

## House Amendments to Senate Bill No. 2553

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

### AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

16        **SECTION 1. Short title.** Sections 1 through 13 of this act  
17 may be cited as the Uniform Partition of Heirs Property Act.

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

19           (1) "Ascendant" means an individual who precedes  
20 another individual in lineage, in the direct line of ascent from  
21 the other individual.

22           (2) "Collateral" means an individual who is related to  
23 another individual under the law of intestate succession of this  
24 state but who is not the other individual's ascendant or  
25 descendant.

26           (3) "Descendant" means an individual who follows  
27 another individual in lineage, in the direct line of descent from  
28 the other individual.

29           (4) "Determination of value" means a court order  
30 determining the fair market value of heir property under Section 6  
31 or 10 or adopting the valuation of the property agreed to by all  
32 cotenants.

33           (5) "Heir property" means real property held in tenancy  
34 in common which satisfies all of the following requirements as of  
35 the filing of a partition action:

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

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

40                   (C) Any of the following applies:

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

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

46                           (iii) Twenty percent (20%) or more of  
47 the cotenants are relatives.

48           (6) "Partition by sale" means a court-ordered sale of  
49 the entire heir property, whether by auction, sealed bids, or  
50 open-market sale conducted under Section 10.

51           (7) "Partition in kind" means the division of heir  
52 property into physically distinct and separately titled parcels.

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

56           (9) "Relative" means an ascendant, descendant, or  
57 collateral or an individual otherwise related to another

58 individual by blood, marriage, adoption, or law of this state  
59 other than this act.

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

63 (b) In an action to partition real property under Title 11,  
64 Chapter 21, Mississippi Code of 1972, the court shall determine  
65 whether the property is heir property. If the court determines  
66 that the property is heir property, the property must be  
67 partitioned under this act unless all of the cotenants otherwise  
68 agree in a record.

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

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

75 (b) If the plaintiff in a partition action seeks an order of  
76 notice by publication and the court determines that the property  
77 may be heir property, the plaintiff, not later than ten (10) days  
78 after the court's determination, shall post and maintain while the  
79 action is pending a conspicuous sign on the property that is the  
80 subject of the action. The sign must state that the action has  
81 commenced and identify the name and address of the court and the  
82 common designation by which the property is known. The court may

83 require the plaintiff to publish on the sign the name of the  
84 plaintiff and the known defendants.

85 **SECTION 5. Masters.** If the court appoints masters under  
86 Section 11-21-15, each master, in addition to the requirements and  
87 disqualifications applicable to masters in Title 11, Chapter 21,  
88 Mississippi Code of 1972, must be disinterested and impartial and  
89 not a party to or a participant in the action.

90 **SECTION 6. Determination of value.** (a) Except as otherwise  
91 provided in subsections (b) and (c), if the court determines that  
92 the property that is the subject of a partition action is heir  
93 property, the court shall determine the fair market value of the  
94 property by ordering an appraisal pursuant to subsection (d).

95 (b) If all cotenants have agreed to the value of the  
96 property or to another method of valuation, the court shall adopt  
97 that value or the value produced by the agreed method of  
98 valuation.

99 (c) If the court determines that the evidentiary value of an  
100 appraisal is outweighed by the cost of the appraisal, the court,  
101 after an evidentiary hearing, shall determine the fair market  
102 value of the property and send notice to the parties of the value.

103 (d) If the court orders an appraisal, the court shall  
104 appoint a disinterested real estate appraiser licensed in this  
105 state to determine the fair market value of the property assuming  
106 sole ownership of the fee simple estate. On completion of the  
107 appraisal, the appraiser shall file a sworn or verified appraisal  
108 with the court.

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

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

114 (2) That the appraisal is available at the clerk's  
115 office; and

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

119 (f) If an appraisal is filed with the court pursuant to  
120 subsection (d), the court shall conduct a hearing to determine the  
121 fair market value of the property not sooner than thirty (30) days  
122 after a copy of the notice of the appraisal is sent to each party  
123 under subsection (e), whether or not an objection to the appraisal  
124 is filed under subsection (e) (3). In addition to the  
125 court-ordered appraisal, the court may consider any other evidence  
126 of value offered by a party.

127 (g) After a hearing under subsection (f), but before  
128 considering the merits of the partition action, the court shall  
129 determine the fair market value of the property and send notice to  
130 the parties of the value.

131 **SECTION 7. Cotenant buyout.** (a) If any cotenant requested  
132 partition by sale, after the determination of value under Section  
133 6, the court shall send notice to the parties that any cotenant

134 except a cotenant that requested partition by sale may buy all the  
135 interests of the cotenants that requested partition by sale.

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

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

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

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

150 (2) If more than one cotenant elects to buy all the  
151 interests of the cotenants that requested partition by sale, the  
152 court shall allocate the right to buy those interests among the  
153 electing cotenants based on each electing cotenant's existing  
154 fractional ownership of the entire parcel divided by the total  
155 existing fractional ownership of all cotenants electing to buy and  
156 send notice to all the parties of that fact and of the price to be  
157 paid by each electing cotenant.

