

House _____ Amendment NO. _____

Offered By _____

1 AMEND Senate Committee Substitute for Senate Bill No. 83, Page 5, Section 452.377, Line 127, by
2 inserting after all of said section and line the following:

3
4 "528.700. 1. The provisions of sections 528.700 to 528.750 shall be known and may be
5 cited as the "Save the Family Farm Act".

6 2. For purposes of sections 528.700 to 528.750, the following terms and phrases shall mean:

7 (1) "Ascendant", an individual who precedes another individual in lineage, in the direct line
8 of ascent from the other individual;

9 (2) "Collateral", an individual who is related to another individual under the law of intestate
10 succession of this state but who is not the other individual's ascendant or descendant;

11 (3) "Descendant", an individual who follows another individual in lineage, in the direct line
12 of descent from the other individual;

13 (4) "Determination of value", a court order determining the fair market value of heirs'
14 property under section 528.720 or 528.740 or adopting the valuation of the property agreed to by all
15 cotenants;

16 (5) "Heirs' property", real property held in tenancy in common that satisfies all of the
17 following requirements as of the filing of a partition action:

18 (a) There is no agreement in a record binding all the cotenants that governs the partition of
19 the property;

20 (b) One or more of the cotenants acquired title from a relative, whether living or deceased;
21 and

22 (c) Any of the following applies:

23 a. Twenty percent or more of the interests are held by cotenants who are relatives;

24 b. Twenty percent or more of the interests are held by an individual who acquired title from
25 a relative, whether living or deceased; or

26 c. Twenty percent or more of the cotenants are relatives;

27 (6) "Partition by sale", a court-ordered sale of the entire heirs' property, whether by auction,
28 sealed bids, or open-market sale conducted under section 528.740;

29 (7) "Partition in kind", the division of heirs' property into physically distinct and separately
30 titled parcels;

31 (8) "Record", information that is inscribed on a tangible medium or that is stored in an
32 electronic or other medium and is retrievable in perceivable form;

33 (9) "Relative", an ascendant, descendant, or collateral or an individual otherwise related to
34 another individual by blood, marriage, adoption, or law of this state other than the provisions of
35 sections 528.700 to 528.750.

36 528.705. 1. Sections 528.700 to 528.750 shall apply to partition actions filed on or after

Action Taken _____ Date _____

1 August 28, 2019.

2 2. In an action to partition real property under this chapter, the court shall determine whether
3 the property is heirs' property. If the court determines that the property is heirs' property, the
4 property shall be partitioned under sections 528.700 to 528.750 unless all of the cotenants otherwise
5 agree in a record.

6 3. Sections 528.700 to 528.750 shall supplement sections 528.010 to 528.640 and Missouri
7 supreme court rule 96.

8 528.710. 1. Sections 528.700 to 528.750 shall not limit or affect the method by which
9 service of a complaint in a partition action may be made.

10 2. If the plaintiff in a partition action seeks an order of notice by publication and the court
11 determines that the property may be heirs' property, the plaintiff, no later than ten days after the
12 court's determination, shall post and maintain, while the action is pending, a conspicuous sign on the
13 property that is the subject of the action. The sign shall state that the action has commenced and
14 identify the name and address of the court and the common designation by which the property is
15 known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the
16 known defendants.

17 528.715. If the court appoints commissioners under supreme court rule 96, each
18 commissioner, in addition to the requirements and disqualifications applicable to commissioners in
19 supreme court rule 96, shall be disinterested and impartial and not a party to or a participant in the
20 action.

21 528.720. 1. Except as otherwise provided in subsections 2 and 3 of this section, if the court
22 determines that the property that is the subject of a partition action is heirs' property, the court shall
23 determine the fair market value of the property by ordering a certified appraisal under subsection 4
24 of this section.

25 2. If all cotenants have agreed to the value of the property or to another method of valuation,
26 the court shall adopt that value or the value produced by the agreed method of valuation.

27 3. If the court determines that the evidentiary value of an appraisal is outweighed by the cost
28 of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the
29 property and send notice to the parties of the value.

30 4. If the court orders a certified appraisal, the court shall appoint a disinterested real estate
31 appraiser licensed in this state to determine the fair market value of the property assuming sole
32 ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn
33 or verified appraisal with the court.

34 5. If an appraisal is conducted under subsection 4 of this section, no later than ten days after
35 the appraisal is filed, the court shall send notice to each party with a known address, stating:

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

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

38 (3) That a party may file with the court an objection to the appraisal no later than thirty days
39 after the notice is sent stating the grounds for the objection.

