

By: Representative Banks

To: Judiciary A

HOUSE BILL NO. 1126

1 AN ACT TO AMEND SECTIONS 11-21-11, 11-21-27 AND 11-21-73,  
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FAMILY MEMBERS AND  
3 CO-OWNERS SHALL HAVE THE RIGHT OF FIRST REFUSAL IN A PARTITION  
4 SALE; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 11-21-11, Mississippi Code of 1972, is  
7 amended as follows:

8 11-21-11. If, upon hearing, the court be of the opinion that  
9 a sale of the lands, or any part thereof, will better promote the  
10 interest of all parties than a partition in kind, or if the court  
11 be satisfied that an equal division cannot be made, it shall order  
12 a sale of the lands, or such part thereof as may be deemed proper,  
13 and a division of the proceeds among the cotenants according to  
14 their respective interests. Remaining family members and  
15 co-owners shall have the right of first refusal in the sale. The  
16 court may appoint a master to make the sale, and may make all  
17 proper orders to protect the rights of the parties interested.  
18 The court may order the sale of a part of the land and the  
19 partition in kind of the residue.

20 Before the court shall order a sale of the lands, the court  
21 may cause an appraisal to be made of the property, the expense of  
22 which shall be taxed and collected as costs in the proceedings. If  
23 the court causes an appraisal of the property to be made, then,  
24 subsequent to the receipt and filing of the appraisal with the  
25 court, the court shall hold in abeyance its order for sale of the  
26 land for a period of thirty (30) days in order to allow the  
27 parties the opportunity to reach an agreement as to a partition in  
28 kind or sale of the lands.

29           **SECTION 2.** Section 11-21-27, Mississippi Code of 1972, is  
30 amended as follows:

31           11-21-27. If, after a judgment for partition and the  
32 appointment of masters, it shall appear from the report of the  
33 masters, or on exceptions to their report, that a just and equal  
34 division of the land cannot be made, or that a sale will better  
35 promote the interest of all the cotenants, the court shall order a  
36 sale of the land, or such part thereof as may be deemed proper,  
37 and a division of the proceeds among those interested, as provided  
38 for. Family members and co-owners shall have the right of first  
39 refusal in the sale.

40           Before the court shall order a sale of the lands, the court  
41 may cause an appraisal to be made of the property, the expense of  
42 which shall be taxed and collected as costs in the proceedings. If  
43 the court causes an appraisal of the property to be made, then,  
44 subsequent to the receipt and filing of the appraisal with the  
45 court, the court shall hold in abeyance its order for sale of the  
46 land for a period of thirty (30) days in order to allow the  
47 parties the opportunity to reach an agreement as to a partition in  
48 kind or sale of the lands.

49           **SECTION 3.** Section 11-21-73, Mississippi Code of 1972, is  
50 amended as follows:

51           11-21-73. A tenant in common of personal property, not  
52 exceeding in value the amount provided in Section 9-11-9, may  
53 apply for a partition of it by petition in writing to the county  
54 court of the county in which the property or some part of it may  
55 be, or, in counties not having a county court, to the justice  
56 court of the county in which the property or some part of it may  
57 be. Thereupon, all the cotenants shall be summoned and the rights  
58 of parties ascertained, and an order made for a division of the  
59 property. If the property be incapable of division in kind  
60 according to the several interests, or if a sale and division of  
61 the proceeds will better promote the interests of parties, the

62 county court or justice court, as the case may be, shall order a  
63 sale and a division of its proceeds, and may designate a person to  
64 make the sale, and may issue execution specially framed to that  
65 end, and make all orders necessary or proper to protect the rights  
66 of parties and to effect a sale and division of the proceeds.  
67 Family members and co-owners shall have the right of first refusal  
68 in the sale.

69         **SECTION 4.** This act shall take effect and be in force from  
70 and after July 1, 2005