abandoned.

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

(1) a settlement conference is not required under this chapter; and

(2) the conditions set forth in subsection (a) do not apply, and the foreclosure action may proceed as otherwise allowed by law.

SECTION 10. IC 32-30-10.5-10, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference **as follows:**

(1) In a foreclosure action filed after June 30, 2009, but before July 1, 2011, if the debtor contacts the court to schedule a settlement conference as described in section ~~8(c)~~ **8(c)(1)** of this chapter.

(2) In a foreclosure action filed after June 30, 2011, upon the filing of the creditor's complaint under section 8(d) of this chapter.

(b) The court's notice of a settlement conference **under this section** must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date must not be earlier than ~~twenty-five (25)~~ **forty (40)** days after the date of the notice **under this section** or later than sixty (60) days after the date of the notice **under this section,** for the purpose of attempting to negotiate a foreclosure prevention

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agreement.

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

(3) Require the debtor ~~to bring to the settlement conference~~ **and the creditor to exchange, at least thirty (30) days before the date of the settlement conference, the documents contained on the Indiana housing and community development authority's settlement list under IC 5-20-1-4.** ~~the following documents needed to engage in good faith negotiations with the creditor:~~

~~(A) Documentation of the debtor's present and projected future:~~

~~income;~~

~~expenses;~~

~~assets; and~~

~~liabilities.~~

~~including documentation of the debtor's employment history.~~

~~(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.~~

~~(4) Require the creditor to bring to the settlement conference the following transaction history for the mortgage:~~

~~(A) A copy of the original note and mortgage.~~

~~(B) A payment record substantiating the default.~~

~~(C) An itemization of all amounts claimed by the creditor as being owed on the mortgage.~~

~~(D) Any other documentation that the court determines is needed.~~

~~(5)~~ **(4)** Inform the parties that:

(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and

(B) **subject to subsection (c),** an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

~~(6)~~ **(5)** Inform the parties that the settlement conference will be conducted at the county courthouse, or at another place designated by the court, on the date and time specified in the

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notice under subdivision (1) unless the parties submit to the court a stipulation to:

(A) modify the date, time, and place of the settlement conference; or

(B) hold the settlement conference by telephone at a date and time agreed to by the parties.

If the parties stipulate under clause (B) to conduct the settlement conference by telephone, the parties shall ensure the availability of any technology needed to allow simultaneous participation in the settlement conference by all participants.

~~(b)~~ **(c)** An attorney for the creditor shall attend the settlement conference, and an authorized representative of the creditor shall be available by telephone during the settlement conference. In addition, the court may require any person that is a party to the foreclosure action to appear at or participate in a settlement conference held under this ~~section,~~ **chapter,** and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered. **Any costs to a creditor associated with the use of a third party mediator or civil penalty imposed on a creditor under subsection (j) may not be charged to or collected from the debtor, either directly or indirectly.**

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

~~(d)~~ **(e)** The creditor shall ensure that any person representing the creditor:

(1) at a settlement conference scheduled under subsection (a); or

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

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

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

~~(f)~~ **(g)** If, as a result of a settlement conference held under this ~~section,~~ **chapter,** the debtor and the creditor are unable to agree on the

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terms of a foreclosure prevention agreement:

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

(2) the foreclosure action filed by the creditor may proceed as otherwise allowed by law, **subject to the court's right under subsection (c) to order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered.**

~~(g)~~ **(h)** If:

(1) a foreclosure is dismissed by the creditor under subsection ~~(c)~~ **(f)** after a foreclosure prevention agreement is reached; and

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

the creditor or its assigns may bring a foreclosure action ~~under IC 32-30-10-3~~ **with respect to the mortgage that is the subject of the foreclosure prevention agreement** without sending the notices described in section 8 of this chapter.

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

(j) Subject to subsection (c), the court may impose sanctions, including a civil penalty in an amount determined by the court, on any party to a foreclosure action subject to this chapter for any violation of:

(1) this chapter; or

(2) an order or rule of the court that is issued in connection with, or that otherwise applies to, a foreclosure action subject to this chapter.

SECTION 11. IC 32-30-10.5-11, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action shall serve notice of the availability of a settlement conference under ~~section 8(c) of~~ this chapter. **The notice required by this section must inform the debtor**

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that the debtor:

(1) has the right to participate in a settlement conference, subject to section 9(b) of this chapter; and

(2) may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice required by this section is served, of the debtor's intent to participate in a settlement conference.

