

Senate File 2175 - Introduced

SENATE FILE 2175
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3065)

A BILL FOR

1 An Act relating to partition of property in kind and partition
2 of property by sale.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 SUBCHAPTER I

2 DEFINITIONS

3 Section 1. NEW SECTION. 651.1 Definitions.

4 As used in this chapter, unless the context otherwise
5 requires:

6 1. "*Ascendant*" means an individual who precedes another
7 individual in lineage in the direct line of ascent from the
8 other individual.

9 2. "*Collateral*" means an individual who is related to
10 another individual under the law of intestate succession of
11 this state but who is not the other individual's ascendant or
12 descendant.

13 3. "*Cotenant*" means a person holding title to real property
14 under tenancy in common ownership.

15 4. "*Descendant*" means an individual who follows another
16 individual in lineage in the direct line of descent from the
17 other individual.

18 5. "*Heirs property*" means real property held in tenancy in
19 common that satisfies all of the following requirements as of
20 the date of the filing of a partition action:

21 a. There is not a recorded agreement that binds all of the
22 cotenants that governs the partition of the property.

23 b. One or more of the cotenants acquired title from a living
24 or deceased relative.

25 c. Any of the following apply:

26 (1) Twenty percent or more of the interests are held by
27 cotenants who are relatives.

28 (2) Twenty percent or more of the interests are held by
29 an individual who acquired title from a living or deceased
30 relative.

31 (3) Twenty percent or more of the cotenants are relatives.

32 6. "*Owelty*" means an equitable remedy in a partition action
33 used to equalize the value of the property a party receives
34 through the payment of a sum of money from a recipient of
35 a higher value property to the recipient of a lower value

1 property.

2 7. "*Partition by sale*" means a court-ordered sale of
3 property subject to partition.

4 8. "*Partition in kind*" means a court-ordered division of
5 property subject to partition into physically distinct and
6 separately titled parcels.

7 9. "*Record*" means information that is inscribed on a
8 tangible medium or that is stored in an electronic or other
9 medium and is retrievable in perceivable form.

10 10. "*Relative*" means an ascendant, descendant, or collateral
11 or an individual otherwise related to another individual by
12 blood, marriage, adoption, or other law of this state.

13 SUBCHAPTER II

14 GENERAL PROVISIONS

15 Sec. 2. NEW SECTION. 651.2 Action for partition of
16 property.

17 Property shall be partitioned by equitable proceedings. A
18 property subject to partition shall be partitioned by sale
19 and the proceeds from the sale divided by the owners of the
20 property unless one or more of the property owners files
21 a request for partition in kind and the court determines
22 partition in kind is equitable and practicable.

23 Sec. 3. NEW SECTION. 651.3 Partition of real estate pending
24 probate or administration of an estate.

25 If an entire interest in real estate is owned by a decedent
26 on whose estate administration or probate is pending a
27 partition action shall not be brought until four months after
28 the second publication of the notice of the appointment of
29 the personal representative. A partition action shall not be
30 brought at any time while an application for authority to sell
31 such real estate is pending in a probate proceeding.

32 Sec. 4. NEW SECTION. 651.4 Petition for partition of
33 property.

34 A petition for partition of property shall describe the
35 property and the plaintiff's interest in the property. The

1 petition shall name all indispensable parties pursuant to
2 section 651.5 and state the nature and extent of each interest
3 or lien as far as each interest or lien is known by the
4 plaintiff.

5 **Sec. 5. NEW SECTION. 651.5 Parties to a petition for**
6 **partition of property.**

7 1. A petition for partition of property shall include as
8 parties all persons indispensable to the partition including
9 an owner of an undivided interest and a holder of a lien on all
10 or part of the property.

11 2. A petition for partition of property may include as
12 parties a person having an actual, apparent, claimed, or
13 contingent interest in the property.

14 3. The court shall have jurisdiction over an unborn person's
15 contingent or prospective vested interest as a cotenant of real
16 property in a partition proceeding. The court shall appoint
17 a guardian ad litem for such unborn person pursuant to the
18 rules of civil procedures. The partition in kind or partition
19 by sale of the real property pursuant to a court decree shall
20 have the same force and effect as to all such unborn persons,
21 or persons claiming by, through, or under the unborn person,
22 as though the unborn person were in being when the decree
23 was entered and the real property or proceeds of the unborn
24 person's interest shall be subject to the order of the court
25 until the right fully vests.

