

By: Senator(s) Hopson

To: Judiciary, Division A

SENATE BILL NO. 2698

1 AN ACT TO CREATE THE UNIFORM PARTITION OF HEIRS PROPERTY ACT;
2 TO CREATE A SHORT TITLE; TO ENACT DEFINITIONS; TO PROVIDE FOR
3 APPLICABILITY AND RELATION TO OTHER LAW; TO PROVIDE FOR NOTICE OF
4 A COMPLAINT; TO PROVIDE FOR COTENANT BUYOUT; TO CREATE
5 ALTERNATIVES; TO PROVIDE FOR PARTITION IN KIND; TO PROVIDE FOR
6 SALE; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1. Short title.** This act may be cited as the
9 Uniform Partition of Heirs Property Act.

10 **SECTION 2. Definitions.** In this act:

11 (1) "Ascendant" means an individual who precedes
12 another individual in lineage, in the direct line of ascent from
13 the other individual.

14 (2) "Collateral" means an individual who is related to
15 another individual under the law of intestate succession of this
16 state but who is not the other individual's ascendant or
17 descendant.

18 (3) "Descendant" means an individual who follows
19 another individual in lineage, in the direct line of descent from
20 the other individual.



21 (4) "Determination of value" means a court order
22 determining the fair market value of heirs property under Section
23 6 or 10 or adopting the valuation of the property agreed to by all
24 cotenants.

25 (5) "Heirs property" means real property held in
26 tenancy in common which satisfies all of the following
27 requirements as of the filing of a partition action:

28 (A) There is no agreement in a record binding all the
29 cotenants which governs the partition of the property;

30 (B) One or more of the cotenants acquired title from a
31 relative, whether living or deceased; and

32 (C) Any of the following applies:

33 (i) Twenty percent (20%) or more of the interests
34 are held by cotenants who are relatives;

35 (ii) Twenty percent (20%) or more of the interests
36 are held by an individual who acquired title from a relative,
37 whether living or deceased; or

38 (iii) Twenty percent (20%) or more of the
39 cotenants are relatives.

40 (6) "Partition by sale" means a court-ordered sale of
41 the entire heirs property, whether by auction, sealed bids, or
42 open-market sale conducted under Section 10.

43 (7) "Partition in kind" means the division of heirs
44 property into physically distinct and separately titled parcels.



45 (8) "Record" means information that is inscribed on a
46 tangible medium or that is stored in an electronic or other medium
47 and is retrievable in perceivable form.

48 (9) "Relative" means an ascendant, descendant, or
49 collateral or an individual otherwise related to another
50 individual by blood, marriage, adoption, or law of this state
51 other than this act.

52 **SECTION 3. Applicability; relation to other law.** (a) This
53 act applies to partition actions filed on or after the effective
54 date of this act.

55 (b) In an action to partition real property under Chapter
56 21, Title 11, Mississippi Code of 1972, the court shall determine
57 whether the property is heirs property. If the court determines
58 that the property is heirs property, the property must be
59 partitioned under this act unless all of the cotenants otherwise
60 agree in a record.

61 (c) This act supplements Chapter 21, Title 11, Mississippi
62 Code of 1972, and, if an action is governed by this act, replaces
63 provisions that are inconsistent with this act.

64 **SECTION 4. Service; notice by posting.** (a) This act does
65 not limit or affect the method by which service of a complaint in
66 a partition action may be made.

67 (b) If the plaintiff in a partition action seeks an order of
68 notice by publication and the court determines that the property
69 may be heirs property, the plaintiff, not later than ten (10) days



70 after the court's determination, shall post and maintain while the
71 action is pending a conspicuous sign on the property that is the
72 subject of the action. The sign must state that the action has
73 commenced and identify the name and address of the court and the
74 common designation by which the property is known. The court may
75 require the plaintiff to publish on the sign the name of the
76 plaintiff and the known defendants.

77 **SECTION 5. Masters.** If the court appoints masters pursuant
78 to Section 11-21-15, each master, in addition to the requirements
79 and disqualifications applicable to masters in Chapter 21, Title
80 11, Mississippi Code of 1972, must be disinterested and impartial
81 and not a party to or a participant in the action.