158 (3) If no cotenant elects to buy all the interests of  
159 the cotenants that requested partition by sale, the court shall

160 send notice to all the parties of that fact and resolve the  
161 partition action under Section 8(a) and (b).

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

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

171 (2) If no electing cotenant timely pays its apportioned  
172 price, the court shall resolve the partition action under Section  
173 8(a) and (b) as if the interests of the cotenants that requested  
174 partition by sale were not purchased.

175 (3) If one or more but not all of the electing  
176 cotenants fail to pay their apportioned price on time, the court,  
177 on motion, shall give notice to the electing cotenants that paid  
178 their apportioned price of the interest remaining and the price  
179 for all that interest.

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

185           (1) If only one (1) cotenant pays the entire price for  
186 the remaining interest, the court shall issue an order  
187 reallocating the remaining interest to that cotenant. The court  
188 shall issue promptly an order reallocating the interests of all of  
189 the cotenants and disburse the amounts held by it to the persons  
190 entitled to them.

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

195           (3) If more than one cotenant pays the entire price for  
196 the remaining interest, the court shall reapportion the remaining  
197 interest among those paying cotenants, based on each paying  
198 cotenant's original fractional ownership of the entire parcel  
199 divided by the total original fractional ownership of all  
200 cotenants that paid the entire price for the remaining interest.  
201 The court shall issue promptly an order reallocating all of the  
202 cotenants' interests, disburse the amounts held by it to the  
203 persons entitled to them, and promptly refund any excess payment  
204 held by the court.

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



211 (h) If the court receives a timely request under subsection  
212 (g), the court, after hearing, may deny the request or authorize  
213 the requested additional sale on such terms as the court  
214 determines are fair and reasonable, subject to the following  
215 limitations:

216 (1) A sale authorized under this subsection may occur  
217 only after the purchase prices for all interests subject to sale  
218 under subsections (a) through (f) have been paid into court and  
219 those interests have been reallocated among the cotenants as  
220 provided in those subsections; and

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

224 **SECTION 8. Partition alternatives.** (a) If all the  
225 interests of all cotenants that requested partition by sale are  
226 not purchased by other cotenants pursuant to Section 7, or if  
227 after conclusion of the buyout under Section 7, a cotenant remains  
228 that has requested partition in kind, the court shall order  
229 partition in kind unless the court, after consideration of the  
230 factors listed in Section 9, finds that partition in kind will  
231 result in manifest prejudice to the cotenants as a group. In  
232 considering whether to order partition in kind, the court shall  
233 approve a request by two (2) or more parties to have their  
234 individual interests aggregated.

235 (b) If the court does not order partition in kind under  
236 subsection (a), the court shall order partition by sale pursuant

237 to Section 10 or, if no cotenant requested partition by sale, the  
238 court shall dismiss the action.

239 (c) If the court orders partition in kind pursuant to  
240 subsection (a), the court may require that one or more cotenants  
241 pay one or more other cotenants amounts so that the payments,  
242 taken together with the value of the in-kind distributions to the  
243 cotenants, will make the partition in kind just and proportionate  
244 in value to the fractional interests held.

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

251 **SECTION 9. Considerations for partition in kind.** (a) In  
252 determining under Section 8(a) whether partition in kind would  
253 result in manifest prejudice to the cotenants as a group, the  
254 court shall consider the following:

255 (1) Whether the heir property practicably can be  
256 divided among the cotenants;

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

263 (3) Evidence of the collective duration of ownership or  
264 possession of the property by a cotenant and one or more  
265 predecessors in title or predecessors in possession to the  
266 cotenant who are or were relatives of the cotenant or each other;

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

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

273 (6) The degree to which the cotenants have contributed  
274 their pro rata share of the property taxes, insurance, and other  
275 expenses associated with maintaining ownership of the property or  
276 have contributed to the physical improvement, maintenance, or  
277 upkeep of the property; and

278 (7) Any other relevant factor.

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

282 **SECTION 10. Open-market sale, sealed bids, or auction.** (a)

283 If the court orders a sale of heir property, the sale must be an  
284 open-market sale unless the court finds that a sale by sealed bids  
285 or an auction would be more economically advantageous and in the  
286 best interest of the cotenants as a group.

287 (b) If the court orders an open-market sale and the parties,  
288 not later than ten (10) days after the entry of the order, agree

289 on a real estate broker licensed in this state to offer the  
290 property for sale, the court shall appoint the broker and  
291 establish a reasonable commission. If the parties do not agree on  
292 a broker, the court shall appoint a disinterested real estate  
293 broker licensed in this state to offer the property for sale and  
294 shall establish a reasonable commission. The broker shall offer  
295 the property for sale in a commercially reasonable manner at a  
296 price no lower than the determination of value and on the terms  
297 and conditions established by the court.

