



February 5, 2021

SENATE BILL No. 38

DIGEST OF SB 38 (Updated February 3, 2021 2:10 pm - DI 140)

Citations Affected: IC 34-11; IC 36-2.

Synopsis: Adverse possession statute of limitations. Amends the statute concerning the statute of limitations for actions for the recovery of the possession of real estate to provide that such an action that: (1) involves a line located and established by a professional surveyor; and (2) accrues before the lines are located and established by the surveyor; must be commenced before the expiration of the appeal period set forth in the statute governing county surveyors. Amends the provision concerning the establishment of property lines by means of a legal survey to specify that the lines established are binding on all affected landowners, including a landowner who claims title under a claim of adverse possession. Provides that certain information must be contained in a notice of survey sent to adjoining landowners, and that a legible copy of the plat of the legal survey must be enclosed with the notice.

Effective: July 1, 2021.

Doriot, Koch

January 4, 2021, read first time and referred to Committee on Judiciary.
February 4, 2021, reported favorably — Do Pass.

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February 5, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 38

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 34-11-2-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 11. **(a) Except as**
3 **provided in subsection (b)**, an action upon contracts in writing other
4 than those for the payment of money, and including all mortgages other
5 than chattel mortgages, deeds of trust, judgments of courts of record,
6 and for the recovery of the possession of real estate, must be
7 commenced within ten (10) years after the cause of action accrues.
8 However, an action upon contracts in writing other than those for the
9 payment of money entered into before September 1, 1982, not
10 including chattel mortgages, deeds of trust, judgments of courts of
11 record, or for the recovery of the possession of real estate, must be
12 commenced within twenty (20) years after the cause of action accrues.
13 **(b) This subsection applies to an action:**
14 **(1) for the recovery of the possession of real estate;**
15 **(2) that involves or is affected by a line located and**
16 **established by a professional surveyor under IC 36-2-12-10;**
17 **and**

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1 **(3) that accrues before the lines are located and established as**
 2 **described in subdivision (2).**

3 **An action to which this subsection applies must be commenced**
 4 **before the expiration of the appeal period set forth in**
 5 **IC 36-2-12-14.**

6 SECTION 2. IC 36-2-12-10, AS AMENDED BY P.L.159-2018,
 7 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2021]: Sec. 10. (a) The county surveyor shall maintain a legal
 9 survey record book, which must contain a record of all the legal
 10 surveys made in the county showing outline maps of each section,
 11 grant, tract, subdivision, or group of sections, grants, tracts, and
 12 subdivisions in sufficient detail so that the approximate location of
 13 each legal survey can be shown. Legal surveys shall be indexed by
 14 location.

15 (b) A landowner desiring to establish the location of the line
 16 between the landowner's land and that of an adjoining landowner by
 17 means of a legal survey may do so as follows:

18 (1) The landowner shall procure a professional surveyor
 19 registered under IC 25-21.5 to locate the line in question and shall
 20 compensate the professional surveyor.

21 (2) The professional surveyor shall notify the owners of adjoining
 22 lands that the professional surveyor is going to make the survey.
 23 The notice must be given by registered or certified mail at least
 24 twenty (20) days before the survey is started.

25 (3) The lines and corners shall be properly marked, monumented
 26 by durable material with letters and figures establishing such lines
 27 and corners, referenced, and tied to corners shown in the corner
 28 record book in the office of the county surveyor or to corners
 29 shown on a plat recorded in the plat books in the office of the
 30 county recorder.

31 (4) The professional surveyor shall present to the county surveyor
 32 for entry in the legal survey record book a plat of the legal survey
 33 and proof of notice to the adjoining landowners. The professional
 34 surveyor shall give notice to adjoining landowners by registered
 35 or certified mail within ten (10) days after filing of the survey.

36 **(c) A notice under subsection (b)(4) shall include the following**
 37 **information:**

38 (1) **A legal survey was performed of an adjoining property**
 39 **under this section.**

40 (2) **The plat of the legal survey was filed with the county**
 41 **surveyor for entry into the legal survey record book.**

42 (3) **The lines located and established under this section are**



1 **binding on all landowners affected, as well as the landowners'**
 2 **respective heirs and assigns, unless an appeal is taken under**
 3 **section 14 of this chapter.**

4 **(4) An appeal under section 14 of this chapter must be made**
 5 **to the circuit court of the county in which the surveyed**
 6 **property is located not later than:**

7 **(A) ninety (90) days after the notice of filing, if the**
 8 **landowner appealing the legal survey is a resident of the**
 9 **county; or**

10 **(B) one (1) year after the notice of filing, if the landowner**
 11 **appealing the legal survey is a not a resident of the county.**

12 **(5) If the affected landowner has reason to believe that the**
 13 **landowner has a claim of title under adverse possession, the**
 14 **landowner must:**

15 **(A) file a claim in a court with proper jurisdiction; or**

16 **(B) record an affidavit under IC 36-2-11-19(a)(4) or a deed**
 17 **reflecting the claim of adverse possession in the office of**
 18 **the recorder of the county in which the property is located;**
 19 **before the end of the applicable time period provided in**
 20 **subdivision (4).**

21 **(6) An affected landowner may not bring a claim of title under**
 22 **adverse possession against the state or a political subdivision.**

23 **The notice shall also include a legible copy of the plat of the legal**
 24 **survey.**

25 **(c) (d) The lines located and established under subsection (b) are**
 26 **binding on all landowners affected and their heirs and assigns,**
 27 **including an affected landowner who claims title under a claim of**
 28 **adverse possession:**

29 **(1) that has not been filed in a court with jurisdiction; or**

30 **(2) with respect to which:**

31 **(A) a deed reflecting the adverse possession; or**

32 **(B) an affidavit under IC 36-2-11-19(a)(4);**

33 **has not been recorded in the office of the recorder of the**
 34 **county in which the property is located;**

35 **as of the date the survey is entered into the legal survey record**
 36 **book under this section, unless an appeal is taken under section 14 of**
 37 **this chapter. The right to appeal commences when the plat of the legal**
 38 **survey is entered by the county surveyor in the legal survey record**
 39 **book.**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 38, 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 to SB 38 as introduced.)

BROWN L, Chairperson

Committee Vote: Yeas 8, Nays 0

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