82 **SECTION 6. Determination of value.** (a) Except as otherwise
83 provided in subsections (b) and (c), if the court determines that
84 the property that is the subject of a partition action is heirs
85 property, the court shall determine the fair market value of the
86 property by ordering an appraisal pursuant to subsection (d).

87 (b) If all cotenants have agreed to the value of the
88 property or to another method of valuation, the court shall adopt
89 that value or the value produced by the agreed method of
90 valuation.

91 (c) If the court determines that the evidentiary value of an
92 appraisal is outweighed by the cost of the appraisal, the court,
93 after an evidentiary hearing, shall determine the fair market
94 value of the property and send notice to the parties of the value.



95 (d) If the court orders an appraisal, the court shall
96 appoint a disinterested real estate appraiser licensed in this
97 state to determine the fair market value of the property assuming
98 sole ownership of the fee simple estate. On completion of the
99 appraisal, the appraiser shall file a sworn or verified appraisal
100 with the court.

101 (e) If an appraisal is conducted pursuant to subsection (d),
102 not later than ten (10) days after the appraisal is filed, the
103 court shall send notice to each party with a known address,
104 stating:

105 (1) The appraised fair market value of the property;

106 (2) That the appraisal is available at the clerk's
107 office; and

108 (3) That a party may file with the court an objection
109 to the appraisal not later than thirty (30) days after the notice
110 is sent, stating the grounds for the objection.

111 (f) If an appraisal is filed with the court pursuant to
112 subsection (d), the court shall conduct a hearing to determine the
113 fair market value of the property not sooner than thirty (30) days
114 after a copy of the notice of the appraisal is sent to each party
115 under subsection (e), whether or not an objection to the appraisal
116 is filed under subsection (e) (3). In addition to the
117 court-ordered appraisal, the court may consider any other evidence
118 of value offered by a party.



119 (g) After a hearing under subsection (f), but before
120 considering the merits of the partition action, the court shall
121 determine the fair market value of the property and send notice to
122 the parties of the value.

123 **SECTION 7. Cotenant buyout.** (a) If any cotenant requested
124 partition by sale, after the determination of value under Section
125 6, the court shall send notice to the parties that any cotenant
126 except a cotenant that requested partition by sale may buy all the
127 interests of the cotenants that requested partition by sale.

128 (b) Not later than forty-five (45) days after the notice is
129 sent under subsection (a), any cotenant except a cotenant that
130 requested partition by sale may give notice to the court that it
131 elects to buy all the interests of the cotenants that requested
132 partition by sale.

133 (c) The purchase price for each of the interests of a
134 cotenant that requested partition by sale is the value of the
135 entire parcel determined under Section 6 multiplied by the
136 cotenant's fractional ownership of the entire parcel.

137 (d) After expiration of the period in subsection (b), the
138 following rules apply:

139 (1) If only one (1) cotenant elects to buy all the
140 interests of the cotenants that requested partition by sale, the
141 court shall notify all the parties of that fact.

142 (2) If more than one cotenant elects to buy all the
143 interests of the cotenants that requested partition by sale, the



144 court shall allocate the right to buy those interests among the
145 electing cotenants based on each electing cotenant's existing
146 fractional ownership of the entire parcel divided by the total
147 existing fractional ownership of all cotenants electing to buy and
148 send notice to all the parties of that fact and of the price to be
149 paid by each electing cotenant.

150 (3) If no cotenant elects to buy all the interests of
151 the cotenants that requested partition by sale, the court shall
152 send notice to all the parties of that fact and resolve the
153 partition action under Section 8(a) and (b).

154 (e) If the court sends notice to the parties under
155 subsection (d)(1) or (2), the court shall set a date, not sooner
156 than sixty (60) days after the date the notice was sent, by which
157 electing cotenants must pay their apportioned price into the
158 court. After this date, the following rules apply:

159 (1) If all electing cotenants timely pay their
160 apportioned price into court, the court shall issue an order
161 reallocating all the interests of the cotenants and disburse the
162 amounts held by the court to the persons entitled to them.

163 (2) If no electing cotenant timely pays its apportioned
164 price, the court shall resolve the partition action under Section
165 8(a) and (b) as if the interests of the cotenants that requested
166 partition by sale were not purchased.

