



Reprinted
February 15, 2011

SENATE BILL No. 543

DIGEST OF SB 543 (Updated February 14, 2011 4:54 pm - DI 106)

Citations Affected: IC 29-1; IC 32-17.

Synopsis: Partition. Establishes a new procedure for partitioning real and personal property that: (1) requires a court to refer the matter to mediation; and (2) requires the court to order the property sold at auction if the parties are not able to reach an agreement during mediation. Repeals superseded provisions.

Effective: July 1, 2011.

Steele

January 20, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 7, 2011, reported favorably — Do Pass.
February 14, 2011, read second time, amended, ordered engrossed.

C
o
p
y

SB 543—LS 7218/DI 106+



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.

C
o
p
y

SENATE BILL No. 543

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

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

1 SECTION 1. IC 29-1-17-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) When two (2)
3 or more distributees are entitled to distribution of **an** undivided
4 ~~interests~~ **interest** in any real or personal property of the estate,
5 distribution shall be made of undivided interests ~~therein~~ **in the**
6 **property** unless the personal representative or one (1) or more of the
7 distributees petition the court **for partition** not later than the hearing
8 on the petition for final distribution. ~~to make partition thereof.~~ If a
9 petition is filed, the court, after notice is given to all interested persons
10 as the court directs, shall proceed **in accordance with IC 32-17-4-2.5.**
11 ~~to make partition; allot and divide the property in the same manner as~~
12 ~~provided by the statutes with respect to civil actions for partition; so~~
13 ~~that each party receives property of a value proportionate to the party's~~
14 ~~interest in the whole. The court may direct the personal representative~~
15 ~~to sell any property which cannot be partitioned without prejudice to~~
16 ~~the owners and which cannot conveniently be allotted to any one (1)~~
17 ~~party. If partition is made in kind, the court may appoint a~~

SB 543—LS 7218/DI 106+



1 commissioner to partition the property, who shall have the powers and
 2 perform the duties of a commissioner in civil actions for partition; and
 3 the court shall have the same powers with respect to the commissioner's
 4 report as in civil actions. If equal partition cannot be had between the
 5 parties without prejudice to the rights or interests of some, partition
 6 may be made in unequal shares and by awarding judgment for
 7 compensation to be paid by one (1) or more parties to one (1) or more
 8 of the others. Any two (2) or more parties may agree to accept
 9 undivided interests. Any sale under this section shall be conducted and
 10 confirmed in the same manner as other probate sales. The expenses of
 11 the partition, including reasonable compensation to the commissioner,
 12 shall be equitably apportioned by the court among the parties. Each
 13 party must pay the party's own attorney's fees. The amount charged to
 14 each party constitutes a lien on the property allotted to the party. **The**
 15 **person who files for partition shall conduct a title search with the**
 16 **bureau of motor vehicles (if the personal property is titled) or a**
 17 **search for liens under the Uniform Commercial Code (if the**
 18 **personal property is not titled). The person shall file a copy of the**
 19 **results of the search with the court.**

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

- 26 (1) distribute to each distributee a pro rata share of the total fair
 27 market value of all the particular assets as of the date of
 28 distribution; and
 29 (2) divide the assets in a manner that results in a fair and
 30 equitable division among the distributees of any capital gain or
 31 loss on the assets.

32 SECTION 2. IC 32-17-4-2 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) A person
 34 described in section 1(a) of this chapter may file a petition to compel
 35 partition in the circuit court or court having probate jurisdiction of the
 36 county in which the land or any part of the land is located.

37 (b) A petition filed under subsection (a) must contain the following:

- 38 (1) A description of the premises.
 39 (2) The rights and titles in the land of the parties interested.

40 (c) **At the time a person files a petition under this chapter, the**
 41 **person shall cause a title search to be made regarding the land that**
 42 **is the subject of the partition. The person shall file a copy of the**

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

results of the title search with the court.

SECTION 3. IC 32-17-4-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 2.5. (a) Not later than thirty (30) days after a petition to compel partition has been filed, the court shall refer the matter to mediation in accordance with the Indiana rules of alternative dispute resolution. In its order referring the matter for mediation, the court shall advise the parties that the real or personal property will be sold at auction if the parties are unable to reach an agreement not later than sixty (60) days after the order is issued.**

(b) If:

- (1) less than sixty (60) days after the date the order was issued under subsection (a), the parties report to the court that they are unable to reach an agreement concerning some or all of the property; or**
- (2) the parties have not reached an agreement concerning some or all of the property not later than sixty (60) days after the order was issued under subsection (a);**

the court shall immediately order the property sold at auction and the proceeds divided. If the parties have reached an agreement concerning part of the property, the court shall order the sale at auction of only those parcels or items of property with respect to which an agreement has not been reached.