26 **Sec. 6. NEW SECTION. 651.6 The answer to a partition**
27 **petition.**

28 A defendant's answer to a partition petition shall state the
29 amount and nature of the defendant's interest. A defendant may
30 deny the interest of a plaintiff and by supplemental pleading,
31 if necessary, may deny the interest of any other defendant.

32 **Sec. 7. NEW SECTION. 651.7 Joinder and counterclaim.**

33 A party may perfect or quiet title to property that is
34 subject to a partition petition or request adjudication of a
35 right of a party as to any matter originating from or connected

1 to the property, including a lien between any parties. Except
2 as permitted by this section, a joinder of any other claim to a
3 partition petition shall not be permitted. A counterclaim to a
4 partition petition shall not be permitted.

5 Sec. 8. NEW SECTION. 651.8 **Partition of personal property**
6 **subject to a lien.**

7 Personal property that is subject to a lien on the whole or
8 any part of the property shall only be partitioned by sale.

9 Sec. 9. NEW SECTION. 651.9 **Partition of real and personal**
10 **property in the same action.**

11 Real and personal property owned by the same person may be
12 partitioned in the same action. A referee appointed by the
13 court may act as to both the real and the personal property.

14 Sec. 10. NEW SECTION. 651.10 **Jurisdiction of property**
15 **partitioned in kind or of proceeds from a partition by sale.**

16 Property that has been partitioned in kind or the proceeds
17 from a property that has been partitioned by sale shall be
18 subject to the order of the court until the disposition of the
19 rights in the property become fully vested.

20 Sec. 11. NEW SECTION. 651.11 **Property partitioned by sale**
21 **and partitioned in kind in the same action.**

22 If all parts of a property cannot be partitioned in kind,
23 parts of the property may be partitioned in kind and other
24 parts of the property may be partitioned by sale as provided in
25 this chapter.

26 Sec. 12. NEW SECTION. 651.12 **Initial court decree and**
27 **appointment of referee.**

28 The court shall file an initial decree establishing the
29 shares and interests of all owners in a property subject to
30 a partition petition. One referee shall be appointed in the
31 decree unless all owners of the property agree upon a larger
32 number of referees. The decree shall order an appraisal or
33 estimation of the valuation of the property and may direct
34 either a public or private sale of the property. Unless all
35 owners of the property agree to an alternative method for

1 conducting the appraisal or of estimating the valuation of
2 the property, the decree shall appoint three disinterested
3 persons with knowledge of property valuation to appraise the
4 property. The decree shall direct the referee to file a report
5 with the court setting forth the referee's recommendations for
6 completing the partition of the property. All other contested
7 issues related to the partition petition, including liens, may
8 be determined by the initial decree or by a supplemental decree
9 or decrees.

10 Sec. 13. NEW SECTION. **651.13 Abstract, plats, and surveys.**

11 The court may order the filing of a complete abstract
12 covering real property involved in a partition action. The
13 court may order a party to the partition action to produce any
14 abstract in the party's possession or control. The court may
15 order a plaintiff to obtain an abstract if a complete abstract
16 is unavailable. The expense for such abstract shall be taxed
17 as costs. The abstract shall be available to the court or any
18 party to the partition action during the partition proceedings.
19 The court may also order a plaintiff to obtain a plat or survey
20 and the expense for such shall be taxed as costs.

21 Sec. 14. NEW SECTION. **651.14 Adjudication of liens on a
22 property subject to partition.**

23 The court shall decide the nature, extent, priority, or
24 validity of a party's lien not previously determined and any
25 other issues as the court directs. The referee appointed by
26 the court shall provide notice of the court hearing to decide
27 such matters to the interested parties. Adjudication of liens
28 shall precede a partition in kind. A partition by sale and
29 the distribution of proceeds from such sale to any party not
30 affected by a lien may proceed prior to adjudication of liens
31 on the property.

32 Sec. 15. NEW SECTION. **651.15 Referee possession of property
33 and court preservation of property.**

34 The court may order a referee to lease or to take possession
35 of a property subject to partition. The court may issue an

1 injunction to preserve a property subject to partition or issue
2 an order providing for the care and custody of such property.
3 Any expenses incurred under this section as allowed by the
4 court shall be taxed as costs.

5 Sec. 16. NEW SECTION. 651.16 **The procedure for partition**
6 **in kind.**

7 1. A court-appointed referee authorized to partition a
8 property in kind shall qualify by taking an oath. A bond shall
9 not be required.

