

By the Committee on Community Affairs; and Senator Fasano

578-1934-05

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A bill to be entitled

An act relating to statutory ways of necessity;
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 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,

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

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

19 | 704.01 Common-law and statutory easements defined and
20 | determined.--

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

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

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

15 704.04 Judicial remedy and compensation to servient
16 owner.--When the owner or owners of such lands across which a
17 statutory way of necessity under s. 704.01(2) is claimed,
18 exclusive of the common-law right, objects or refuses to
19 permit the use of such way under the conditions set forth
20 herein or until she or he receives compensation therefor,
21 either party or the board of county commissioners of such
22 county may file suit in the circuit court of the county
23 wherein the land is located in order to determine if the claim
24 for said easement exists, and the amount of compensation to
25 which said party is entitled for use of such easement. When
26 ~~where~~ said easement is awarded to the owner of the dominant
27 tenement, it shall be in compliance with s. 704.01(2) and
28 shall exist so long as such easement is reasonably necessary
29 ~~for the purposes stated herein~~. The court, in its discretion,
30 shall determine all questions, including the type, duration,
31 extent, and location of the easement, the amount of

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

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

15 704.04 Judicial remedy and compensation to servient
16 owner.--When the owner or owners of such lands across which a
17 statutory way of necessity under s. 704.01(2) is claimed,
18 exclusive of the common-law right, objects or refuses to
19 permit the use of such way under the conditions set forth
20 herein or until she or he receives compensation therefor,
21 either party or the board of county commissioners of such
22 county may file suit in the circuit court of the county
23 wherein the land is located in order to determine if the claim
24 for said easement exists, and the amount of compensation to
25 which said party is entitled for use of such easement. Where
26 said easement is awarded to the owner of the dominant
27 tenement, it shall be in compliance with s. 704.01(2) and
28 shall exist so long as such easement is reasonably necessary
29 for the purposes stated herein. The court, in its discretion,
30 shall determine all questions, including the type, duration,
31 extent, and location of the easement, the amount of

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

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

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9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 Senate Bill 1184

12 The committee substitute deletes language that expanded a
13 statutory way of necessity to landlocked property of its use
14 or intended use.
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