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

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

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

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

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

310 (2) Redetermine the value of the property and order  
311 that the property continue to be offered for an additional time;  
312 or

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

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

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

322 **SECTION 11. Report of open-market sale.** (a) Unless  
323 required to do so within a shorter time by Title 11, Chapter 21,  
324 Mississippi Code of 1972, a broker appointed under Section 10(b)  
325 to offer heir property for open-market sale shall file a report  
326 with the court not later than seven (7) days after receiving an  
327 offer to purchase the property for at least the value determined  
328 under Section 6 or 10.

329 (b) The report required by subsection (a) must contain the  
330 following information:

- 331 (1) A description of the property to be sold to each  
332 buyer;
- 333 (2) The name of each buyer;
- 334 (3) The proposed purchase price;
- 335 (4) The terms and conditions of the proposed sale,  
336 including the terms of any owner financing;
- 337 (5) The amounts to be paid to lienholders;
- 338 (6) A statement of contractual or other arrangements or  
339 conditions of the broker's commission; and
- 340 (7) Other material facts relevant to the sale.

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

345           **SECTION 13.**   **Relation to electronic signatures in global and**  
346 **national commerce act.**   This act modifies, limits, and supersedes  
347 the Electronic Signatures in Global and National Commerce Act, 15  
348 USC Section 7001 et seq., but does not modify, limit, or supersede  
349 Section 101(c) of that act, 15 USC Section 7001(c), or authorize  
350 electronic delivery of any of the notices described in Section  
351 103(b) of that act, 15 USC Section 7003(b).

352           **SECTION 14.**   Section 11-21-5, Mississippi Code of 1972, is  
353 amended as follows:

354           11-21-5.   Any of the parties in interest, whether infants or  
355 adults, may institute proceedings for the partition of lands or  
356 for a partition sale thereof, by judgment of court as herein  
357 provided, except that if the court determines that the property is  
358 heir property under the Uniform Partition of Heirs Property Act,  
359 then such partition or sale must comply with the provisions of  
360 Sections 1 through 13 of this act.   All persons in interest must  
361 be made parties except (a) in cases where a part of the freehold  
362 is owned by persons owning a life estate therein or a life tenancy  
363 therein subject to the rights of remaindermen or reversioners,  
364 then, in such event, it shall only be necessary that the person or  
365 persons owning or claiming a life estate or life tenancy therein  
366 be made parties; and (b) in cases where the partition is for the

367 surface of the land only, it shall not be necessary that persons  
368 owning divided or undivided interests in the minerals in the land  
369 be made parties unless such persons also have an interest in the  
370 surface of the land. An infant, or person of unsound mind, may  
371 sue by next friend as in other cases; but if the infant, or non  
372 compos mentis, have a guardian, the guardian must appear as next  
373 friend, unless good cause to the contrary be shown. Where an  
374 infant or non compos is made a party defendant, the guardian, if  
375 any, of such infant or non compos shall also be made a party,  
376 whether the infant or non compos be resident or nonresident and  
377 whether the guardian be a resident or a nonresident; and the said  
378 guardian may appear and answer the complaint. The summons to the  
379 defendants, including the guardian aforesaid, shall be made  
380 pursuant to the Mississippi Rules of Civil Procedure. The word  
381 "guardian," where used in this section, shall be held to apply  
382 also to all persons who, under the laws of any other state or  
383 country, stand in that relation whether known as curator, tutor,  
384 committee or conservator, or by whatever other name or title such  
385 person may be known.

386 **SECTION 15.** This act shall take effect and be in force from  
387 and after July 1, 2020.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

1 AN ACT TO CREATE THE "UNIFORM PARTITION OF HEIRS PROPERTY  
2 ACT"; TO DEFINE CERTAIN TERMS; TO PROVIDE FOR APPLICABILITY AND  
3 RELATION TO OTHER LAW; TO ESTABLISH THE PROCEDURES TO BE FOLLOWED  
4 BY THE COURTS IN PARTITIONING REAL PROPERTY THAT IS DETERMINED TO

5 BE HEIR PROPERTY; TO REQUIRE A PLAINTIFF IN A PARTITION ACTION  
6 INVOLVING HEIR PROPERTY TO POST NOTICE OF THE ACTION ON THE  
7 PROPERTY; TO PRESCRIBE THE MANNER BY WHICH THE FAIR MARKET VALUE  
8 OF HEIR PROPERTY MUST BE DETERMINED; TO AUTHORIZE COTENANTS TO BUY  
9 THE INTEREST OF ANOTHER COTENANT WHO HAS REQUESTED A PARTITION BY  
10 SALE; TO AUTHORIZE ALTERNATIVES TO PARTITION IN KIND THAT WILL  
11 RESULT IN MANIFEST PREJUDICE; TO ESTABLISH PROCEDURES FOR THE SALE  
12 OF HEIR PROPERTY; TO AMEND SECTION 11-21-5, MISSISSIPPI CODE OF  
13 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
14 PURPOSES.

HR43\SB2553A.J

Andrew Ketchings  
Clerk of the House of Representatives