10 2. The referee shall designate each proposed parcel of the
11 partitioned property by visible monuments. If allowed by the
12 court, the referee may employ a surveyor or assistants to aid
13 the referee and the expenses for such shall be taxed as costs.

14 3. For good reasons shown the court may order a referee
15 making a partition in kind to allot a particular parcel or a
16 particular article of personal property to a specific party.

17 4. The referee shall file a report with the court that
18 details the referee's proposed division of the property
19 subject to partition in kind. The report shall describe with
20 reasonable particularity the respective shares and the specific
21 property allotted to each property owner. If real property
22 is part of the partition, a plat shall be filed with the
23 report. The referee may recommend owelty payments as part of
24 the referee's recommendation for the partition in kind. The
25 court shall promptly set a time and place for a hearing on
26 the referee's report. The referee shall give notice of such
27 hearing to all interested parties as ordered by the court.

28 5. After the hearing the court may approve, modify,
29 or disapprove the referee's report, or order the property
30 partitioned by sale. If the court approves partition in kind
31 subject to owelty payments as recommended by the referee, the
32 court shall order that the partition in kind shall not be
33 completed until all owelty payments have been made. If all
34 owelty payments are not made as ordered, the court shall make
35 further orders as appropriate. On approving a partition in

1 kind after all owelty payments have been made, the court shall
2 file a decree that includes all of the following:

3 *a.* Describes the property partitioned in kind in its
4 entirety.

5 *b.* Describes each partitioned parcel or article of personal
6 property allotted to each property owner.

7 *c.* Enters judgment against each property owner for each
8 property owner's apportioned costs. Such costs shall be a lien
9 on each owner's respective allotted parcel or article and for
10 which special execution may issue on demand of any interested
11 person.

12 6. Upon completion of a partition in kind of real property
13 pursuant to a court decree, the clerk of court shall file a
14 certified copy of the decree with the county recorder and
15 provide a copy to the county auditor of each county where any
16 of the partitioned property is located. The county auditor
17 shall record a transfer in the deed records and index each
18 parcel as a conveyance with the name of the owner of each
19 parcel as the grantee and the names of all other parties to
20 the partition petition as grantors. The costs of making and
21 recording the certified copy of the decree shall be taxed as
22 costs in the case.

23 Sec. 17. NEW SECTION. 651.17 Referee's report to the court
24 of inability to make a partition in kind.

25 A referee shall file a report with the court if the referee
26 is not able to make a partition in kind on a property subject to
27 partition. Upon receipt of the report, the court shall take
28 the following actions:

29 1. If the partition involves personal property, the court
30 shall order a sale of the personal property without further
31 notice.

32 2. If the partition involves real property, the court shall
33 set a hearing as provided under section 651.16. After such
34 hearing the court may order a sale or other disposition of the
35 real property, as the court deems appropriate.

1 Sec. 18. NEW SECTION. **651.18 Procedure for partition by**
2 **sale.**

3 1. A referee appointed by the court to partition property
4 by sale shall qualify by taking an oath. A bond shall not be
5 required before the referee conveys real property unless the
6 referee is required to do any of the following:

7 a. Sell personal property.

8 b. Take possession of real property.

9 c. Receive a payment on the sale before conveyance of the
10 real property.

11 2. Before conveying real property, the referee shall give
12 bond in the amount of one hundred twenty-five percent of the
13 total sale price of the real property, payable to the parties
14 entitled to the proceeds from the sale, and conditioned on the
15 faithful discharge of the referee's duties.

16 3. The referee shall file a report with the court that
17 provides all of the following:

18 a. A recommendation for the appropriate public or private
19 sale process to offer the property for sale, including but not
20 limited to a public auction or private listing.

21 b. A copy of any appraisal for the property to be
22 partitioned if required by the court.

23 4. The court shall promptly set a time and place for a
24 hearing on the referee's report. The referee shall provide
25 notice of the hearing to all interested parties.

26 5. After the hearing the court may approve, modify, or
27 disapprove the referee's report. If the court orders the
28 property to be partitioned by sale, the referee shall offer the
29 property for sale pursuant to the court order.

