

By Senator Fasano

11-650A-05

See HB 351

1 A bill to be entitled

2 An act relating to statutory ways of necessity;

3 amending s. 704.01, F.S.; revising criteria for

4 establishing a statutory way of necessity

5 exclusive of common-law right; amending s.

6 704.04, F.S.; removing a limitation on the

7 existence of certain easements; providing for

8 reenactment of certain provisions under certain

9 circumstances; providing for effectiveness;

10 providing an effective date.

11

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

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14 Section 1. Subsection (2) of section 704.01, Florida

15 Statutes, is amended to read:

16 704.01 Common-law and statutory easements defined and

17 determined.--

18 (2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW

19 RIGHT.--Based on public policy, convenience, and necessity, a

20 statutory way of necessity exclusive of any common-law right

21 exists when any land or portion thereof is ~~outside any~~

22 ~~municipality which is being used or desired to be used for a~~

23 ~~dwelling or dwellings or for agricultural or for timber~~

24 ~~raising or cutting or stockraising purposes shall be shut off~~

25 or hemmed in by lands, fencing, or other improvements of other

26 persons so that no practicable route of egress or ingress

27 shall be available therefrom to the nearest practicable public

28 road or private road in which the landlocked owner has vested

29 easement rights. The owner or tenant thereof, or anyone in

30 their behalf, lawfully may use and maintain an easement for

31 persons, vehicles, stock, franchised cable television service,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 and any utility service, including, but not limited to, water,
2 wastewater, reclaimed water, natural gas, electricity, and
3 telephone service, over, under, through, and upon the lands
4 which lie between the said shut-off or hemmed-in lands and
5 such public road or private road in which the landlocked owner
6 has vested easement rights by means of the nearest practical
7 route, considering the use to which said lands are being put;
8 and the use thereof, as aforesaid, shall not constitute a
9 trespass; nor shall the party thus using the same be liable in
10 damages for the use thereof, ~~+~~ provided that such easement
11 shall be used only in an orderly and proper manner.

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

21 704.01 Common-law and statutory easements defined and
22 determined.--

23 (2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW
24 RIGHT.--Based on public policy, convenience, and necessity, a
25 statutory way of necessity exclusive of any common-law right
26 exists when any land or portion thereof outside any
27 municipality which is being used or desired to be used for a
28 dwelling or dwellings or for agricultural or for timber
29 raising or cutting or stockraising purposes shall be shut off
30 or hemmed in by lands, fencing, or other improvements of other
31 persons so that no practicable route of egress or ingress

1 shall be available therefrom to the nearest practicable public
2 or private road. The owner or tenant thereof, or anyone in
3 their behalf, lawfully may use and maintain an easement for
4 persons, vehicles, stock, franchised cable television service,
5 and any utility service, including, but not limited to, water,
6 wastewater, reclaimed water, natural gas, electricity, and
7 telephone service, over, under, through, and upon the lands
8 which lie between the said shut-off or hemmed-in lands and
9 such public or private road by means of the nearest practical
10 route, considering the use to which said lands are being put;
11 and the use thereof, as aforesaid, shall not constitute a
12 trespass; nor shall the party thus using the same be liable in
13 damages for the use thereof; provided that such easement shall
14 be used only in an orderly and proper manner.

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

17 704.04 Judicial remedy and compensation to servient
18 owner.--When the owner or owners of such lands across which a
19 statutory way of necessity under s. 704.01(2) is claimed,
20 exclusive of the common-law right, objects or refuses to
21 permit the use of such way under the conditions set forth
22 herein or until she or he receives compensation therefor,
23 either party or the board of county commissioners of such
24 county may file suit in the circuit court of the county
25 wherein the land is located in order to determine if the claim
26 for said easement exists, and the amount of compensation to
27 which said party is entitled for use of such easement. When
28 ~~where~~ said easement is awarded to the owner of the dominant
29 tenement, it shall be in compliance with s. 704.01(2) and
30 shall exist so long as such easement is reasonably necessary
31 ~~for the purposes stated herein.~~ The court, in its discretion,

1 shall determine all questions, including the type, duration,
2 extent, and location of the easement, the amount of
3 compensation, and the attorney's fees and costs to be awarded
4 to either party for unreasonable refusal to comply with the
5 provisions of s. 704.01(2), provided that if either of said
6 parties so requests in her or his original pleadings, the
7 amount of compensation may be determined by a jury trial. The
8 easement shall date from the time the award is paid.

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

17 704.04 Judicial remedy and compensation to servient
18 owner.--When the owner or owners of such lands across which a
19 statutory way of necessity under s. 704.01(2) is claimed,
20 exclusive of the common-law right, objects or refuses to
21 permit the use of such way under the conditions set forth
22 herein or until she or he receives compensation therefor,
23 either party or the board of county commissioners of such
24 county may file suit in the circuit court of the county
25 wherein the land is located in order to determine if the claim
26 for said easement exists, and the amount of compensation to
27 which said party is entitled for use of such easement. Where
28 said easement is awarded to the owner of the dominant
29 tenement, it shall be in compliance with s. 704.01(2) and
30 shall exist so long as such easement is reasonably necessary
31 for the purposes stated herein. The court, in its discretion,

1 shall determine all questions, including the type, duration,
2 extent, and location of the easement, the amount of
3 compensation, and the attorney's fees and costs to be awarded
4 to either party for unreasonable refusal to comply with the
5 provisions of s. 704.01(2) provided that if either of said
6 parties so requests in her or his original pleadings, the
7 amount of compensation may be determined by a jury trial. The
8 easement shall date from the time the award is paid.

9 Section 5. This act shall take effect July 1, 2005.

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