167 (3) If one or more but not all of the electing
168 cotenants fail to pay their apportioned price on time, the court,



169 on motion, shall give notice to the electing cotenants that paid
170 their apportioned price of the interest remaining and the price
171 for all that interest.

172 (f) Not later than twenty (20) days after the court gives
173 notice pursuant to subsection (e) (3), any cotenant that paid may
174 elect to purchase all of the remaining interest by paying the
175 entire price into the court. After the twenty-day period, the
176 following rules apply:

177 (1) If only one (1) cotenant pays the entire price for
178 the remaining interest, the court shall issue an order
179 reallocating the remaining interest to that cotenant. The court
180 shall issue promptly an order reallocating the interests of all of
181 the cotenants and disburse the amounts held by it to the persons
182 entitled to them.

183 (2) If no cotenant pays the entire price for the
184 remaining interest, the court shall resolve the partition action
185 under Section 8(a) and (b) as if the interests of the cotenants
186 that requested partition by sale were not purchased.

187 (3) If more than one cotenant pays the entire price for
188 the remaining interest, the court shall reapportion the remaining
189 interest among those paying cotenants, based on each paying
190 cotenant's original fractional ownership of the entire parcel
191 divided by the total original fractional ownership of all
192 cotenants that paid the entire price for the remaining interest.
193 The court shall issue promptly an order reallocating all of the



194 cotenants' interests, disburse the amounts held by it to the
195 persons entitled to them, and promptly refund any excess payment
196 held by the court.

197 (g) Not later than forty-five (45) days after the court
198 sends notice to the parties pursuant to subsection (a), any
199 cotenant entitled to buy an interest under this section may
200 request the court to authorize the sale as part of the pending
201 action of the interests of cotenants named as defendants and
202 served with the complaint but that did not appear in the action.

203 (h) If the court receives a timely request under subsection
204 (g), the court, after hearing, may deny the request or authorize
205 the requested additional sale on such terms as the court
206 determines are fair and reasonable, subject to the following
207 limitations:

208 (1) A sale authorized under this subsection may occur
209 only after the purchase prices for all interests subject to sale
210 under subsections (a) through (f) have been paid into court and
211 those interests have been reallocated among the cotenants as
212 provided in those subsections; and

213 (2) The purchase price for the interest of a
214 nonappearing cotenant is based on the court's determination of
215 value under Section 6.

216 **SECTION 8. Partition alternatives.** (a) If all the
217 interests of all cotenants that requested partition by sale are
218 not purchased by other cotenants pursuant to Section 7, or if



219 after conclusion of the buyout under Section 7, a cotenant remains
220 that has requested partition in kind, the court shall order
221 partition in kind unless the court, after consideration of the
222 factors listed in Section 9, finds that partition in kind will
223 result in manifest prejudice to the cotenants as a group. In
224 considering whether to order partition in kind, the court shall
225 approve a request by two or more parties to have their individual
226 interests aggregated.

227 (b) If the court does not order partition in kind under
228 subsection (a), the court shall order partition by sale pursuant
229 to Section 10 or, if no cotenant requested partition by sale, the
230 court shall dismiss the action

231 (c) If the court orders partition in kind pursuant to
232 subsection (a), the court may require that one or more cotenants
233 pay one or more other cotenants amounts so that the payments,
234 taken together with the value of the in-kind distributions to the
235 cotenants, will make the partition in kind just and proportionate
236 in value to the fractional interests held.

237 (d) If the court orders partition in kind, the court shall
238 allocate to the cotenants that are unknown, unlocatable, or the
239 subject of a default judgment, if their interests were not bought
240 out pursuant to Section 7, a part of the property representing the
241 combined interests of these cotenants as determined by the court
242 and this part of the property shall remain undivided.



