

**SENATE BILL No. 205**

By Committee on Judiciary

2-10

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1 AN ACT concerning civil actions and civil procedure; relating to partition;  
2 prescribing procedures and requirements for partition of certain real  
3 property; enacting the uniform partition of heirs property act.  
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5 WHEREAS, the provisions of sections 1 through 13 shall be known as  
6 the save the family farm act.

7 Now, therefore:

8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. Sections 1 through 13, and amendments thereto, shall be  
10 known and may be cited as the uniform partition of heirs property act.

11 Sec. 2. As used in the uniform partition of heirs property act:

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

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

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

19 (d) "Determination of value" means a court order determining the fair  
20 market value of heirs property under section 6 or 10, and amendments  
21 thereto, or adopting the valuation of the property agreed to by all co-  
22 tenants.

23 (e) "Heirs property" means real property held in tenancy in common  
24 that satisfies all of the following requirements as of the filing of a partition  
25 action:

26 (1) There is no agreement in a record binding all the co-tenants that  
27 governs the partition of the property;

28 (2) one or more of the co-tenants acquired title from a relative,  
29 whether living or deceased; and

30 (3) any of the following applies:

31 (A) 20% or more of the interests are held by co-tenants who are  
32 relatives;

33 (B) 20% or more of the interests are held by an individual who  
34 acquired title from a relative, whether living or deceased; or

35 (C) 20% or more of the co-tenants are relatives.

36 (f) "Partition by sale" means a court-ordered sale of the entire heirs

1 property, whether by auction, sealed bids or open-market sale conducted  
2 under section 10, and amendments thereto.

3 (g) "Partition in kind" means the division of heirs property into  
4 physically distinct and separately titled parcels.

5 (h) "Record" means information that is inscribed on a tangible  
6 medium or that is stored in an electronic or other medium and is  
7 retrievable in perceivable form.

8 (i) "Relative" means an ascendant, descendant or collateral or an  
9 individual otherwise related to another individual by blood, marriage,  
10 adoption or law of this state other than the uniform partition of heirs  
11 property act.

12 Sec. 3. (a) The uniform partition of heirs property act applies to  
13 partition actions filed on or after July 1, 2021.

14 (b) In an action to partition real property under K.S.A. 60-1003, and  
15 amendments thereto, the court shall determine whether the property is  
16 heirs property. If the court determines that the property is heirs property,  
17 the property must be partitioned under the uniform partition of heirs  
18 property act, unless all of the co-tenants otherwise agree in a record.

19 (c) The uniform partition of heirs property act supplements K.S.A.  
20 60-1003, and amendments thereto, and, if an action is governed by the act,  
21 replaces provisions of K.S.A. 60-1003, and amendments thereto, that are  
22 inconsistent with the act.

23 Sec. 4. (a) The uniform partition of heirs property act does not limit  
24 or affect the method by which service of a complaint in a partition action  
25 may be made.

26 (b) If the plaintiff in a partition action seeks an order of notice by  
27 publication, and the court determines that the property may be heirs  
28 property, the plaintiff, not later than 10 days after the court's determination,  
29 shall post a conspicuous sign on the property that is the subject of the  
30 action and shall maintain the sign while the action is pending. The sign  
31 must state that the action has commenced and identify the name and  
32 address of the court and the common designation by which the property is  
33 known. The court may require the plaintiff to publish on the sign the name  
34 of the plaintiff and the known defendants.

35 Sec. 5. If the court appoints commissioners pursuant to K.S.A. 60-  
36 1003, and amendments thereto, each commissioner, in addition to the  
37 requirements and disqualifications applicable to commissioners in K.S.A.  
38 60-1003, and amendments thereto, must be disinterested and impartial and  
39 not a party to or a participant in the action.

40 Sec. 6. (a) Except as otherwise provided in subsections (b) and (c), if  
41 the court determines that the property that is the subject of a partition  
42 action is heirs property, the court shall determine the fair market value of  
43 the property by ordering an appraisal pursuant to subsection (d).

1 (b) If all co-tenants have agreed to the value of the property or to  
2 another method of valuation, the court shall adopt that value or the value  
3 produced by the agreed method of valuation.

4 (c) If the court determines that the evidentiary value of an appraisal is  
5 outweighed by the cost of the appraisal, the court, after an evidentiary  
6 hearing, shall determine the fair market value of the property and send  
7 notice to the parties of the value.

8 (d) If the court orders an appraisal, the court shall appoint a  
9 disinterested real estate appraiser licensed in this state to determine the fair  
10 market value of the property assuming sole ownership of the fee simple  
11 estate. On completion of the appraisal, the appraiser shall file a sworn or  
12 verified appraisal with the court.

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

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

17 (2) that the appraisal is available at the clerk's office; and

18 (3) that a party may file with the court an objection to the appraisal,  
19 not later than 30 days after the notice is sent, stating the grounds for the  
20 objection.

