

SENATE BILL NO. 35

BY SENATOR PRICE (On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact Section 3 of Chapter 3 of Title IV of Book II of the Civil Code, to be
3 comprised of Civil Code Arts. 689 through 696, to enact Chapter 3 of Code Title IV
4 of Code Book II of Title 9 of the Louisiana Revised Statutes of 1950, to be
5 comprised of R.S. 9:1281 through 1289, and to repeal Civil Code Art. 696.1, relative
6 to legal servitudes; to provide for rights of passage; to provide for enclosed estates;
7 to provide for utility servitudes; to provide for constructions; to provide for location;
8 to provide for compensation; to provide for indemnification; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Section 3 of Chapter 3 of Title IV of Book II of the Civil Code, comprised
12 of Civil Codes Arts. 689 through 696, is hereby amended and reenacted to read as follows:

13 SECTION 3. RIGHT OF PASSAGE

14 Art. 689. Enclosed estate; right of passage

15 A. The owner of an estate that has no access to a public road ~~or utility~~ may
16 claim a right of passage over neighboring property to the nearest public road ~~or~~
17 ~~utility. He~~ **The owner** is bound to compensate ~~his~~ **the** neighbor for the right of
18 passage acquired ~~and to indemnify his neighbor for the damage he may occasion.~~

19 ~~New or additional maintenance burdens imposed upon the servient estate or~~
20 ~~intervening lands resulting from the utility servitude shall be the responsibility of the~~
21 ~~owner of the dominant estate.~~

22 **B. The right to demand compensation from the owner of the enclosed**

estate may become barred by prescription. The accrual of prescription has no effect on the right of passage due to the owner of the enclosed estate.

Revision Comments – 2025

(a) This revision does not change the law regarding the right of passage for an enclosed estate. This Article expresses the default rule that when an estate has no access to a public road, the owner of the enclosed estate must be provided a servitude of passage to the nearest public road and the owner of the enclosed estate must compensate the owner of the estate over which passage is obtained for that right of passage.

(b) An estate has no access to a public road when the estate does not abut a public road and have legal access to a public road. See *Rockholt v. Keaty*, 237 So. 2d 663, 667-68 (La. 1970). An estate that has access to a public road through, for example, a servitude created by acquisitive prescription, destination of the owner, or juridical act is not an enclosed estate.

(c) This revision clarifies that compensation is owed when a right of passage is provided under this Article. Compensation for a right of passage is the fair market value of the right of passage. See *Hutchison v. Jackson*, 399 So. 2d 1238, 1241 (La. App. 3 Cir. 1981). This revision continues the rule previously stated in Article 696 that the right of an owner to demand compensation from the owner of an enclosed estate may become barred by prescription, but the accrual of prescription does not impact the owner of the enclosed estate's ability to claim or exercise a right of passage.

(d) This revision continues to require the owner of an enclosed estate to indemnify a neighbor over whose property passage is acquired for any damage caused by the exercise of the servitude. The requirement to indemnify the neighbor for any damage caused has been moved to Article 696 to clarify that indemnification is required for a right of passage acquired under either Article 689 or Article 694.

(e) This revision removes the utility servitude from the enclosed estates articles. The utility servitude is provided for in R.S. 9:1281 et seq.

Art. 690. Extent of passage

The right of passage for the benefit of an enclosed estate shall be suitable for the kind of traffic ~~or utility~~ that is reasonably necessary for the use of that estate.

Revision Comments – 2025

(a) This revision does not change the law. It continues to require that the right of passage for the benefit of an enclosed estate should be that which is reasonably necessary for the enclosed estate based on its use.

(b) In determining what is reasonably necessary for the use of the enclosed estate, consideration shall be given to the use of the enclosed estate at the time of enclosure, the current use of the enclosed estate, any reasonably anticipated uses of the enclosed estate, and other relevant facts. In many cases, a right of passage for vehicular traffic may be the type of passage that is reasonably necessary for the enclosed estate, but this Article does not necessarily require that an enclosed estate receive a right of passage for vehicular traffic.

Art. 691. Constructions

The owner of the enclosed estate may construct on the right-of-way the type of road, ~~utility, or railroad,~~ or other works reasonably necessary for the exercise of the ~~servitude~~ right of passage.

~~The utility crossing shall be constructed in compliance with all appropriate and applicable federal and state standards so as to mitigate all hazards posed by the passage and the particular conditions of the servient estate and intervening lands.~~

Revision Comments – 2025

(a) This revision does not change the law regarding the types of roads, railroads, or other works that may be constructed.

(b) The utility servitude is provided for in R.S. 9:1281 et seq. and includes the standard to which the utility crossing must be constructed.

Art. 692. Location of passage

The owner of the enclosed estate may not demand the location of the right of passage ~~or the right-of-way for the utility~~ anywhere ~~he~~ that the owner chooses.

