

1 A bill to be entitled
 2 An act relating to statutory ways of necessity; amending
 3 s. 704.01, F.S.; revising criteria for establishing a
 4 statutory way of necessity exclusive of common-law right;
 5 amending s. 704.04, F.S.; removing a limitation on the
 6 existence of certain easements; providing for reenactment
 7 of certain provisions under certain circumstances;
 8 providing for effectiveness; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (2) of section 704.01, Florida
 13 Statutes, is amended to read:

14 704.01 Common-law and statutory easements defined and
 15 determined.--

16 (2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW
 17 RIGHT.--Based on public policy, convenience, and necessity, a
 18 statutory way of necessity exclusive of any common-law right
 19 exists when any land or portion thereof ~~outside any municipality~~
 20 ~~which is being used or desired to be used for a dwelling or~~
 21 ~~dwellings or for agricultural or for timber raising or cutting~~
 22 ~~or stockraising purposes shall be shut off or hemmed in by~~
 23 lands, fencing, or other improvements of other persons so that
 24 no practicable route of egress or ingress shall be available
 25 therefrom to the nearest practicable public road or private road
 26 in which the landlocked owner has vested easement rights. The
 27 owner or tenant thereof, or anyone in their behalf, lawfully may
 28 use and maintain an easement for persons, vehicles, stock,

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29 | franchised cable television service, and any utility service,
 30 | including, but not limited to, water, wastewater, reclaimed
 31 | water, natural gas, electricity, and telephone service, over,
 32 | under, through, and upon the lands which lie between the said
 33 | shut-off or hemmed-in lands and such public road or private road
 34 | in which the landlocked owner has vested easement rights by
 35 | means of the nearest practical route, considering the use to
 36 | which said lands are being put; and the use thereof, as
 37 | aforesaid, shall not constitute a trespass; nor shall the party
 38 | thus using the same be liable in damages for the use thereof,+
 39 | provided that such easement shall be used only in an orderly and
 40 | proper manner.

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

50 | 704.01 Common-law and statutory easements defined and
 51 | determined.--

52 | (2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW
 53 | RIGHT.--Based on public policy, convenience, and necessity, a
 54 | statutory way of necessity exclusive of any common-law right
 55 | exists when any land or portion thereof outside any municipality
 56 | which is being used or desired to be used for a dwelling or

57 dwellings or for agricultural or for timber raising or cutting
 58 or stockraising purposes shall be shut off or hemmed in by
 59 lands, fencing, or other improvements of other persons so that
 60 no practicable route of egress or ingress shall be available
 61 therefrom to the nearest practicable public or private road. The
 62 owner or tenant thereof, or anyone in their behalf, lawfully may
 63 use and maintain an easement for persons, vehicles, stock,
 64 franchised cable television service, and any utility service,
 65 including, but not limited to, water, wastewater, reclaimed
 66 water, natural gas, electricity, and telephone service, over,
 67 under, through, and upon the lands which lie between the said
 68 shut-off or hemmed-in lands and such public or private road by
 69 means of the nearest practical route, considering the use to
 70 which said lands are being put; and the use thereof, as
 71 aforesaid, shall not constitute a trespass; nor shall the party
 72 thus using the same be liable in damages for the use thereof;
 73 provided that such easement shall be used only in an orderly and
 74 proper manner.

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

77 704.04 Judicial remedy and compensation to servient
 78 owner.--When the owner or owners of such lands across which a
 79 statutory way of necessity under s. 704.01(2) is claimed,
 80 exclusive of the common-law right, objects or refuses to permit
 81 the use of such way under the conditions set forth herein or
 82 until she or he receives compensation therefor, either party or
 83 the board of county commissioners of such county may file suit
 84 in the circuit court of the county wherein the land is located

85 in order to determine if the claim for said easement exists, and
 86 the amount of compensation to which said party is entitled for
 87 use of such easement. When ~~Where~~ said easement is awarded to the
 88 owner of the dominant tenement, it shall be in compliance with
 89 s. 704.01(2) and shall exist so long as such easement is
 90 reasonably necessary ~~for the purposes stated herein~~. The court,
 91 in its discretion, shall determine all questions, including the
 92 type, duration, extent, and location of the easement, the amount
 93 of compensation, and the attorney's fees and costs to be awarded
 94 to either party for unreasonable refusal to comply with the
 95 provisions of s. 704.01(2), provided that if either of said
 96 parties so requests in her or his original pleadings, the amount
 97 of compensation may be determined by a jury trial. The easement
 98 shall date from the time the award is paid.

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

107 704.04 Judicial remedy and compensation to servient
 108 owner.--When the owner or owners of such lands across which a
 109 statutory way of necessity under s. 704.01(2) is claimed,
 110 exclusive of the common-law right, objects or refuses to permit
 111 the use of such way under the conditions set forth herein or
 112 until she or he receives compensation therefor, either party or

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

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

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