SECTION 12. IC 33-37-7-2, AS AMENDED BY P.L.182-2009(ss), SECTION 395, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the homeowner protection unit account established by IC 4-6-12-9 one hundred percent (100%) of the automated record keeping fees collected under IC 33-37-5-21 with respect to actions resulting in the accused person entering into a pretrial diversion program agreement under IC 33-39-1-8 or a deferral program agreement under IC 34-28-5-1 and for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

(1) IC 33-37-4-1(a) (criminal costs fees).

(2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).

(3) IC 33-37-4-3(a) (juvenile costs fees).

(4) IC 33-37-4-4(a) (civil costs fees).

(5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).

(6) IC 33-37-4-7(a) (probate costs fees).

(7) IC 33-37-5-17 (deferred prosecution fees).

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

(1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).

(2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

(3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).

(4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).

(5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).

(6) One hundred percent (100%) of the safe schools fee collected

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under IC 33-37-5-18.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21) not distributed under subsection (a).

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

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

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance account established by IC 5-2-6-23(h) one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

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

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-37-5-6.

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(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

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

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

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

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

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

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

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

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

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

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

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

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

(l) The proceeds of the garnishee service fee collected under

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IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as follows:

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

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

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

(1) The mortgage foreclosure counseling and education fees collected under IC 33-37-5-30 (before its expiration on January 1, 2013).

(2) Any civil penalties imposed and collected by the court under IC 32-30-10.5-10(j).

SECTION 13. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 582, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.94-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

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

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

(4) Records containing trade secrets.

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

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

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

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

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

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

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(13) Contact information relating to a defendant in a mortgage foreclosure action under IC 32-30-10.5-8.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private

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contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's

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family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

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

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

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

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) intelligence assessments;

(G) domestic preparedness strategies;

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

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

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

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

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

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

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

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

(A) Telephone number.

(B) Address.

(C) Social Security number.

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

(A) Telephone number.

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

(22) Notwithstanding subdivision (8)(A), the name,

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compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) the victim of a crime; or

(iii) a family member of a correctional officer or the victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

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

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

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

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

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

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

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 2. IC 5-20-1-4, AS AMENDED BY P.L.105-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The authority has all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the power:

(1) to make or participate in the making of construction loans for multiple family residential housing under terms that are approved

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by the authority;

(2) to make or participate in the making of mortgage loans for multiple family residential housing under terms that are approved by the authority;

(3) to purchase or participate in the purchase from mortgage lenders of mortgage loans made to persons of low and moderate income for residential housing;

(4) to make loans to mortgage lenders for the purpose of furnishing funds to such mortgage lenders to be used for making mortgage loans for persons and families of low and moderate income. However, the obligation to repay loans to mortgage lenders shall be general obligations of the respective mortgage lenders and shall bear such date or dates, shall mature at such time or times, shall be evidenced by such note, bond, or other certificate of indebtedness, shall be subject to prepayment, and shall contain such other provisions consistent with the purposes of this chapter as the authority shall by rule or resolution determine;

(5) to collect and pay reasonable fees and charges in connection with making, purchasing, and servicing of its loans, notes, bonds, commitments, and other evidences of indebtedness;

(6) to acquire real property, or any interest in real property, by conveyance, including purchase in lieu of foreclosure, or foreclosure, to own, manage, operate, hold, clear, improve, and rehabilitate such real property and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purposes of the authority;

(7) to sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction loan, a land development loan, a mortgage loan, or a loan of any type permitted by this chapter;

(8) to procure insurance against any loss in connection with its operations in such amounts and from such insurers as it may deem necessary or desirable;

(9) to consent, subject to the provisions of any contract with noteholders or bondholders which may then exist, whenever it deems it necessary or desirable in the fulfillment of its purposes to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, loan to lender, or contract or agreement of any kind to which the

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authority is a party;
(10) to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing;
(11) to include in any borrowing such amounts as may be deemed necessary by the authority to pay financing charges, interest on the obligations (for a period not exceeding the period of construction and a reasonable time thereafter or if the housing is completed, two (2) years from the date of issue of the obligations), consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;
(12) to make and publish rules respecting its lending programs and such other rules as are necessary to effectuate the purposes of this chapter;
(13) to provide technical and advisory services to sponsors, builders, and developers of residential housing and to residents and potential residents, including housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;
(14) to promote research and development in scientific methods of constructing low cost residential housing of high durability;
(15) to encourage community organizations to participate in residential housing development;
(16) to make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, limited liability company, or other organization or entity necessary or convenient to accomplish the purposes of this chapter;
(17) to accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
(18) to sue and be sued in its own name, plead and be impleaded;
(19) to maintain an office in the city of Indianapolis and at such other place or places as it may determine;
(20) to adopt an official seal and alter the same at pleasure;
(21) to adopt and from time to time amend and repeal bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties;