21 (f) If an appraisal is filed with the court pursuant to subsection (d),  
22 the court shall conduct a hearing to determine the fair market value of the  
23 property not sooner than 30 days after a copy of the notice of the appraisal  
24 is sent to each party under subsection (e), whether or not an objection to  
25 the appraisal is filed under subsection (e)(3). In addition to the court-  
26 ordered appraisal, the court may consider any other evidence of value  
27 offered by a party.

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

31 Sec. 7. (a) If any co-tenant requested partition by sale, after the  
32 determination of value under section 6, and amendments thereto, the court  
33 shall send notice to the parties that any co-tenant, except a co-tenant that  
34 requested partition by sale, may buy all the interests of the co-tenants that  
35 requested partition by sale.

36 (b) Not later than 45 days after the notice is sent under subsection (a),  
37 any co-tenant, except a co-tenant that requested partition by sale, may give  
38 notice to the court that it elects to buy all the interests of the co-tenants that  
39 requested partition by sale.

40 (c) The purchase price for each of the interests of a co-tenant that  
41 requested partition by sale is the value of the entire parcel determined  
42 under section 6, and amendments thereto, multiplied by the co-tenant's  
43 fractional ownership of the entire parcel.

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

3 (1) If only one co-tenant elects to buy all the interests of the co-  
4 tenants that requested partition by sale, the court shall notify all the parties  
5 of that fact.

6 (2) If more than one co-tenant elects to buy all the interests of the co-  
7 tenants that requested partition by sale, the court shall allocate the right to  
8 buy those interests among the electing co-tenants based on each electing  
9 co-tenant's existing fractional ownership of the entire parcel divided by the  
10 total existing fractional ownership of all co-tenants electing to buy and  
11 send notice to all the parties of that fact and of the price to be paid by each  
12 electing co-tenant.

13 (3) If no co-tenant elects to buy all the interests of the co-tenants that  
14 requested partition by sale, the court shall send notice to all the parties of  
15 that fact and resolve the partition action under section 8(a) and (b), and  
16 amendments thereto.

17 (e) If the court sends notice to the parties under subsection (d)(1) or  
18 (2), the court shall set a date, not sooner than 60 days after the date the  
19 notice was sent, by which electing co-tenants must pay their apportioned  
20 price into the court. After this date, the following rules apply:

21 (1) If all electing co-tenants timely pay their apportioned price into  
22 court, the court shall issue an order reallocating all the interests of the co-  
23 tenants and disburse the amounts held by the court to the persons entitled  
24 to them.

25 (2) If no electing co-tenant timely pays its apportioned price, the  
26 court shall resolve the partition action under section 8(a) and (b), and  
27 amendments thereto, as if the interests of the co-tenants that requested  
28 partition by sale were not purchased.

29 (3) If one or more, but not all of the electing co-tenants, fail to pay  
30 their apportioned price on time, the court, on motion, shall give notice to  
31 the electing co-tenants that paid their apportioned price of the interest  
32 remaining and the price for all that interest.

33 (f) Not later than 20 days after the court gives notice pursuant to  
34 subsection (e)(3), any co-tenant that paid may elect to purchase all of the  
35 remaining interests by paying the entire price into the court. After the 20-  
36 day period, the following rules apply:

37 (1) If only one co-tenant pays the entire price for the remaining  
38 interests, the court shall issue an order reallocating the remaining interests  
39 to that co-tenant. The court shall issue promptly an order reallocating the  
40 interests of all of the co-tenants and disburse the amounts held by it to the  
41 persons entitled to them.

42 (2) If no co-tenant pays the entire price for the remaining interests,  
43 the court shall resolve the partition action under section 8(a) and (b), and

1 amendments thereto, as if the interests of the co-tenants that requested  
2 partition by sale were not purchased.

3 (3) If more than one co-tenant pays the entire price for the remaining  
4 interests, the court shall reapportion the remaining interests among those  
5 paying co-tenants, based on each paying co-tenant's original fractional  
6 ownership of the entire parcel divided by the total original fractional  
7 ownership of all co-tenants that paid the entire price for the remaining  
8 interests. The court shall issue promptly an order reallocating all of the co-  
9 tenants' interests, disburse the amounts held by it to the persons entitled to  
10 them and promptly refund any excess payment held by the court.

11 (g) Not later than 45 days after the court sends notice to the parties  
12 pursuant to subsection (a), any co-tenant entitled to buy an interest under  
13 this section may request the court to authorize the sale as part of the  
14 pending action of the interests of co-tenants named as defendants and  
15 served with the complaint but that did not appear in the action.

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

20 (1) A sale authorized under this subsection may occur only after the  
21 purchase prices for all interests subject to sale under subsections (a)  
22 through (f) have been paid into court and those interests have been  
23 reallocated among the co-tenants as provided in those subsections; and

24 (2) the purchase price for the interest of a nonappearing co-tenant is  
25 based on the court's determination of value under section 6, and  
26 amendments thereto.