The passage ~~generally shall be taken along the shortest route~~ from the enclosed estate to the public road ~~or utility at the location~~ generally shall be taken along the shortest route that is the least injurious to the intervening lands.

~~The location of the utility right-of-way shall coincide with the location of the servitude of passage unless an alternate location providing access to the nearest utility is least injurious to the servient estate and intervening lands.~~

~~The court shall evaluate and determine that the location of the servitude of passage or utility shall not affect the safety of the operations or significantly interfere with the operations of the owner of the servient estate or intervening lands prior to the granting of the servitude of passage or utility.~~

Revision Comments – 2025

(a) This revision does not change the law for the purpose of the location of the right of passage.

(b) There is a general presumption that the shortest route is the route least injurious to the servient estate. See *Hardisty v. Young*, 720 So. 2d 811 (La. App. 3 Cir. 1998); *Mitcham v. Birdsong*, 573 So. 2d 1294 (La. App. 2 Cir. 1991); *Wells v. Anglade*, 23 So. 2d 469, 472 (La. App. 1 Cir. 1945). The shortest route, however, may not be the least injurious to the servient estate, in which case the court may select an alternative location. In determining whether the shortest route is least injurious, courts should consider facts such as whether the location of the right of passage will interfere with the operations of the proposed servient estate, excessive costs to either the dominant or the servient estate, conditions that may make the shortest route impassable, or other factors. See, e.g., *Inabnet v. Pipes*, 241 So. 2d 595, 597–98 (La. App. 2 Cir. 1970); *Pearson v. Theriot*, 534 So. 2d 35, 37–38 (La. App. 3 Cir. 1988); *May v. Miller*, 941 So. 2d 661, 669–70 (La. App. 3 Cir. 2006).

(c) In determining the location of the right of passage, this Article recognizes that there may be multiple estates, or intervening lands, that could serve as the servient estate, all of which may allow an equidistant passage to the public road. In

such a case, the court must determine which estate will be the servient estate and where on that estate the passage will be located. In both instances, the court should ensure that the shortest route that is the least injurious is selected.

(d) The selection of the location of the passage under this Article applies to a right of passage created under Article 689. This Article does not apply to a right of passage created under Article 694.

Art. 693. Enclosed estate; voluntary act:

If an estate becomes enclosed as a result of a voluntary act ~~or omission~~ of its owner **at the time of the enclosure**, the neighbors are not bound to furnish a passage to ~~him or his~~ **the owner or the owner's** successors.

Revision Comments – 2025

(a) This revision clarifies existing law. An estate that becomes enclosed through the voluntary actions of that estate's owner at the time that the estate becomes enclosed is not entitled to a right of passage under Article 689. See *Spotsville v. Herbert & Murrell, Inc.*, 698 So. 2d 31 (La. App. 3 Cir. 1997). The owner of the enclosed estate may acquire a conventional servitude of passage through a voluntary transaction with a neighboring owner, but the enclosed estate owner is not entitled to claim a legal servitude of passage under Article 689.

(b) This Article applies only when the owner of the enclosed estate causes the enclosure through his voluntary actions at the time of the enclosure. For example, if an owner subdivides the property and retains the enclosed tract of land without reserving a right of passage, the enclosed estate has become enclosed as a result of the voluntary action of the owner and is not entitled to a right of passage under Article 689. This Article does not apply when the enclosure is caused by the inaction of the owner of the enclosed estate, such as when the enclosure is caused by the loss of a servitude through prescription of nonuse. See *LeBlanc v. Thibodeaux*, 615 So. 2d 295 (La. 1993).

(c) This Article applies to the owner of the enclosed estate and the owner's successors. Although some courts have interpreted the Article otherwise, the plain language of Article 693 has always clearly stated that it applies to successors. See *Yiannopoulos*, 4 La. Civ. L. Treatise, Predial Servitudes §5:23 (2013).

Art. 694. Enclosed estate; voluntary alienation or **judicial** partition

A. When in the case of **judicial** partition, or a voluntary alienation of an estate or of a part thereof, property alienated or partitioned becomes enclosed, passage shall be furnished gratuitously **to the owner and the owner's successors even if the location of the passage is not the shortest route to the public road, and even if the act of alienation or partition does not mention a right of passage.**

B. **In the case of judicial partition, passage shall be furnished** by the owner of the land on which the passage was previously exercised, ~~even if it is not the shortest route to the public road or utility, and even if the act of alienation or partition does not mention a servitude of passage.~~ **In the case of a voluntary**

alienation, passage shall be furnished on the estate whose owner caused the enclosure.

Revision Comments – 2025

(a) This revision clarifies that when an estate is enclosed by judicial partition or alienation, a gratuitous right of passage is owed to the owner of the enclosed estate and the owner's successors. