

# HOUSE BILL No. 1308

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## DIGEST OF INTRODUCED BILL

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

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

**Effective:** Upon passage.

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January 14, 2013, read first time and referred to Committee on Judiciary.

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First Regular Session 118th General Assembly (2013)

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

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

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

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## HOUSE BILL No. 1308



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

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

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



- 1 The account is administered by the authority.
- 2 (b) The home ownership education account consists of:
- 3 (1) court fees collected under ~~IC 33-37-5-30 (before its expiration~~  
 4 ~~on January 1, 2013); IC 33-37-5-32;~~
- 5 (2) civil penalties imposed and collected under:
- 6 (A) IC 6-1.1-12-43(g)(2)(B); or
- 7 (B) IC 27-7-3-15.5(e); and
- 8 (3) any civil penalties imposed and collected by a court for a  
 9 violation of a court order in a foreclosure action under  
 10 IC 32-30-10.5.
- 11 (c) The expenses of administering the home ownership education  
 12 account shall be paid from money in the account.
- 13 (d) The treasurer of state shall invest the money in the home  
 14 ownership education account not currently needed to meet the  
 15 obligations of the account in the same manner as other public money  
 16 may be invested.
- 17 SECTION 2. IC 5-20-6-3, AS AMENDED BY P.L.170-2011,  
 18 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 UPON PASSAGE]: Sec. 3. In addition to using money provided for the  
 20 program from:
- 21 (1) court fees under ~~IC 33-37-5-30 (before its expiration on~~  
 22 ~~January 1, 2013); IC 33-37-5-32;~~
- 23 (2) civil penalties imposed and collected under:
- 24 (A) IC 6-1.1-12-43(g)(2)(B); or
- 25 (B) IC 27-7-3-15.5(e); and
- 26 (3) any civil penalties imposed and collected by a court for a  
 27 violation of a court order in a foreclosure action under  
 28 IC 32-30-10.5;
- 29 the authority may solicit contributions and grants from the private  
 30 sector, nonprofit entities, and the federal government to assist in  
 31 carrying out the purposes of this chapter.
- 32 SECTION 3. IC 33-37-4-4, AS AMENDED BY P.L.136-2012,  
 33 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 34 UPON PASSAGE]: Sec. 4. (a) The clerk shall collect a civil costs fee  
 35 of one hundred dollars (\$100) from a party filing a civil action. This  
 36 subsection does not apply to the following civil actions:
- 37 (1) Proceedings to enforce a statute defining an infraction under  
 38 IC 34-28-5 (or IC 34-4-32 before its repeal).
- 39 (2) Proceedings to enforce an ordinance under IC 34-28-5 (or  
 40 IC 34-4-32 before its repeal).
- 41 (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
- 42 (4) Proceedings in paternity under IC 31-14.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (11) For a mortgage foreclosure action, ~~filed after June 30, 2009,~~  
19 ~~and before January 1, 2013,~~ a mortgage foreclosure counseling  
20 and education fee ~~(IC 33-37-5-30 (before its expiration on~~  
21 ~~January 1, 2013))~~. **(IC 33-37-5-32).**

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

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

31 SECTION 5. IC 33-37-7-2, AS AMENDED BY P.L.136-2012,  
32 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
33 UPON PASSAGE]: Sec. 2. (a) The clerk of a circuit court shall  
34 distribute semiannually to the auditor of state as the state share for  
35 deposit in the homeowner protection unit account established by  
36 IC 4-6-12-9 one hundred percent (100%) of the automated record  
37 keeping fees collected under IC 33-37-5-21 with respect to actions  
38 resulting in the accused person entering into a pretrial diversion  
39 program agreement under IC 33-39-1-8 or a deferral program  
40 agreement under IC 34-28-5-1 and for deposit in the state general fund  
41 seventy percent (70%) of the amount of fees collected under the  
42 following:



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- 1 (1) IC 33-37-4-1(a) (criminal costs fees).  
 2 (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).  
 3 (3) IC 33-37-4-3(a) (juvenile costs fees).  
 4 (4) IC 33-37-4-4(a) (civil costs fees).  
 5 (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).  
 6 (6) IC 33-37-4-7(a) (probate costs fees).  
 7 (7) IC 33-37-5-17 (deferred prosecution fees).  
 8 (b) The clerk of a circuit court shall distribute semiannually to the  
 9 auditor of state for deposit in the state user fee fund established in  
 10 IC 33-37-9-2 the following:  
 11 (1) Twenty-five percent (25%) of the drug abuse, prosecution,  
 12 interdiction, and correction fees collected under  
 13 IC 33-37-4-1(b)(5).  
 14 (2) Twenty-five percent (25%) of the alcohol and drug  
 15 countermeasures fees collected under IC 33-37-4-1(b)(6),  
 16 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).  
 17 (3) One hundred percent (100%) of the child abuse prevention  
 18 fees collected under IC 33-37-4-1(b)(7).  
 19 (4) One hundred percent (100%) of the domestic violence  
 20 prevention and treatment fees collected under IC 33-37-4-1(b)(8).  
 21 (5) One hundred percent (100%) of the highway work zone fees  
 22 collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).  
 23 (6) One hundred percent (100%) of the safe schools fee collected  
 24 under IC 33-37-5-18.  
 25 (7) The following:  
 26 (A) For a county operating under the state's automated judicial  
 27 system, one hundred percent (100%) of the automated record  
 28 keeping fee (IC 33-37-5-21) not distributed under subsection  
 29 (a).  
 30 (B) For a county not operating under the state's automated  
 31 judicial system, eighty percent (80%) of the automated record  
 32 keeping fee (IC 33-37-5-21) not distributed under subsection  
 33 (a).  
 34 (c) The clerk of a circuit court shall distribute monthly to the county  
 35 auditor the following:  
 36 (1) Seventy-five percent (75%) of the drug abuse, prosecution,  
 37 interdiction, and correction fees collected under  
 38 IC 33-37-4-1(b)(5).  
 39 (2) Seventy-five percent (75%) of the alcohol and drug  
 40 countermeasures fees collected under IC 33-37-4-1(b)(6),  
 41 IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).  
 42 The county auditor shall deposit fees distributed by a clerk under this

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1 subsection into the county drug free community fund established under  
2 IC 5-2-11.

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

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

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

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

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

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

27 (2) The percentage share of the support and maintenance fees for  
28 cases designated as Title IV-D child support cases in ISETS or the  
29 successor statewide automated support enforcement system  
30 collected under IC 33-37-5-6 that is reimbursable to the county at  
31 the federal financial participation rate.

32 The county clerk shall distribute monthly to the department of child  
33 services the percentage share of the support and maintenance fees for  
34 cases designated as Title IV-D child support cases in ISETS, or the  
35 successor statewide automated support enforcement system, collected  
36 under IC 33-37-5-6 that is not reimbursable to the county at the  
37 applicable federal financial participation rate.

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

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

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- 1 (2) One hundred percent (100%) of the small claims garnishee  
 2 service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for  
 3 deposit in the county general fund.
- 4 (h) This subsection does not apply to court administration fees  
 5 collected in small claims actions filed in a court described in IC 33-34.  
 6 The clerk of a circuit court shall semiannually distribute to the auditor  
 7 of state for deposit in the state general fund one hundred percent  
 8 (100%) of the following:
- 9 (1) The public defense administration fee collected under  
 10 IC 33-37-5-21.2.
- 11 (2) The judicial salaries fees collected under IC 33-37-5-26.
- 12 (3) The DNA sample processing fees collected under  
 13 IC 33-37-5-26.2.
- 14 (4) The court administration fees collected under IC 33-37-5-27.
- 15 (i) The clerk of a circuit court shall semiannually distribute to the  
 16 auditor of state for deposit in the judicial branch insurance adjustment  
 17 account established by IC 33-38-5-8.2 one hundred percent (100%) of  
 18 the judicial insurance adjustment fee collected under IC 33-37-5-25.
- 19 (j) The proceeds of the service fee collected under  
 20 IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as  
 21 follows:
- 22 (1) The clerk shall distribute one hundred percent (100%) of the  
 23 service fees collected in a circuit, superior, county, or probate  
 24 court to the county auditor for deposit in the county general fund.
- 25 (2) The clerk shall distribute one hundred percent (100%) of the  
 26 service fees collected in a city or town court to the city or town  
 27 fiscal officer for deposit in the city or town general fund.
- 28 (k) The proceeds of the garnishee service fee collected under  
 29 IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as  
 30 follows:
- 31 (1) The clerk shall distribute one hundred percent (100%) of the  
 32 garnishee service fees collected in a circuit, superior, county, or  
 33 probate court to the county auditor for deposit in the county  
 34 general fund.
- 35 (2) The clerk shall distribute one hundred percent (100%) of the  
 36 garnishee service fees collected in a city or town court to the city  
 37 or town fiscal officer for deposit in the city or town general fund.
- 38 (l) The clerk of the circuit court shall distribute semiannually to the  
 39 auditor of state for deposit in the home ownership education account  
 40 established by IC 5-20-1-27 one hundred percent (100%) of the  
 41 following:
- 42 (1) The mortgage foreclosure counseling and education fees

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1 collected under ~~IC 33-37-5-30 (before its expiration on January~~  
 2 ~~1, 2013)~~. **IC 33-37-5-32.**

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

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

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

20 (1) deposit in an appropriate account and otherwise manage the  
 21 fees the Indiana Bar Foundation receives under this subsection in  
 22 the same manner the Indiana Bar Foundation deposits and  
 23 manages the net earnings the Indiana Bar Foundation receives  
 24 from IOLTA accounts; and

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

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

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

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