



January 20, 2012

SENATE BILL No. 156

DIGEST OF SB 156 (Updated January 18, 2012 11:43 am - DI 106)

Citations Affected: IC 29-1; IC 31-17; 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 that the property be sold at auction if the parties are not able to reach an agreement during mediation. Repeals superseded provisions.

Effective: July 1, 2012.

Steele, Randolph

January 4, 2012, read first time and referred to Committee on Judiciary.
January 19, 2012, amended, reported favorably — Do Pass.

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SB 156—LS 6603/DI 106+



January 20, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 156

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, 2012]: 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

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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. **With
 15 respect to personal property, the person who files for partition
 16 shall conduct a title search with the bureau of motor vehicles (if the
 17 personal property is titled) or a search for liens under the Uniform
 18 Commercial Code (if the personal property is not titled). The
 19 person shall file a copy of the 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, 2012]: 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 subsection (a), 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**

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1 **results of the title search with the court.**

2 SECTION 3. IC 32-17-4-2.5 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2012]: **Sec. 2.5. (a) Not later than thirty (30) days after a petition
5 to compel partition has been filed, the court shall refer the matter
6 to mediation in accordance with the Indiana rules of alternative
7 dispute resolution. In its order referring the matter for mediation,
8 the court shall advise the parties that the real or personal property
9 will be sold at auction if the parties are unable to reach an
10 agreement not later than sixty (60) days after the order is issued.**

11 **(b) If:**

12 **(1) less than sixty (60) days after the date the referral to
13 mediation was issued under subsection (a), the parties report
14 to the court that they are unable to reach an agreement
15 concerning some or all of the property; or**

16 **(2) the parties have not reached an agreement concerning
17 some or all of the property not later than sixty (60) days after
18 the referral to mediation was issued under subsection (a);**

19 **the court shall, once all defenses have been pleaded and the matter
20 placed at issue, immediately order that the property be sold at
21 auction and that the proceeds be divided. If the parties have
22 reached an agreement concerning part of the property, the court
23 shall order the sale at auction of only those parcels or items of
24 property with respect to which an agreement has not been reached.**

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

32 **(d) The court shall order that the property be sold not earlier
33 than thirty (30) or later than sixty (60) days after the date on
34 which:**

35 **(1) the parties select an auctioneer; or**

36 **(2) the court orders the sheriff to sell the property;**

37 **whichever is applicable.**

38 **(e) At the time the court orders the property to be sold, the
39 court shall notify all lienholders and other persons with an interest
40 in the lien or property, as identified in the title search or lien
41 search required under IC 29-1-17-11 or section 2 of this chapter,
42 of the sale. The property must be sold free and clear of all liens and**

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1 special assessments except prescriptive easements, easements of
 2 record, and irrevocable licenses, with any sum secured by a lien or
 3 special assessment to be satisfied from the proceeds of the sale.

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

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

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

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

17 SECTION 4. IC 32-17-4-3 IS REPEALED [EFFECTIVE JULY 1,
 18 2012]. Sec. 3: The proceedings, practice, and pleadings for an action
 19 under this chapter are the same as in civil suits, except as otherwise
 20 provided in this chapter.

21 SECTION 5. IC 32-17-4-4 IS REPEALED [EFFECTIVE JULY 1,
 22 2012]. Sec. 4: (a) If:

- 23 (1) upon trial of any issue;
- 24 (2) upon default; or
- 25 (3) by consent of parties;

26 the court determines that partition should be made; the court shall
 27 award an interlocutory judgment that partition be made to parties who
 28 desire partition:

29 (b) In issuing a judgment under subsection (a); the court shall:

- 30 (1) specify the share assigned to each party; and
- 31 (2) take into consideration advancements to heirs of a person
 32 dying intestate.

33 (c) If the court issues a judgment under subsection (a); any part of
 34 the premises remaining after the partition belongs to the persons
 35 entitled to the premises; subject to a future partition:

36 (d) If:

- 37 (1) upon trial of any issue;
- 38 (2) upon default; or
- 39 (3) by confession or consent of parties;

40 the court determines that the land for which partition is demanded
 41 cannot be divided without damage to the owners; the court may order
 42 the whole or any part of the premises to be sold as provided under

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1 section 12 of this chapter:

2 SECTION 6. IC 32-17-4-5 IS REPEALED [EFFECTIVE JULY 1,
3 2012]. Sec. 5: Notwithstanding section 4 of this chapter, a court may
4 not order or affirm partition of any real estate contrary to the intention
5 of a testator expressed in the testator's will:

6 SECTION 7. IC 32-17-4-6 IS REPEALED [EFFECTIVE JULY 1,
7 2012]. Sec. 6: Upon judgment of partition, the court shall appoint three
8 (3) individuals as commissioners who:

- 9 (1) are disinterested resident freeholders;
10 (2) reside and own land in the county in which court is held; and
11 (3) are not related to any of the parties;

12 who shall make partition of the land in accordance with the judgment
13 of the court.

