

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 543 be amended to read as follows:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 29-1-17-11 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) When two (2)
5 or more distributees are entitled to distribution of **an** undivided
6 **interests interest** in any real or personal property of the estate,
7 distribution shall be made of undivided interests **therein in the**
8 **property** unless the personal representative or one (1) or more of the
9 distributees petition the court **for partition** not later than the hearing
10 on the petition for final distribution. **to make partition thereof.** If a
11 petition is filed, the court, after notice is given to all interested persons
12 as the court directs, shall proceed **in accordance with IC 32-17-4-2.5.**
13 **to make partition; allot and divide the property in the same manner as**
14 **provided by the statutes with respect to civil actions for partition; so**
15 **that each party receives property of a value proportionate to the party's**
16 **interest in the whole. The court may direct the personal representative**
17 **to sell any property which cannot be partitioned without prejudice to**
18 **the owners and which cannot conveniently be allotted to any one (1)**
19 **party. If partition is made in kind, the court may appoint a**
20 **commissioner to partition the property, who shall have the powers and**
21 **perform the duties of a commissioner in civil actions for partition; and**
22 **the court shall have the same powers with respect to the commissioner's**
23 **report as in civil actions. If equal partition cannot be had between the**
24 **parties without prejudice to the rights or interests of some, partition**
25 **may be made in unequal shares and by awarding judgment for**
26 **compensation to be paid by one (1) or more parties to one (1) or more**
27 **of the others. Any two (2) or more parties may agree to accept**
28 **undivided interests. Any sale under this section shall be conducted and**
29 **confirmed in the same manner as other probate sales. The expenses of**
30 **the partition, including reasonable compensation to the commissioner,**
31 **shall be equitably apportioned by the court among the parties. Each**

1 party must pay the party's own attorney's fees. The amount charged to
2 each party constitutes a lien on the property allotted to the party. **The**
3 **person who files for partition shall conduct a title search with the**
4 **bureau of motor vehicles (if the personal property is titled) or a**
5 **search for liens under the Uniform Commercial Code (if the**
6 **personal property is not titled). The person shall file a copy of the**
7 **results of the search with the court.**

8 (b) If a distribution of particular assets of a decedent is to be made
9 to two (2) or more distributees that are entitled to receive fractional
10 shares in the assets, the decedent's personal representative may, under
11 an agreement among the distributees, distribute the particular assets
12 without distributing to each distributee a pro rata share of each asset.
13 However, the personal representative shall:

14 (1) distribute to each distributee a pro rata share of the total fair
15 market value of all the particular assets as of the date of
16 distribution; and

17 (2) divide the assets in a manner that results in a fair and
18 equitable division among the distributees of any capital gain or
19 loss on the assets."

20 Page 2, line 2, after "real" insert "**or personal**".

21 Page 2, line 16, after "parcels" insert "**or items**".

22 Page 2, line 32, before "property" insert "**lien or**".

23 Page 2, line 32, after "under" insert "**IC 29-1-17-11 or**".

24 Page 2, line 38, after "chapter" insert "**or a lien search under**
25 **IC 29-1-17-11**".

26 Renumber all SECTIONS consecutively.

(Reference is to SB 543 as printed February 8, 2011.)

Senator STEELE