30 6. The referee shall give notice of the time and place of a
31 public sale of the property by two separate publications, at
32 least six days apart, in a newspaper of general circulation in
33 the county where the public sale of the property is to be held.
34 The last publication shall be at least seven days prior to a
35 public sale of real estate and at least four days prior to a

1 public sale of personal property. If authorized by the court,
2 the referee may advertise the sale beyond the required notice
3 and may employ an auctioneer or assistant to assist the referee
4 with the sale of the property. If allowed by the court, the
5 expense of such shall be taxed as costs.

6 7. The referee shall report all proposed sales to the court.
7 The court shall promptly set a time and place for a hearing
8 and the referee shall give notice to all interested parties.
9 Notice of the hearing shall also be given to any party who
10 files a request with the clerk of court, with the party's
11 name and the address where notice is to be sent, before the
12 referee's report is approved by the court. The clerk shall
13 docket the request and transmit a copy to the referee.

14 8. After the hearing the court may approve or disapprove the
15 sale of the property. The court may expressly order a private
16 sale of the property for less than the appraised value of the
17 property.

18 9. Real property shall not be conveyed to a buyer until a
19 partition by sale is approved by court order. Real property
20 shall not be conveyed to a buyer until the sale price for such
21 property has been paid in full.

22 10. If the court disapproves the partition by sale of a
23 property, all moneys paid or securities given shall be returned
24 to the persons entitled to such.

25 11. The court may require a party entitled to sale proceeds
26 from a property partitioned by sale to give satisfactory
27 security to refund any proceeds received, with interest, before
28 such party receives proceeds arising from the sale in the
29 event the court later rules such party is not entitled to the
30 proceeds.

31 Sec. 19. NEW SECTION. 651.19 **Validity of referee's deed.**

32 Upon court approval of a sale of property to be partitioned
33 by sale, the referee shall file a referee's deed that shall be
34 recorded in the county where the real estate is located. The
35 recorded referee's deed shall be valid against all subsequent

1 purchasers and against all persons who are parties to the
2 partition by sale proceeding.

3 Sec. 20. NEW SECTION. 651.20 Partition by sale — liens
4 on property.

5 Personal property shall be partitioned by sale free of all
6 liens. Real property shall be partitioned by sale free of all
7 liens except liens held against the entire real property.

8 Sec. 21. NEW SECTION. 651.21 Proceeds of property
9 partitioned by sale.

10 1. After a property has been partitioned by sale, a party,
11 including a holder of a lien from which the property has been
12 freed by the sale, shall have the same rights or interests in
13 the proceeds as the party had in the property sold, subject to
14 a prior charge for costs.

15 2. The court shall appoint a trustee, or order other
16 suitable provisions, for the proceeds of a share held for life
17 or years in the remainder. The ascertained share of any absent
18 owner shall be retained, or the proceeds invested for the
19 owner's benefit, under an order of the court.

20 Sec. 22. NEW SECTION. 651.22 Costs of a partition action.

21 All costs related to a partition action shall be advanced by
22 the plaintiff with such costs paid by all parties to the action
23 proportionately to each party's respective interest. A cost
24 created by a contest arising from the partition action shall be
25 taxed against the losing contestant unless otherwise ordered
26 by the court. If partition is in kind, costs shall be adjudged
27 and may be collected as provided in section 651.16, subsection
28 5. If partition is by sale, the costs shall be paid from the
29 proceeds and deducted from the shares of the parties against
30 whom the costs are taxed. Such remedies for collecting costs
31 shall be cumulative of other remedies.

32 Sec. 23. NEW SECTION. 651.23 Plaintiff's attorney fees.

33 1. On partition of real property, but not of personal
34 property, the court shall order a reasonable fee in favor of
35 the plaintiff's attorney. The fee shall be taxed as costs.

1 2. If the plaintiff is the losing contestant in a contest
2 arising from any partition action, any of the plaintiff's
3 attorney fees relating to such contest shall not be taxed as
4 costs.

5 Sec. 24. NEW SECTION. 651.24 Other fees taxed as costs.

6 Appraisers, referees, and attorneys appointed by a referee
7 with court approval shall receive reasonable compensation as
8 approved by the court and such compensation shall be part of
9 the costs.

10 Sec. 25. NEW SECTION. 651.25 Referee's final report.

11 Unless waived in writing by all interested parties, the
12 court shall fix a time and a place for a hearing on the
13 referee's final report. The referee shall give notice of the
14 hearing to all interested parties.