27 Sec. 8. (a) If all the interests of all co-tenants that requested partition  
28 by sale are not purchased by other co-tenants pursuant to section 7, and  
29 amendments thereto, or if after conclusion of the buyout under section 7,  
30 and amendments thereto, a co-tenant remains that has requested partition  
31 in kind, the court shall order partition in kind, unless the court, after  
32 consideration of the factors listed in section 9, and amendments thereto,  
33 finds that partition in kind will result in manifest prejudice to the co-  
34 tenants as a group. In considering whether to order partition in kind, the  
35 court shall approve a request by two or more parties to have their  
36 individual interests aggregated.

37 (b) If the court does not order partition in kind under subsection (a),  
38 the court shall order partition by sale pursuant to section 10, and  
39 amendments thereto, or, if no co-tenant requested partition by sale, the  
40 court shall dismiss the action.

41 (c) If the court orders partition in kind pursuant to subsection (a), the  
42 court may require that one or more co-tenants pay one or more other co-  
43 tenants amounts so that the payments, taken together with the value of the

1 in-kind distributions to the co-tenants, will make the partition in kind just  
2 and proportionate in value to the fractional interests held.

3 (d) If the court orders partition in kind, the court shall allocate to the  
4 co-tenants that are unknown, unlocatable, or the subject of a default  
5 judgment, if their interests were not bought out pursuant to section 7, and  
6 amendments thereto, a part of the property representing the combined  
7 interests of these co-tenants as determined by the court and this part of the  
8 property shall remain undivided.

9 Sec. 9. (a) In determining under section 8(a), and amendments  
10 thereto, whether partition in kind would result in manifest prejudice to the  
11 co-tenants as a group, the court shall consider the following:

12 (1) Whether the heirs property practicably can be divided among the  
13 co-tenants;

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

19 (3) evidence of the collective duration of ownership or possession of  
20 the property by a co-tenant and one or more predecessors in title or  
21 predecessors in possession to the co-tenant who are or were relatives of the  
22 co-tenant or each other;

23 (4) a co-tenant's sentimental attachment to the property, including any  
24 attachment arising because the property has ancestral or other unique or  
25 special value to the co-tenant;

26 (5) the lawful use being made of the property by a co-tenant and the  
27 degree to which the co-tenant would be harmed if the co-tenant could not  
28 continue the same use of the property;

29 (6) the degree to which the co-tenants have contributed their pro rata  
30 share of the property taxes, insurance and other expenses associated with  
31 maintaining ownership of the property or have contributed to the physical  
32 improvement, maintenance or upkeep of the property; and

33 (7) any other relevant factors.

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

37 Sec. 10. (a) If the court orders a sale of heirs property, the sale must  
38 be an open-market sale, unless the court finds that a sale by sealed bids or  
39 an auction would be more economically advantageous and in the best  
40 interest of the co-tenants as a group.

41 (b) If the court orders an open-market sale and the parties, not later  
42 than 10 days after the entry of the order, agree on a real estate broker  
43 licensed in this state to offer the property for sale, the court shall appoint

1 the broker and establish a reasonable commission. If the parties do not  
2 agree on a broker, the court shall appoint a disinterested real estate broker  
3 licensed in this state to offer the property for sale and shall establish a  
4 reasonable commission. The broker shall offer the property for sale in a  
5 commercially reasonable manner at a price no lower than the  
6 determination of value and on the terms and conditions established by the  
7 court.

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

11 (1) The broker shall comply with the reporting requirements in  
12 section 11, and amendments thereto; and

13 (2) the sale may be completed in accordance with state law other than  
14 the uniform partition of heirs property act.

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

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

19 (2) redetermine the value of the property and order that the property  
20 continue to be offered for an additional time; or

21 (3) order that the property be sold by sealed bids or an auction.

22 (e) If the court orders a sale by sealed bids or an auction, the court  
23 shall set terms and conditions of the sale. If the court orders an auction, the  
24 auction must be conducted under K.S.A. 60-1003, and amendments  
25 thereto.

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

29 Sec. 11. (a) Unless required to do so within a shorter time by K.S.A.  
30 60-1003, and amendments thereto, a broker appointed under section 10(b),  
31 and amendments thereto, to offer heirs property for open-market sale shall  
32 file a report with the court not later than seven days after receiving an offer  
33 to purchase the property for at least the value determined under section 6  
34 or 10, and amendments thereto.

35 (b) The report required by subsection (a) must contain the following  
36 information:

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

38 (2) the name of each buyer;

39 (3) the proposed purchase price;

40 (4) the terms and conditions of the proposed sale, including the terms  
41 of any owner financing;

42 (5) the amounts to be paid to lienholders;

43 (6) a statement of contractual or other arrangements or conditions of

1 the broker's commission; and

2 (7) other material facts relevant to the sale.

3 Sec. 12. In applying and construing this uniform act, consideration  
4 must be given to the need to promote uniformity of the law with respect to  
5 its subject matter among states that enact it.

6 Sec. 13. The uniform partition of heirs property act modifies, limits  
7 and supersedes the electronic signatures in global and national commerce  
8 act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede  
9 section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic  
10 delivery of any of the notices described in section 103(b) of that act, 15  
11 U.S.C. § 7003(b).

12 Sec. 14. This act shall take effect and be in force from and after its  
13 publication in the statute book.