14 SECTION 8. IC 32-17-4-7 IS REPEALED [EFFECTIVE JULY 1,
15 2012]. Sec. 7: (a) Before discharging their duties, the commissioners
16 appointed under section 6 of this chapter shall take an oath to faithfully
17 perform the duties of their trust:

- 18 (b) The oath described in subsection (a) must:
19 (1) if taken in open court, be entered in the court's order book; and
20 (2) if not taken in open court, be endorsed on the warrant issued
21 to the commissioners to make the partition:

22 SECTION 9. IC 32-17-4-8 IS REPEALED [EFFECTIVE JULY 1,
23 2012]. Sec. 8: Two (2) or more persons may, if they choose, have their
24 shares set off together:

25 SECTION 10. IC 31-17-4-9 IS REPEALED [EFFECTIVE JULY 1,
26 2012]. Sec. 9: The remedies in this chapter are in addition to and do not
27 limit other civil or criminal remedies available to the noncustodial
28 parent:

29 SECTION 11. IC 32-17-4-10 IS REPEALED [EFFECTIVE JULY
30 1, 2012]. Sec. 10: If the court confirms a report filed under section 9 of
31 this chapter, the court shall:

- 32 (1) spread the report on the order book;
33 (2) enter a judgment of partition in accordance with the report;
34 and
35 (3) record the report and judgment in a separate book kept for that
36 purpose:

37 SECTION 12. IC 32-17-4-11 IS REPEALED [EFFECTIVE JULY
38 1, 2012]. Sec. 11: (a) Before confirming a report filed under section 9
39 of this chapter, the court may, if the court determines that good cause
40 exists, set aside the report:

- 41 (b) If the court sets aside a report under subsection (a):
42 (1) the court may:

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- 1 (A) recommit the duty of partition to the same commissioners;
 2 or
 3 (B) appoint other commissioners in the same manner as the
 4 original commissioners; and
 5 (2) the commissioners shall perform the duties described in this
 6 chapter.
- 7 SECTION 13. IC 32-17-4-12 IS REPEALED [EFFECTIVE JULY
 8 1, 2012]. Sec. 12: (a) If the commissioners report to the court that the
 9 whole or part of the land of which partition is demanded can not be
 10 divided without damage to the owners; the court may order the whole
 11 or any part of the land to be sold at public or private sale on terms and
 12 conditions prescribed by the court.
- 13 (b) If the court orders a sale under this section, the order shall
 14 provide for reasonable public notice of the sale.
- 15 (c) If the court orders a sale under this section but does not order the
 16 sale to be made for cash, the court shall require that the purchaser make
 17 a cash payment of at least one-third (1/3) of the purchase price to the
 18 commissioner appointed under section 14 of this chapter at the time of
 19 the sale.
- 20 (d) Land sold under this section may not be sold for less than:
 21 (1) if sold at public sale, two-thirds (2/3) of its appraised value;
 22 and
 23 (2) if sold at private sale, its appraised value.
- 24 The court shall determine the appraised value of the land in the same
 25 manner as in cases of sales of land on execution.
- 26 (e) If only a part of land is sold under this section, the remainder
 27 may be partitioned as provided under this chapter.
- 28 (f) If the value of land ordered by the court to be sold at private sale
 29 does not exceed one thousand dollars (\$1,000), the land may, in the
 30 discretion of the court, be sold without any notice of sale being had or
 31 given.
- 32 (g) In all cases, the purchaser of land sold under this section has
 33 rights in all crops planted on the land after the sale.
- 34 (h) The court may:
 35 (1) approve reports of sale by commissioners in partition
 36 proceedings; and
 37 (2) order the deed delivered to the purchaser.
- 38 SECTION 14. IC 32-17-4-13 IS REPEALED [EFFECTIVE JULY
 39 1, 2012]. Sec. 13: If the court confirms partial partition:
 40 (1) the shares assigned are full shares; and
 41 (2) the residue reserved for sale is discharged from all title or
 42 claim of the parties receiving assignment of their shares under the

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1 partition.

2 SECTION 15. IC 32-17-4-14 IS REPEALED [EFFECTIVE JULY
3 1, 2012]. Sec. 14: (a) If the court orders a sale under section 12 of this
4 chapter, the court shall appoint a commissioner, other than a
5 commissioner appointed to make partition, to conduct the sale.

6 (b) A commissioner appointed under this section shall file a bond
7 payable to the state of Indiana in an amount determined by the court,
8 conditioned for the faithful discharge of the duties of the
9 commissioner's trust.

10 SECTION 16. IC 32-17-4-15 IS REPEALED [EFFECTIVE JULY
11 1, 2012]. Sec. 15: (a) If the court determines that:

12 (1) land is sold under section 12 of this chapter for cash; or
13 (2) land is sold under section 12 of this chapter for partial credit
14 and that the first or cash payment of the purchase price is paid;
15 the court shall order the commissioner appointed under section 14 of
16 this chapter, or some other person, to execute a conveyance to the
17 purchaser.