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(22) to employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the authority and to fix and pay their compensation from funds available to the authority therefor;

(23) notwithstanding IC 5-13, but subject to the requirements of any trust agreement entered into by the authority, to invest:

(A) the authority's money, funds, and accounts;

(B) any money, funds, and accounts in the authority's custody; and

(C) proceeds of bonds or notes;

in the manner provided by an investment policy established by resolution of the authority;

(24) to make or participate in the making of construction loans, mortgage loans, or both, to individuals, partnerships, limited liability companies, corporations, and organizations for the construction of residential facilities for individuals with a developmental disability or for individuals with a mental illness or for the acquisition or renovation, or both, of a facility to make it suitable for use as a new residential facility for individuals with a developmental disability or for individuals with a mental illness;

(25) to make or participate in the making of construction and mortgage loans to individuals, partnerships, corporations, limited liability companies, and organizations for the construction, rehabilitation, or acquisition of residential facilities for children;

(26) to purchase or participate in the purchase of mortgage loans from:

(A) public utilities (as defined in IC 8-1-2-1); or

(B) municipally owned gas utility systems organized under IC 8-1.5;

if those mortgage loans were made for the purpose of insulating and otherwise weatherizing single family residences in order to conserve energy used to heat and cool those residences;

(27) to provide financial assistance to mutual housing associations (IC 5-20-3) in the form of grants, loans, or a combination of grants and loans for the development of housing for low and moderate income families;

(28) to service mortgage loans made or acquired by the authority and to impose and collect reasonable fees and charges in connection with such servicing;

(29) subject to the authority's investment policy, to enter into swap agreements (as defined in IC 8-9.5-9-4) in accordance with

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IC 8-9.5-9-5 and IC 8-9.5-9-7;

(30) to promote and foster community revitalization through community services and real estate development;

(31) to coordinate and establish linkages between governmental and other social services programs to ensure the effective delivery of services to low income individuals and families, including individuals or families facing or experiencing homelessness;

(32) to cooperate with local housing officials and plan commissions in the development of projects that the officials or commissions have under consideration;

(33) to develop a list of documents that a creditor and debtor are required to exchange before attending a settlement conference under IC 32-30-10.5-10;

~~(33)~~ **(34)** to take actions necessary to implement its powers that the authority determines to be appropriate and necessary to ensure the availability of state or federal financial assistance; and

~~(34)~~ **(35)** to administer any program or money designated by the state or available from the federal government or other sources that is consistent with the authority's powers and duties.

The omission of a power from the list in this subsection does not imply that the authority lacks that power. The authority may exercise any power that is not listed in this subsection but is consistent with the powers listed in this subsection to the extent that the power is not expressly denied by the Constitution of the State of Indiana or by another statute.

(b) The authority shall ensure that a mortgage loan acquired by the authority under subsection (a)(3) or made by a mortgage lender with funds provided by the authority under subsection (a)(4) is not knowingly made to a person whose adjusted family income, as determined by the authority, exceeds one hundred twenty-five percent (125%) of the median income for the geographic area involved. However, if the authority determines that additional encouragement is needed for the development of the geographic area involved, a mortgage loan acquired or made under subsection (a)(3) or (a)(4) may be made to a person whose adjusted family income, as determined by the authority, does not exceed one hundred forty percent (140%) of the median income for the geographic area involved. The authority shall establish procedures that the authority determines are appropriate to structure and administer any program conducted under subsection (a)(3) or (a)(4) for the purpose of acquiring or making mortgage loans to persons of low or moderate income. In determining what constitutes low income, moderate income, or median income for purposes of any

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program conducted under subsection (a)(3) or (a)(4), the authority shall consider:

(1) the appropriate geographic area in which to measure income levels; and

(2) the appropriate method of calculating low income, moderate income, or median income levels including:

(A) sources of;

(B) exclusions from; and

(C) adjustments to;

income.

(c) The authority, when directed by the governor, shall administer programs and funds under 42 U.S.C. 1437 et seq.

(d) The authority shall identify, promote, assist, and fund:

(1) home ownership education programs; and

(2) mortgage foreclosure counseling and education programs under IC 5-20-6;

conducted throughout Indiana by nonprofit counseling agencies that the authority has certified, or by any other public, private, or nonprofit entity in partnership with a nonprofit agency that the authority has certified, using funds appropriated under section 27 of this chapter. The attorney general and the entities listed in IC 4-6-12-4(a)(1) through IC 4-6-12-4(a)(10) shall cooperate with the authority in implementing this subsection.