15 Sec. 26. NEW SECTION. 651.26 Payment of proceeds less than
16 ten thousand dollars to a minor.

17 If a minor for whom no conservator has been appointed is
18 entitled to proceeds from a partition of property by sale in an
19 amount not exceeding ten thousand dollars, the court may order
20 the proceeds paid to the minor's parent, guardian, or an adult
21 with whom the minor resides, for the use of the minor. After
22 such person files a written receipt for the proceeds with the
23 court, the referee shall be discharged of all liability for the
24 proceeds.

25 SUBCHAPTER III

26 SPECIAL PROVISIONS FOR PARTITION OF HEIRS PROPERTY

27 Sec. 27. NEW SECTION. 651.27 Applicability of special
28 provisions of heirs property.

29 If a cotenant requests a partition in kind in an action to
30 partition heirs property, the partition action shall proceed
31 under the special provisions for partition of heirs property
32 under this subchapter. The provisions of this subchapter
33 shall control in the event of a conflict with a provision of
34 subchapter II.

35 Sec. 28. NEW SECTION. 651.28 Initial decree.

1 1. If the court determines that a property subject to a
2 partition action is heirs property, and a cotenant requests
3 a partition in kind of such property, the court shall file
4 an initial decree pursuant to section 651.12 ordering the
5 partition action to proceed under this subchapter. The court
6 shall appoint a referee and direct the referee to obtain an
7 appraisal as provided in section 651.12. The referee shall
8 file the appraisal with the court.

9 2. Within ten calendar days after the referee files the
10 appraisal with the court, the court shall send notice to the
11 referee and to each party to the partition action. The notice
12 shall provide all of the following information:

13 a. The appraised fair market value of the heirs property.

14 b. The address of the clerk's office where the appraisal is
15 available for review.

16 c. Advise that a party may file an objection to the
17 appraisal with the court no later than thirty calendar days
18 after the date of notice by the court. An objection must state
19 the grounds for the objection.

20 3. No sooner than thirty calendar days after the date of
21 notice by the court and regardless of whether an objection to
22 the appraisal is filed, the court shall conduct a hearing to
23 determine the fair market value of the heirs property. The
24 court shall set a time and place for the hearing and give
25 notice to the referee and all parties to the partition action.
26 At the hearing, in addition to the court-ordered appraisal, the
27 court may consider any other evidence offered by the referee or
28 by a party to the partition action.

29 4. After the hearing the court shall file an order that
30 determines the fair market value of the heirs property and
31 provide notice of the determination to the referee and all
32 parties to the partition action.

33 Sec. 29. NEW SECTION. 651.29 Cotenant buyout.

34 1. If a cotenant requests partition by sale of the heirs
35 property after receiving notice of the court's determination of

1 the fair market value of the heirs property pursuant to section
2 651.28, the court shall send notice to all parties advising of
3 all of the following:

4 *a.* That a cotenant, except a cotenant that has requested
5 partition by sale of the heirs property, may elect to buy all
6 of the interests of a cotenant that has requested partition by
7 sale of the heirs property.

8 *b.* That a cotenant, except a cotenant that has requested
9 partition by sale of the heirs property, shall give notice to
10 the court no later than forty-five days after the date the
11 court sends notice pursuant to section 651.28, subsection 4,
12 of such cotenant's election to buy all of the interests of
13 a cotenant that has requested partition by sale of the heirs
14 property.

15 2. The sale price for the interest of a cotenant that has
16 requested a partition by sale of the heirs property shall be
17 the value of the entire heirs property as determined by the
18 court under section 651.28, multiplied by such cotenant's
19 fractional ownership of the entire heirs property.

20 3. If more than forty-five days have passed since the date
21 the court sent notice pursuant to section 651.28, subsection 4,
22 all of the following shall apply:

23 *a.* If only one cotenant elects to buy all of the interests
24 of a cotenant that has requested partition by sale of the
25 heirs property, the court shall provide notice of such to all
26 interested parties.

27 *b.* If more than one cotenant elects to buy all of the
28 interests of a cotenant that has requested partition by sale
29 of the heirs property, the court shall allocate the right
30 to buy such interests among the electing cotenants based on
31 each electing cotenant's existing fractional ownership of the
32 entire heirs property divided by the total existing fractional
33 ownership of all cotenants electing to buy such interests.
34 The court shall send notice to all interested parties of
35 the calculation used to determine the interest that can be

1 purchased by each electing cotenant and the price to be paid
2 for such interest by each electing cotenant.

3 *c.* If no cotenant elects to buy all of the interests of
4 a cotenant that has requested partition by sale of the heirs
5 property, the court shall send notice to all interested parties
6 and resolve the partition action pursuant to section 651.30.

