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DIGEST

SB 35 Engrossed

2025 Regular Session

Price

Present law (C.C. Art. 689) provides that if an owner of an estate does not have access to a public road or utility, the owner may claim a right of passage over a neighbor's property and compensate and indemnify the neighbor.

Proposed law maintains present law for enclosed estates and a right of passage, moves indemnification to Civil Code Article 696, and moves the utility servitude provisions to the Revised Statutes.

Proposed law provides that the loss of the right to demand compensation by prescription does not affect the right of passage due to the owner of an enclosed estate.

Present law (C.C. Art. 690) provides that the right of passage shall be suitable for the type of traffic that is necessary for the use of the estate.

Proposed law maintains present law and moves the utility servitude provisions to the Revised Statutes.

Present law (C.C. Art. 691) authorizes the construction of the type of work necessary for the exercise of the right of passage.

Proposed law maintains present law and moves the utility servitude provisions to the Revised Statutes.

Present law (C.C. Art. 692) provides that the location of the right of passage shall generally be taken along the shortest route that is the least injurious to the intervening lands.

Proposed law reorganizes present law to clarify that although there is a presumption that the shortest route is the least injurious, it may not be, in which case the court may select an alternative location.

Proposed law moves the utility servitude provisions to the Revised Statutes.

Present law (C.C. Art. 693) provides that if an estate becomes enclosed due to a voluntary act of the owner, the neighbors are not required to provide passage.

Proposed law clarifies present law to provide that if an estate becomes enclosed due to a voluntary act, although the neighbors are not required to provide passage, the owner may acquire a

conventional servitude of passage by transacting with the neighbors.

Present law (C.C. Art. 694) provides for gratuitous passage over the estate on which the passage was previously exercised when alienated or partitioned property becomes enclosed.

Proposed law clarifies present law to highlight that a gratuitous right of passage is owed where it previously existed when an estate is enclosed due to judicial partition or over the estate that caused the enclosure if an estate is enclosed by voluntary alienation.

Present law (C.C. Art. 695) provides for the relocation of a right of passage to a more convenient place.

Proposed law clarifies present law by providing that the relocation of the right of passage by the servient estate must be equally convenient to the enclosed estate.

Present law (C.C. Art. 696) provides that the right to demand indemnity against the owner of the enclosed estate may become barred by prescription.

Proposed law maintains present law and relocates present law contained in C.C. Art. 689 relative to the requirement to indemnify the neighbor for damage caused by the exercise of the right of passage to ensure its application to all rights of passage.

Present law (C.C. Art. 696.1) provides for the definition of utility.

Proposed law repeals present law and relocates its substance to the Revised Statutes.

Proposed law (R.S. 9:1281) provides for the definition of utility as a service commonly used in the operation of an ordinary household.

Proposed law (R.S. 9:1282) provides a utility servitude over neighboring property to the owner of an estate that does not have access.

Proposed law further provides that the loss of the right to demand compensation by prescription does not affect the right of passage due to the owner of an enclosed estate.

Proposed law (R.S. 9:1283) provides that the utility servitude is limited to what is reasonably necessary to provide the utility.

Proposed law (R.S. 9:1284) authorizes the construction, and the maintenance thereof, of the type of work necessary for the exercise of the utility servitude.

Proposed law (R.S. 9:1285) provides that the location of the utility servitude shall generally be taken along the shortest route that is the least injurious to the intervening lands.

Proposed law (R.S. 9:1286) provides that if an estate loses access to a utility due to a voluntary act

of the owner, the neighbors are not required to provide a servitude.

Proposed law (R.S. 9:1287) provides that a gratuitous utility servitude is owed where it previously existed when an estate is enclosed due to judicial partition or over the estate that caused the enclosure if an estate is enclosed by voluntary alienation.

Proposed law (R.S. 9:1288) provides for the relocation of a utility servitude to a more convenient place at the expense of the owner of the servient estate.

Proposed law (R.S. 9:1289) provides that indemnity is owed to the owner of the servient estate for any damage caused by the exercise of the utility servitude. Proposed law also provides that the right to demand indemnity against the owner of the enclosed estate may become barred by prescription.

Effective August 1, 2025.

(Amends C.C. Arts. 689-696; adds R.S. 9:1281-1289; repeals C.C. Art. 696.1)