

Committee Substitute for Senate Bill No. 1184

An act relating to transportation access; amending s. 704.01, F.S.; revising criteria for establishing a statutory way of necessity exclusive of common-law right; amending s. 704.04, F.S.; removing a limitation on the existence of certain easements; providing for reenactment of certain provisions under certain circumstances; providing for effectiveness; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 704.01, Florida Statutes, is amended to read:

704.01 Common-law and statutory easements defined and determined.—

(2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW RIGHT.—Based on public policy, convenience, and necessity, a statutory way of necessity exclusive of any common-law right exists when any land, including land formed by accretion, reliction, or other naturally occurring processes, or portion thereof, ~~outside any municipality~~ which is being used or ~~is~~ desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes ~~is shall be~~ shut off or hemmed in by lands, fencing, or other improvements ~~by~~ of other persons so that no practicable route of egress or ingress ~~is shall be~~ available therefrom to the nearest practicable public or private road in which the landlocked owner has vested easement rights. The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put; and the use thereof, as aforesaid, shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof,; provided that such easement shall be used only in an orderly and proper manner.

Section 2. Effective only if a court determines that subsection (2) of section 704.01, Florida Statutes, as amended by section 1 of this act, is unconstitutional and such determination is upheld on appeal, it is the intent of the Legislature that the provisions of such subsection shall be the same as those in existence prior to amendment by this act, and to that end subsection (2) of section 704.01, Florida Statutes, as it existed prior to amendment by section 1 of this act, is reenacted to read:

704.01 Common-law and statutory easements defined and determined.—

(2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW RIGHT.—Based on public policy, convenience, and necessity, a statutory way of necessity exclusive of any common-law right exists when any land or portion thereof outside any municipality which is being used or desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes shall be shut off or hemmed in by lands, fencing, or other improvements of other persons so that no practicable route of egress or ingress shall be available therefrom to the nearest practicable public or private road. The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon the lands which lie between the said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put; and the use thereof, as aforesaid, shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof; provided that such easement shall be used only in an orderly and proper manner.

Section 3. Section 704.04, Florida Statutes, is amended to read:

704.04 Judicial remedy and compensation to servient owner.—When the owner or owners of such lands across which a statutory way of necessity under s. 704.01(2) is claimed, exclusive of the common-law right, objects or refuses to permit the use of such way under the conditions set forth herein or until she or he receives compensation therefor, either party or the board of county commissioners of such county may file suit in the circuit court of the county wherein the land is located in order to determine if the claim for said easement exists, and the amount of compensation to which said party is entitled for use of such easement. ~~When~~ Where said easement is awarded to the owner of the dominant tenement, it shall be in compliance with s. 704.01(2) and shall exist so long as such easement is reasonably necessary ~~for the purposes stated herein~~. The court, in its discretion, shall determine all questions, including the type, duration, extent, and location of the easement, the amount of compensation, and the attorney's fees and costs to be awarded to either party for unreasonable refusal to comply with the provisions of s. 704.01(2), provided that if either of said parties so requests in her or his original pleadings, the amount of compensation may be determined by a jury trial. The easement shall date from the time the award is paid.

Section 4. Effective only if a court determines that section 704.04, Florida Statutes, as amended by section 3 of this act, is unconstitutional and such determination is upheld on appeal, it is the intent of the Legislature that the provisions of such section shall be the same as those in existence prior to amendment by this act, and to that end section 704.04, Florida Statutes, as it existed prior to amendment by this act, is reenacted to read:

704.04 Judicial remedy and compensation to servient owner.—When the owner or owners of such lands across which a statutory way of necessity under s. 704.01(2) is claimed, exclusive of the common-law right, objects or refuses to permit the use of such way under the conditions set forth herein

or until she or he receives compensation therefor, either party or the board of county commissioners of such county may file suit in the circuit court of the county wherein the land is located in order to determine if the claim for said easement exists, and the amount of compensation to which said party is entitled for use of such easement. Where said easement is awarded to the owner of the dominant tenement, it shall be in compliance with s. 704.01(2) and shall exist so long as such easement is reasonably necessary for the purposes stated herein. The court, in its discretion, shall determine all questions, including the type, duration, extent, and location of the easement, the amount of compensation, and the attorney's fees and costs to be awarded to either party for unreasonable refusal to comply with the provisions of s. 704.01(2) provided that if either of said parties so requests in her or his original pleadings, the amount of compensation may be determined by a jury trial. The easement shall date from the time the award is paid.

Section 5. This act shall take effect upon becoming a law.

Approved by the Governor June 13, 2005.

Filed in Office Secretary of State June 13, 2005.