

SENATE BILL No. 145

DIGEST OF INTRODUCED BILL

Citations Affected: IC 29-1.

Synopsis: Probate matters. Provides that the \$25,000 allowance to which a spouse of a decedent is entitled from the decedent's estate is subordinate to any specific liens on the tangible personal property and real property of the estate that were perfected before the date of the decedent's death. Repeals laws that: (1) impose a three-month delay for certain creditor actions, including foreclosures; and (2) require that a personal representative be named in any suit by a creditor against an estate.

Effective: July 1, 2018.

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January 3, 2018, read first time and referred to Committee on Judiciary.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 145

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

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

1 SECTION 1. IC 29-1-4-1, AS AMENDED BY P.L.143-2009,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 1. (a) **Subject to subsection (g)**, the surviving
4 spouse of a decedent who was domiciled in Indiana at the decedent's
5 death is entitled from the estate to an allowance of twenty-five
6 thousand dollars (\$25,000). If there is no surviving spouse, the
7 decedent's children who are under eighteen (18) years of age at the time
8 of the decedent's death are entitled to the same allowance to be divided
9 equally among them.

10 (b) The allowance under subsection (a) may be claimed against:
11 (1) the personal property of the decedent's estate;
12 (2) the real property that is part of the decedent's estate; or
13 (3) a combination of personal property under subdivision (1) and
14 real property under subdivision (2).

15 (c) Not later than ninety (90) days after the order commencing the
16 estate administration, an individual entitled to the allowance may file
17 with the court an election specifying whether the allowance is being



1 claimed under subsection (b) against the personal property of the estate
 2 or the real property that is part of the estate, or a combination of both.
 3 An interested party may file an objection to the manner in which the
 4 allowance is being claimed not later than thirty (30) days after the date
 5 the election is filed with the court. The court shall rule on the objection
 6 after notice and a hearing. If an election is not filed within ninety (90)
 7 days after the order commencing the estate administration, the
 8 allowance must be satisfied according to the following order of
 9 preference:

10 (1) From the intangible personal property of the estate.

11 (2) From the tangible personal property of the estate.

12 (3) From the real property that is part of the estate.

13 (d) **Subject to subsection (g)**, if the personal property of the estate
 14 is less than twenty-five thousand dollars (\$25,000) in value, the spouse
 15 or decedent's children who are under eighteen (18) years of age at the
 16 time of the decedent's death, as the case may be, are entitled to any real
 17 estate of the estate to the extent necessary to make up the difference
 18 between the value of the personal property and twenty-five thousand
 19 dollars (\$25,000). The amount of that difference is a lien on the real
 20 estate. However, no real estate may be sold to satisfy the survivor's
 21 allowance unless the sale is approved:

22 (1) in an agreement signed by all interested persons; or

23 (2) by court order following notice to all interested persons.

24 (e) An allowance under this section is not chargeable against the
 25 distributive shares of either the surviving spouse or the children.

26 (f) For purposes of this section, the value of the real property that is
 27 part of a decedent's estate must be determined as of the date of the
 28 decedent's death.

29 **(g) The allowance provided for under this section is subordinate**
 30 **to any specific liens on the tangible personal property and real**
 31 **property of the estate that were perfected before the date of the**
 32 **decedent's death.**

33 SECTION 2. IC 29-1-14-0.1, AS ADDED BY P.L.220-2011,
 34 SECTION 477, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2018]: Sec. 0.1. The following amendments to
 36 this chapter apply as follows:

37 (1) The amendments made to sections 2, 13, 17, and 19 of this
 38 chapter by P.L.118-1997 do not apply to an individual whose
 39 death occurs before July 1, 1997.

40 (2) The amendments made to sections 1, 2, 8, 10, 16 **(before its**
 41 **repeal)**, 18, 19, and 21 of this chapter by P.L.252-2001 apply to
 42 the estate of an individual who dies after June 30, 2001.



1 SECTION 3. IC 29-1-14-16 IS REPEALED [EFFECTIVE JULY 1,
2 2018]. Sec. 16: Unless an earlier date is authorized by the judge of the
3 court having jurisdiction of the decedent's estate no proceedings shall
4 be instituted before the end of three (3) months from the death of the
5 decedent to enforce the lien of any judgment rendered against the
6 decedent in his lifetime upon real estate or to enforce any decree
7 specifically directing the sale of such real estate to discharge any lien
8 or liability created or suffered by the decedent; nor shall any suit be
9 brought before that time against the heirs or devisees of the deceased
10 to foreclose any mortgage or other lien thereon; and in case of suit to
11 foreclose any mortgage or other lien thereon; the personal
12 representative shall be made a party defendant thereto; and if the
13 personal representative shall be diligently prosecuting his proceedings
14 to sell the real estate of the deceased for the purpose of making assets
15 to discharge such liens; further proceedings for the sale thereof by the
16 holders of liens thereon shall be stayed; upon the application of the
17 personal representative. This section does not apply to cases where;
18 before the end of the three (3) months; the real estate shall have been
19 sold by the personal representative subject to liens thereon; nor to
20 mortgages and judgments in favor of the state.