(c) If the court orders the property sold at auction, the court shall grant the parties thirty (30) days after the date of the order to select an auctioneer. If the parties are unable to select an auctioneer not more than thirty (30) days after the court orders the property to be sold, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6.

(d) The court shall order the property to be sold not earlier than thirty (30) or more than sixty (60) days after the date on which:

- (1) the parties select an auctioneer; or**
- (2) the court orders the sheriff to sell the property;**

whichever is applicable.

(e) At the time the court orders the property to be sold, the court shall notify all lienholders and other persons with an interest in the lien or property, as identified in the title search required under IC 29-1-17-11 or section 2 of this chapter, of the sale. The property shall be sold free and clear of all liens and special assessments except prescriptive easements and easements of record, with any sum secured by a lien or special assessment to be

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

satisfied from the proceeds of the sale.

(f) The person who causes a title search to be conducted under section 2 of this chapter or a lien search under IC 29-1-17-11 is entitled to indemnification from the proceeds of the sale.

(g) Any person who has paid a tax or special assessment on the property is entitled to pro rata indemnification from the proceeds of the sale.

(h) Any person may advertise a sale under this section at the person's own expense, but is not entitled to indemnification for these expenses.

(i) After deduction of the amounts described in subsections (e), (f), and (g) and the reasonable expenses of the sale, the court shall divide the proceeds of the sale among the remaining property owners in proportion to their ownership interest.

SECTION 4. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2011]: IC 32-17-4-3; IC 32-17-4-4; IC 32-17-4-5; IC 32-17-4-6; IC 32-17-4-7; IC 32-17-4-8; IC 32-17-4-9; IC 32-17-4-10; IC 32-17-4-11; IC 32-17-4-12; IC 32-17-4-13; IC 32-17-4-14; IC 32-17-4-15; IC 32-17-4-16; IC 32-17-4-17; IC 32-17-4-18; IC 32-17-4-19; IC 32-17-4-20; IC 32-17-4-21; IC 32-17-4-22; IC 32-17-4-24.

C
o
p
y



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 543, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 543 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

C
o
p
y

SENATE MOTION

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

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

"SECTION 1. IC 29-1-17-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11. (a) When two (2) or more distributees are entitled to distribution of ~~an~~ undivided ~~interests~~ **interest** in any real or personal property of the estate, distribution shall be made of undivided interests ~~therein~~ **in the property** unless the personal representative or one (1) or more of the distributees petition the court **for partition** not later than the hearing on the petition for final distribution. ~~to make partition thereof.~~ If a petition is filed, the court, after notice is given to all interested persons as the court directs, shall proceed **in accordance with IC 32-17-4-2.5.** ~~to make partition;~~ allot and divide the property in the same manner as provided by the statutes with respect to civil actions for partition; so that each party receives property of a value proportionate to the party's interest in the whole. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one (1) party. If partition is made in kind; the court may appoint a commissioner to partition the property; who shall have the powers and perform the duties of a commissioner in civil actions for partition; and the court shall have the same powers with respect to the commissioner's report as in civil actions. If equal partition cannot be had between the parties without prejudice to the rights or interests of some; partition may be made in unequal shares and by awarding judgment for compensation to be paid by one (1) or more parties to one (1) or more



of the others. Any two (2) or more parties may agree to accept undivided interests. Any sale under this section shall be conducted and confirmed in the same manner as other probate sales. The expenses of the partition, including reasonable compensation to the commissioner, shall be equitably apportioned by the court among the parties. Each party must pay the party's own attorney's fees. The amount charged to each party constitutes a lien on the property allotted to the party. **The person who files for partition shall conduct a title search with the bureau of motor vehicles (if the personal property is titled) or a search for liens under the Uniform Commercial Code (if the personal property is not titled). The person shall file a copy of the results of the search with the court.**

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

- (1) distribute to each distributee a pro rata share of the total fair market value of all the particular assets as of the date of distribution; and
- (2) divide the assets in a manner that results in a fair and equitable division among the distributees of any capital gain or loss on the assets."

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

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

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

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

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

Re-number all SECTIONS consecutively.

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

STEELE

C
O
P
Y