18 (b) A conveyance made under this section bars all claims of the
19 prior owners of the land as if the prior owners had executed the
20 conveyance.

21 (c) If partial credit is given for land sold under section 12 of this
22 chapter, the court shall, at the time the court orders the conveyance to
23 be made under this section, also order and direct that, concurrently with
24 the execution of the conveyance, the purchaser shall execute to the
25 commissioner a mortgage upon the land to secure the deferred
26 payments of the purchase price of the land.

27 (d) The commissioner shall place a mortgage executed under this
28 section upon record as required by law.

29 SECTION 17. IC 32-17-4-16 IS REPEALED [EFFECTIVE JULY
30 1, 2012]. Sec. 16: Commissioners appointed to make partition, or to
31 sell, may not purchase the land partitioned or sold by the
32 commissioners.

33 SECTION 18. IC 32-17-4-17 IS REPEALED [EFFECTIVE JULY
34 1, 2012]. Sec. 17: The commissioner shall pay the proceeds of a sale
35 under this chapter after payment of just costs and expenses to the
36 persons entitled to the proceeds according to their respective shares,
37 under the direction of the court.

38 SECTION 19. IC 32-17-4-18 IS REPEALED [EFFECTIVE JULY
39 1, 2012]. Sec. 18: (a) Any two (2) of the persons named as
40 commissioners to make partition may perform the duties required by
41 this chapter.

42 (b) The court may fill a vacancy of a commissioner.



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1 SECTION 20. IC 32-17-4-19 IS REPEALED [EFFECTIVE JULY
2 1, 2012]. Sec. 19: (a) The occurrence of a vacancy does not invalidate
3 the previous acts of the commissioners:

4 (b) A successor commissioner shall take up and continue the
5 proceedings; which are as valid as if the proceedings had been done by
6 the commissioners first appointed:

7 SECTION 21. IC 32-17-4-20 IS REPEALED [EFFECTIVE JULY
8 1, 2012]. Sec. 20: The court shall provide an allowance; in an amount
9 that the court determines to be reasonable:

10 (1) to the commissioners for their services; and

11 (2) for surveying; marking; chaining; platting; and executing the
12 necessary conveyances:

13 SECTION 22. IC 32-17-4-21 IS REPEALED [EFFECTIVE JULY
14 1, 2012]. Sec. 21: (a) All costs and necessary expenses, including
15 reasonable attorney's fees for plaintiff's attorney; in an amount
16 determined by the court; shall be awarded and enforced in favor of the
17 parties entitled to the costs and expenses against the partitioners:

18 (b) The court shall assign costs and expenses awarded under
19 subsection (a) against each partitioner as the court may determine in
20 equity; taking into consideration each partitioner's relative interest in
21 the land or proceeds apportioned:

22 SECTION 23. IC 32-17-4-22 IS REPEALED [EFFECTIVE JULY
23 1, 2012]. Sec. 22: Upon showing sufficient cause; a party to
24 proceedings under this chapter who was not served with summons may;
25 not more than one (1) year after a partition is confirmed; appear and
26 open the proceedings; and obtain a review of the partition:

27 SECTION 24. IC 32-17-4-24 IS REPEALED [EFFECTIVE JULY
28 1, 2012]. Sec. 24: (a) In a proceeding for the partition of real estate:

29 (1) in a state court; and

30 (2) in which a person less than eighteen (18) years of age is a
31 party in interest;

32 the commissioners appointed to make the partition may lay off into lots
33 or out-lots; streets; and alleys; any land included in the partition and
34 may make a plat of the lots or out-lots; streets; and alleys and submit
35 the plat to the court for approval or rejection:

36 (b) If a plat submitted under subsection (a) is approved by the court:

37 (1) the commissioners appointed to make the partition shall
38 acknowledge the plat in open court;

39 (2) the plat must be recorded as other similar plats of like nature
40 are recorded; and

41 (3) the plat is legally valid as if the plat were made by a legal
42 proprietor of the lands who is at least eighteen (18) years of age:

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1 (c) The court shall determine, upon the return by the commissioners
2 of a plat described in subsection (b), whether it is in the interest of the
3 parties for the land that is the subject of the partition proceeding to be
4 laid off into lots or out-lots, streets, and alleys. If the court determines
5 that it is in the interest of the parties, the appointed commissioners may
6 partition the land as in other cases without detriment to the interested
7 parties. If partition of the land is not practicable without detriment to
8 the interested parties, the lots or out-lots may be sold by order of the
9 court.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 156, 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 4, line 1, delete "and" and insert ",".

Page 4, line 2, after "record," insert "**and irrevocable licenses,**".

and when so amended that said bill do pass.

(Reference is to SB 156 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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