243 **SECTION 9. Considerations for partition in kind.** (a) In

244 determining under Section 8(a) whether partition in kind would
245 result in manifest prejudice to the cotenants as a group, the
246 court shall consider the following:

247 (1) Whether the heirs property practicably can be
248 divided among the cotenants;

249 (2) Whether partition in kind would apportion the
250 property in such a way that the aggregate fair market value of the
251 parcels resulting from the division would be materially less than
252 the value of the property if it were sold as a whole, taking into
253 account the condition under which a court-ordered sale likely
254 would occur;

255 (3) Evidence of the collective duration of ownership or
256 possession of the property by a cotenant and one or more
257 predecessors in title or predecessors in possession to the
258 cotenant who are or were relatives of the cotenant or each other;

259 (4) A cotenant's sentimental attachment to the
260 property, including any attachment arising because the property
261 has ancestral or other unique or special value to the cotenant;

262 (5) The lawful use being made of the property by a
263 cotenant and the degree to which the cotenant would be harmed if
264 the cotenant could not continue the same use of the property;

265 (6) The degree to which the cotenants have contributed
266 their pro rata share of the property taxes, insurance, and other
267 expenses associated with maintaining ownership of the property or



268 have contributed to the physical improvement, maintenance, or
269 upkeep of the property; and

270 (7) Any other relevant factor.

271 (b) The court may not consider any one factor in subsection
272 (a) to be dispositive without weighing the totality of all
273 relevant factors and circumstances.

274 **SECTION 10. Open-market sale, sealed bids, or auction.** (a)
275 If the court orders a sale of heirs property, the sale must be an
276 open-market sale unless the court finds that a sale by sealed bids
277 or an auction would be more economically advantageous and in the
278 best interest of the cotenants as a group.

279 (b) If the court orders an open-market sale and the parties,
280 not later than ten (10) days after the entry of the order, agree
281 on a real estate broker licensed in this state to offer the
282 property for sale, the court shall appoint the broker and
283 establish a reasonable commission. If the parties do not agree on
284 a broker, the court shall appoint a disinterested real estate
285 broker licensed in this state to offer the property for sale and
286 shall establish a reasonable commission. The broker shall offer
287 the property for sale in a commercially reasonable manner at a
288 price no lower than the determination of value and on the terms
289 and conditions established by the court.

290 (c) If the broker appointed under subsection (b) obtains
291 within a reasonable time an offer to purchase the property for at
292 least the determination of value:



293 (1) The broker shall comply with the reporting
294 requirements in Section 11; and

295 (2) The sale may be completed in accordance with state
296 law other than this act.

297 (d) If the broker appointed under subsection (b) does not
298 obtain within a reasonable time an offer to purchase the property
299 for at least the determination of value, the court, after hearing,
300 may:

301 (1) Approve the highest outstanding offer, if any;

302 (2) Redetermine the value of the property and order
303 that the property continue to be offered for an additional time;
304 or

305 (3) Order that the property be sold by sealed bids or
306 at an auction.

307 (e) If the court orders a sale by sealed bids or an auction,
308 the court shall set terms and conditions of the sale. If the
309 court orders an auction, the auction must be conducted under
310 Section 11-21-27.

311 (f) If a purchaser is entitled to a share of the proceeds of
312 the sale, the purchaser is entitled to a credit against the price
313 in an amount equal to the purchaser's share of the proceeds.

314 **SECTION 11. Report of open-market sale.** (a) Unless
315 required to do so within a shorter time by Chapter 21, Title 11,
316 Mississippi Code of 1972, a broker appointed under Section 10(b)
317 to offer heirs property for open-market sale shall file a report



318 with the court not later than seven (7) days after receiving an
319 offer to purchase the property for at least the value determined
320 under Section 6 or 10.

321 (b) The report required by subsection (a) must contain the
322 following information:

323 (1) A description of the property to be sold to each
324 buyer;

325 (2) The name of each buyer;

326 (3) The proposed purchase price;

327 (4) The terms and conditions of the proposed sale,
328 including the terms of any owner financing;

329 (5) The amounts to be paid to lienholders;

330 (6) A statement of contractual or other arrangements or
331 conditions of the broker's commission; and

332 (7) Other material facts relevant to the sale.

333 **SECTION 12. Uniformity of application and construction.** In
334 applying and construing this uniform act, consideration must be
335 given to the need to promote uniformity of the law with respect to
336 its subject matter among states that enact it.

337 **SECTION 13. Relation to electronic signatures in global and
338 national commerce act.** This act modifies, limits, and supersedes
339 the Electronic Signatures in Global and National Commerce Act, 15
340 U.S.C. Section 7001 et seq., but does not modify, limit, or
341 supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c),



342 or authorize electronic delivery of any of the notices described
343 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

344 **SECTION 14.** This act shall take effect and be in force from
345 and after July 1, 2016.