7 4. If the court sends notice to the parties pursuant to
8 subsection 3, paragraph "a" or "b", the court shall set a date
9 no sooner than sixty calendar days after the date that such
10 notice is sent by which the electing cotenants shall pay their
11 apportioned price to the court. The court shall give notice
12 of such date to all interested parties. After such date has
13 passed, all of the following shall apply:

14 *a.* If all electing cotenants have timely paid their
15 apportioned price to the court, the court shall issue an order
16 reallocating all of the interests of the cotenants in the
17 partitioned heirs property and disburse the amounts held by the
18 court to the persons entitled to such disbursements.

19 *b.* If none of the electing cotenants has timely paid their
20 apportioned price to the court, the court shall resolve the
21 heirs partition action under section 651.30 as if the interest
22 of the cotenant that has requested partition by sale of the
23 heirs property has not been purchased.

24 *c.* If one or more but not all of the electing cotenants
25 fail to timely pay their apportioned price to the court, the
26 court on motion shall give notice to the electing cotenants
27 that have timely paid their apportioned price of the interest
28 remaining and the price for which the remaining interest may
29 be purchased.

30 5. Not later than twenty calendar days after the court
31 gives notice pursuant to subsection 4, paragraph "c", a noticed
32 cotenant may elect to purchase all of the remaining interest
33 by paying the entire price for the remaining interest to the
34 court. After the twenty-calendar-day period has expired, all
35 of the following shall apply:

1 *a.* If only one cotenant has paid the entire price for the
2 remaining interest in the partitioned heirs property, the
3 court shall issue an order reallocating the remaining interest
4 to that cotenant. The court shall promptly issue an order
5 reallocating the interests of all the cotenants and disburse
6 the amounts held by the court to the persons entitled to such
7 disbursements.

8 *b.* If none of the cotenants has paid the entire price for
9 the remaining interest in the heirs property, the court shall
10 resolve the partition action under section 651.30 as if the
11 interest of the cotenant that had requested partition by sale
12 of the heirs property has not been purchased.

13 *c.* If more than one cotenant have paid the entire price
14 for the remaining interest in the heirs property, the court
15 shall reapportion the remaining interest among such cotenants
16 based on each cotenant's original fractional ownership of the
17 entire heirs property divided by the total original fractional
18 ownership of all cotenants that paid the entire price for
19 the remaining interest. The court shall promptly issue an
20 order reallocating all cotenants' interests, disburse the
21 amounts held by the court to the persons entitled to such
22 disbursements, and promptly refund any excess payments held by
23 the court to the appropriate persons.

24 6. Not later than forty-five days after the court sends
25 notice to the parties pursuant to subsection 1, a cotenant
26 entitled to buy an interest under this section may request that
27 the court authorize the sale, as part of the pending action, of
28 the interests of any cotenant named as a defendant and served
29 with original notice who did not appear in the action. If the
30 court receives a timely request, the court, after a hearing,
31 may deny the request or authorize the requested additional sale
32 on such terms as the court determines are fair and reasonable,
33 subject to all of the following limitations:

34 *a.* A sale authorized under this subsection shall occur
35 only after the purchase price for all interests subject to

1 sale under this section has been paid to the court and such
2 interests have been reallocated among the cotenants as provided
3 in this section.

4 *b.* The purchase price for the interest of a nonappearing
5 cotenant shall be based on the court's determination of the
6 value of such interest under this section.

7 7. This section shall not be construed to prohibit a
8 cotenant from entering into an agreement with another cotenant
9 to change ownership of their respective interests in the heirs
10 property.

11 Sec. 30. NEW SECTION. **651.30 Alternatives to partition in**
12 **kind.**

13 At the conclusion of a cotenant buyout as provided in
14 section 651.29, the court shall order the heirs property to be
15 partitioned in kind unless the court, after consideration of
16 all factors pursuant to section 651.31, finds that partition
17 in kind will result in great prejudice to the cotenants as a
18 group. In considering whether to order the heirs property to
19 be partitioned in kind, the court shall approve a request by
20 two or more cotenants to aggregate their individual interests
21 in the heirs property.

22 Sec. 31. NEW SECTION. **651.31 Factors the court shall**
23 **consider in determining if partition in kind will result in great**
24 **prejudice.**

25 1. The court shall consider all of the following factors
26 in determining if partition in kind of heirs property will
27 result in great prejudice to the cotenants of such property as
28 a group:

29 *a.* Whether the heirs property can be practicably divided
30 among the cotenants.