(e) The authority shall:

(1) oversee and encourage a regional homeless delivery system that:

(A) considers the need for housing and support services;

(B) implements strategies to respond to gaps in the delivery system; and

(C) ensures individuals and families are matched with optimal housing solutions;

(2) facilitate the dissemination of information to assist individuals and families accessing local resources, programs, and services related to homelessness, housing, and community development; and

(3) each year, estimate and reasonably determine the number of the following:

(A) Individuals in Indiana who are homeless.

(B) Individuals in Indiana who are homeless and less than eighteen (18) years of age.

(C) Individuals in Indiana who are homeless and not residents of Indiana.".

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Page 2, delete lines 29 through 40, begin a new paragraph and insert:

"SECTION 5. IC 32-30-10.5-5, AS ADDED BY P.L.105-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. As used in this chapter, "mortgage" means a loan in which a first mortgage~~, or a land contract that constitutes a first lien,~~ is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes. **The term does not include a land contract or similar agreement in which the debtor does not possess a deed.**"

Page 4, line 22, delete "of the following:" and insert "**that,**".

Page 4, line 23, delete "(1) For" and insert "**for**".

Page 4, line 24, delete "that".

Page 4, run in lines 22 through 32.

Page 4, delete lines 33 through 42.

Page 5, delete lines 1 through 6.

Page 5, between lines 23 and 24, begin a new line blocked left and insert:

> "**Notices and debtor contact information required to be included with a complaint under this subsection are confidential.**".

Page 5, between lines 34 and 35, begin a new paragraph and insert:

"**(f) This section does not apply if a creditor is not required under subsection (e) to send the notices described in this section. As soon as practicable after a creditor files an action to foreclose a mortgage, the court shall send a notice informing the defendant that:**

> **(1) a settlement conference between the defendant and plaintiff will be scheduled by the court under section 10 of this chapter; and**
>
> **(2) the foreclosure action may not proceed until the settlement conference has taken place, subject to the defendant's right to opt out of the settlement conference under section 10(b)(2) of this chapter subject to section 9(b) of this chapter.**".

Page 6, line 13, delete "court shall issue a stay in the proceedings" and insert "**court, notwithstanding Indiana Trial Rule 56, stay the granting of any dispositive motion**".

Page 6, delete lines 36 through 42, begin a new paragraph and insert:

"**(c) If the defendant requests a settlement conference under section 9 of this chapter, the court shall treat the request as the entry of an appearance under Indiana Trial Rule 3.1(B).**".

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Page 7, delete lines 1 through 14.

Page 9, line 28, delete "Subject to subdivision (2), order" and insert "Order".

Page 9, line 31, strike "twenty-five (25)" and insert "**forty (40**)".

Page 9, delete lines 35 through 42.

Page 10, delete lines 1 through 3.

Page 10, line 4, reset in roman "(2)".

Page 10, line 4, delete "(3)".

Page 10, line 8, reset in roman "(3)".

Page 10, line 8, delete "(4)".

Page 10, line 8, strike "to bring to the settlement conference" and insert "**and the creditor to exchange, at least thirty (30) days before the date of the settlement conference, the documents contained on the Indiana housing and community development authority's settlement list under IC 5-20-1-4.**".

Page 10, strike lines 9 through 12.

Page 10, line 13, delete "(i)".

Page 10, line 13, strike "income,".

Page 10, line 13, delete "including documentation of the debtor's".

Page 10, delete line 14.

Page 10, line 15, delete "(ii)".

Page 10, line 15, strike "expenses;".

Page 10, line 16, delete "(iii)".

Page 10, line 16, strike "assets; and".

Page 10, line 17, delete "(iv)".

Page 10, line 17, strike "liabilities.".

Page 10, strike lines 19 through 24.

Page 10, line 25, delete "(5)".

Page 10, line 25, strike "Require the creditor to bring to the settlement conference".

Page 10, strike lines 26 through 32.

Page 10, line 33, delete "(6)" and insert "**(4)**".

Page 10, line 40, delete "(7)" and insert "**(5)**".

Page 11, line 18, delete ":".

Page 11, delete lines 19 through 22.

Page 11, line 23, delete "(3)" and insert "**costs to a creditor associated with the use of a third party mediator or**".

Page 11, line 23, delete ";".

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Page 11, run in lines18 through 25.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 582 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

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