40 6. If an appraisal is filed with the court under subsection 4 of this section, the court shall
41 conduct a hearing to determine the fair market value of the property no sooner than thirty days after
42 a copy of the notice of the appraisal is sent to each party under subsection 5 of this section
43 regardless of whether an objection to the appraisal is filed under subdivision (3) of subsection 5 of
44 this section. In addition to the court-ordered appraisal, the court may consider any other evidence of
45 value offered by a party.

46 7. After a hearing under subsection 6 of this section but before considering the merits of the
47 partition action, the court shall determine the fair market value of the property and send notice to the
48 parties of the value.

49 528.725. 1. If any cotenant has requested partition by sale after the determination of value

1 under section 528.720, the court shall send notice to the parties that any cotenant, except a cotenant
2 that requested partition by sale, may buy all the interests of the cotenants that requested partition by
3 sale.

4 2. No later than forty-five days after the notice is sent under subsection 1 of this section, any
5 cotenant, except a cotenant that requested partition by sale, may give notice to the court that it elects
6 to buy all the interests of the cotenants that requested partition by sale.

7 3. The purchase price for each of the interests of a cotenant that requested partition by sale
8 is the value of the entire parcel determined under section 528.720 multiplied by the cotenant's
9 fractional ownership of the entire parcel.

10 4. After expiration of the period in subsection 2 of this section, the following rules shall
11 apply:

12 (1) If only one cotenant elects to buy all the interests of the cotenants that requested
13 partition by sale, the court shall notify all the parties of that fact;

14 (2) If more than one cotenant elects to buy all the interests of the cotenants that requested
15 partition by sale, the court shall allocate the right to buy those interests among the electing cotenants
16 based on each electing cotenant's existing fractional ownership of the entire parcel divided by the
17 total existing fractional ownership of all cotenants electing to buy and send notice to all the parties
18 of that fact and of the price to be paid by each electing cotenant;

19 (3) If no cotenant elects to buy all the interests of the cotenants that requested partition by
20 sale, the court shall send notice to all the parties of that fact and resolve the partition action under
21 subsection 1 or 2 of section 528.730.

22 5. If the court sends notice to the parties under subdivision (1) or (2) of subsection 4 of this
23 section, the court shall set a date, no sooner than sixty days after the date the notice was sent, by
24 which electing cotenants shall pay their apportioned price into the court. After this date, the
25 following rules shall apply:

26 (1) If all electing cotenants timely pay their apportioned price into court, the court shall
27 issue an order reallocating all the interests of the cotenants and disburse the amounts held by the
28 court to the persons entitled to them;

29 (2) If no electing cotenant timely pays its apportioned price, the court shall resolve the
30 partition action under subsection 1 or 2 of section 528.730 as if the interests of the cotenants that
31 requested partition by sale were not purchased; or

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

35 6. No later than twenty days after the court gives notice under subdivision (3) of subsection
36 5 of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying
37 the entire price into the court. After the twenty-day period, the following rules shall apply:

38 (1) If only one cotenant pays the entire price for the remaining interest, the court shall issue
39 an order reallocating the remaining interest to that cotenant. The court shall promptly issue an order
40 reallocating the interests of all of the cotenants and disburse the amounts held by the court to the
41 persons entitled to such amounts;

42 (2) If no cotenant pays the entire price for the remaining interest, the court shall resolve the
43 partition action under subsection 1 or 2 of section 528.730 as if the interests of the cotenants that
44 requested partition by sale were not purchased; or

45 (3) If more than one cotenant pays the entire price for the remaining interest, the court shall
46 reapportion the remaining interest among those paying cotenants based on each paying cotenant's
47 original fractional ownership of the entire parcel divided by the total original fractional ownership
48 of all cotenants that paid the entire price for the remaining interest. The court shall promptly issue
49 an order reallocating all of the cotenants' interests, disburse the amounts held by the court to the

1 persons entitled to such amounts, and promptly refund any excess payment held by the court.

2 7. No later than forty-five days after the court sends notice to the parties under subsection 1
3 of this section, any cotenant entitled to buy an interest under this section may request the court to
4 authorize the sale as part of the pending action of the interests of cotenants named as defendants and
5 served with the complaint but that did not appear in the action.