31 *b.* Whether a partition in kind will apportion the heirs
32 property in such a way that the aggregate fair market value of
33 the parcels resulting from the division will be materially less
34 than the value of the heirs property if the heirs property is
35 sold as a whole, taking into account the condition under which

1 a court-ordered sale likely will occur.

2 *c.* Evidence of the collective duration of ownership or
3 possession of the heirs property by a cotenant and one or more
4 predecessors in title or predecessors in possession to the
5 cotenant who are or were relatives of the cotenant or each
6 other.

7 *d.* A cotenant's sentimental attachment to the heirs
8 property, including any attachment arising due to the heirs
9 property having ancestral or other unique or special value to
10 the cotenant.

11 *e.* The lawful use being made of the heirs property by a
12 cotenant and the degree to which the cotenant will be harmed
13 if the cotenant cannot continue the same use of the heirs
14 property.

15 *f.* The degree to which a cotenant has contributed the
16 cotenant's pro rata share of the property taxes, insurance, and
17 other expenses associated with maintaining ownership of the
18 heirs property, or has contributed to the physical improvement,
19 maintenance, or upkeep of the heirs property.

20 *g.* Tax consequences.

21 *h.* Any other factors the court deems relevant.

22 2. The court shall weigh the totality of all relevant
23 factors and circumstances and not consider any one factor in
24 subsection 1 to be dispositive.

25 Sec. 32. NEW SECTION. 651.32 **Applicability of subchapter**
26 **II provisions.**

27 1. If the court orders the heirs property partitioned in
28 kind, the proceedings shall be governed by the procedures set
29 forth in subchapter II that are applicable to a partition in
30 kind.

31 2. If the court orders the heirs property partitioned by
32 sale, the proceedings shall be governed by the procedures set
33 forth in subchapter II applicable to a partition by sale.

34 Sec. 33. REPEAL. Chapter 651, Code 2018, is repealed.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill relates to partition of property in kind and
4 partition of property by sale and creates new Code chapter 651.
5 The bill includes partition provisions currently in the rules
6 of civil procedure.

7 The bill defines terms not previously defined for partition
8 including "ascendant", "collateral", "cotentant", "descendant",
9 "heirs property", "owelty", and "relative".

10 The bill contains general provisions applicable to
11 all property partitions. The current procedures related
12 to an action for partition, partition pending probate or
13 administration of an estate, a petition for partition and
14 the parties to such, the answer to a partition petition, and
15 the prohibition of a counterclaim or joinder of claims to a
16 partition petition are not changed by the bill.

17 The bill requires that personal property subject to a lien be
18 partitioned by sale. Partition of real and personal property
19 owned by the same person may be partitioned in the same
20 partition action. Property may be partitioned by both sale and
21 in kind in the same partition action. Property that has been
22 partitioned in kind, or the proceeds from a partition by sale,
23 are subject to an order of the court until disposition of the
24 rights in the property are fully vested. The court may order
25 the filing of an abstract, adjudicate the validity and priority
26 of liens on a property, order a referee to take possession of
27 a property, or issue an order to preserve a property subject
28 to partition.

29 The bill requires that the court file an initial decree
30 establishing the interest and shares of all owners of a
31 property subject to partition. The court shall appoint one
32 referee unless the parties to the partition agree that more
33 than one referee needs to be appointed. This changes the
34 current requirement that the court appoint three referees for a
35 partition in kind and one or more referees for a partition by

1 sale. The court shall order an appraisal conducted by three
2 disinterested persons with knowledge of property valuations, or
3 by a different method of valuation as agreed to by the owners
4 of the property. Currently, the court is not required to order
5 an appraisal for a partition in kind, and for a partition by
6 sale the appraisal is to be conducted by three disinterested
7 freeholders. The bill requires the court to direct the referee
8 to file a report setting forth the referee's recommendations
9 for completing the partition. A referee's report is not
10 currently required to be filed with the court.

11 For a partition in kind, the bill allows the referee to
12 include owelty as part of the referee's recommendation. The
13 bill defines owelty as an equitable remedy used in partition
14 actions to equalize the lower value of property received by
15 a party through the payment of moneys from a recipient of a
16 higher value property. Owelty is not currently allowed in
17 partition actions. The court may approve or disapprove the
18 referee's report, or order the property sold by partition by
19 sale. If the court approves owelty payments, the partition in
20 kind cannot be completed until all owelty payments have been
21 made.

