

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 329

As Recommended by Senate Committee on
Judiciary

Brief*

SB 329 would create the Uniform Partition of Heirs Property Act (Act), which would apply to partition actions filed on or after July 1, 2018. In an action to partition real property, the Act would require courts to determine whether the property is heirs property, and if it is determined to be heirs property, the property would be required to be partitioned under the Act unless all co-tenants otherwise agree in a record. The bill would outline requirements of partition under the Act related to notice, commissioners appointed by the court to partition property, determining the value of heirs property, purchase of the property by co-tenants, partition in kind, and open-market sales when a sale of heirs property is ordered. The bill would also define key terms and specify how the Act should be applied in relation to state and federal law.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Hardy. In the Senate Committee hearing, staff of the Office of Revisor of Statutes explained current law governs division of jointly held property and allows either for the property to be divided (partition in kind) or to be sold and have the proceeds divided (partition by sale). The bill specifies the Act would supplement this current law and replace any provisions inconsistent with the Act.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Senator Hardy appeared as a proponent and provided background for the Act, stating, absent a form of ownership specified in an estate plan, the owner's descendants will inherit real estate as tenants-in-common under state property statutes, and a tenant-in-common may sell his or her interest without the consent of the co-tenants, making it easy for non-family members to acquire an interest in the property. He continued saying this condition has allowed many real estate speculators to acquire heirs property at a price below its fair market value, depleting a family's wealth in the process. Senator Hardy stated the Act preserves the rights of co-tenants to sell their interest in inherited real estate, while ensuring other co-tenants will have the necessary due process to prevent a forced sale: notice, appraisal, and right of first refusal. Under the Act, if the other co-tenants do not exercise their right to purchase property from the seller, the court must order a partition-in-kind, if feasible, and if not, a commercially reasonable sale for fair market value.

A private citizen also appeared as a proponent of the bill, summarizing her experience dividing property under current law. She expressed support for the Act, stating it would make partition law more predictable and hopefully more equitable for all parties. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates enactment of the bill could have a significant fiscal effect upon the Judicial Branch because it creates many new requirements for the district courts regarding partition of property cases. Until the courts have had an opportunity to operate under the bill's provisions, a fiscal effect cannot be estimated. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.