6 8. If the court receives a timely request under subsection 7 of this section, the court, after
7 hearing, may deny the request or authorize the requested additional sale on such terms as the court
8 determines are fair and reasonable, subject to the following limitations:

9 (1) A sale authorized under this subsection may occur only after the purchase prices for all
10 interests subject to sale under subsections 1 to 6 of this section have been paid into court and those
11 interests have been reallocated among the cotenants as provided in subsections 1 to 6 of this section;
12 and

13 (2) The purchase price for the interest of a nonappearing cotenant is based on the court's
14 determination of value under section 528.720.

15 528.730. 1. If all the interests of all cotenants that requested partition by sale are not
16 purchased by other cotenants under section 528.725, or, if after conclusion of the buyout under
17 section 528.725, a cotenant that has requested partition in kind remains, the court shall order
18 partition in kind unless the court, after consideration of the factors listed in section 528.735, finds
19 that partition in kind will result in great prejudice to the cotenants as a group. In considering
20 whether to order partition in kind, the court shall approve a request by two or more parties to have
21 their individual interests aggregated.

22 2. If the court does not order partition in kind under subsection 1 of this section, the court
23 shall order partition by sale under section 528.740 or, if no cotenant requested partition by sale, the
24 court shall dismiss the action.

25 3. If the court orders partition in kind under subsection 1 of this section, the court may
26 require that one or more cotenants pay one or more other cotenants amounts so that the payments,
27 taken together with the value of the in-kind distributions to the cotenants, will make the partition in
28 kind just and proportionate in value to the fractional interests held.

29 4. If the court orders partition in kind, the court shall allocate to the cotenants that are
30 unknown, unlocatable, or the subject of a default judgment, if their interests were not bought out
31 under section 528.725, a part of the property representing the combined interests of these cotenants
32 as determined by the court, and that part of the property shall remain undivided.

33 528.735. 1. In determining, under subsection 1 of section 528.730, whether partition in kind
34 would result in great prejudice to the cotenants as a group, the court shall consider the following:

35 (1) Whether the heirs' property practicably can be divided among the cotenants;

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

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

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

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

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

1 (7) Any other relevant factor.

2 2. The court shall not consider any one factor in subsection 1 of this section to be dispositive
3 without weighing the totality of all relevant factors and circumstances.

4 528.740. 1. If the court orders a sale of heirs' property, the sale shall be an open-market sale
5 unless the court finds that a sale by sealed bids or an auction would be more economically
6 advantageous and in the best interest of the cotenants as a group.

7 2. If the court orders an open-market sale and the parties, no later than ten days after the
8 entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the
9 court shall appoint the broker and establish a reasonable commission. If the parties do not agree on
10 a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the
11 property for sale and shall establish a reasonable commission. The broker shall offer the property
12 for sale in a commercially reasonable manner at a price no lower than the determination of value
13 and on the terms and conditions established by the court. If the court finds that an auction company
14 is more advantageous to the cotenants as a group, it has the discretion to appoint an auction
15 company to conduct the sale required under this subsection.

16 3. If the broker appointed under subsection 2 of this section obtains within a reasonable time
17 an offer to purchase the property for at least the determination of value:

18 (1) The broker shall comply with the reporting requirements in section 528.745; and

19 (2) The sale may be completed in accordance with state law other than sections 528.700 to
20 528.750.

21 4. If the broker appointed under subsection 2 of this section does not obtain within a
22 reasonable time an offer to purchase the property for at least the determination of value, the court,
23 after hearing, may:

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

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

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

28 5. If the court orders a sale by sealed bids or an auction, the court shall set terms and
29 conditions of the sale. If the court orders a sale, the sale shall be conducted under supreme court
30 rule 96.

31 6. If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to
32 a credit against the price in an amount equal to the purchaser's share of the proceeds.

33 528.745. 1. Unless required to do so within a shorter time by supreme court rule 96, a
34 broker appointed under subsection 2 of section 528.740 to offer heirs' property for open-market sale
35 shall file a report with the court no later than seven days after receiving an offer to purchase the
36 property for at least the value determined under section 528.720 or 528.740.

37 2. The report required under subsection 1 of this section shall contain the following
38 information:

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

40 (2) The name of each buyer;

41 (3) The proposed purchase price;

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

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

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

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

48 528.750. In applying and construing sections 528.700 to 528.750, consideration shall be
49 given to the need to promote uniformity of the law with respect to its subject matter among states

- 1 that enact such substantially similar provisions."; and
- 2
- 3 Further amend said bill by amending the title, enacting clause, and intersectional references
- 4 accordingly.