22 Upon approving a partition in kind, the court shall file a
23 decree describing each parcel of real property or article of
24 personal property allotted to each owner and enter judgment
25 against each property owner for their apportioned costs of the
26 action. A certified copy of the decree shall be filed with the
27 county recorder and a copy provided to the county auditor in
28 each county where the partitioned property is located.

29 The bill requires the referee to file a report with the court
30 if the referee is unable to make a partition in kind as ordered
31 by the court. If such partition involves personal property,
32 the court shall order a sale of the property without further
33 notice. If the partition involves real property, the court
34 must set a hearing after which the court may order a partition
35 by sale or order another disposition of the property.

1 The referee's report for a partition by sale must include
2 a recommendation for the appropriate public or private sale
3 process and a copy of the appraisal for the property. The
4 referee must provide notice of the sale by publication in a
5 newspaper of general circulation in the counties where the
6 property to be partitioned is located. The referee must report
7 all proposed sales to the court and the court may approve or
8 disapprove such sales. No real property shall be conveyed
9 prior to approval of the court. The bill requires property
10 subject to partition to be sold free of liens, except those
11 liens against the entire property. Upon court approval, the
12 referee must file a referee's deed that has to be recorded in
13 the counties where the partitioned property is located.

14 The bill requires the court to order a reasonable fee,
15 taxed as costs, for the plaintiff's attorney in a partition of
16 real property. In addition, if the plaintiff is the losing
17 contestant in any contest arising from the partition action,
18 the plaintiff's attorney fees related to such contest shall
19 not be taxed as costs. This is a change from the current rule
20 of civil procedure that requires such fees to be taxed against
21 the losing contestant. The bill does not change the court's
22 ability to order reasonable compensation for any appraisers,
23 referees, and attorneys involved in a partition action.
24 The bill requires that such compensation shall be part of
25 costs. The court shall have a hearing on the referee's final
26 report. Any payment of proceeds of less than \$10,000 from a
27 partition by sale that are to go to a minor who does not have a
28 conservator appointed are to be paid to the minor's parents,
29 guardian, or an adult who resides with the minor.

30 The bill details procedures for partition in kind of heirs
31 property as defined in the bill. The bill provides that these
32 provisions control in the event of a conflict with the general
33 provisions of the new Code chapter.

34 In a partition action involving heirs property in which a
35 cotenant has requested partition in kind, the bill requires

1 the court to issue an initial decree appointing a referee and
2 ordering an appraisal. After the referee files the appraisal,
3 the court must conduct a hearing to determine the fair market
4 value of the heirs property. After the hearing the court
5 must send notice of the fair market value to all cotenants of
6 the heirs property. If at that time a cotenant requests that
7 the heirs property be partitioned by sale, the bill allows
8 all other cotenants to elect to purchase the interest of a
9 cotenant that has requested partition by sale of the heirs
10 property. The bill provides a specific time period in which
11 a cotenant has to elect to purchase such interest, provides
12 a determination of fractional ownership of each cotenant's
13 interest in the heirs property before and after purchase of
14 such interest, provides the time frame for a cotenant to
15 pay for an interest such cotenant has elected to purchase
16 from another cotenant, and provides for reallocation of
17 all cotenants' interests in the heirs property based on the
18 payments made, or not made, by the electing cotenants.

19 The bill allows a cotenant to petition the court to authorize
20 the sale of the interest of a cotenant named as a defendant
21 in the action who does not appear in the action. If the
22 court authorizes such sale, the value of the interest of the
23 nonappearing cotenant shall be determined by the court.

24 If all payments are made by the electing cotenants, the
25 court shall order the heirs property to be partitioned in kind
26 unless the court determines that a partition in kind will
27 result in great prejudice to the cotenants as a group. The
28 court is required to consider the totality of eight factors
29 as detailed in the bill in making such a determination. If
30 the court orders the heirs property to be partitioned in
31 kind, the partition shall be conducted per the partition in
32 kind procedures detailed in the general provisions of the
33 new Code chapter. If the court orders the heirs property to
34 be partitioned by sale, the partition shall be conducted per
35 the partition by sale procedures as detailed in the general

1 provisions of the new Code chapter.

2 The bill repeals Code chapter 651, Code 2018.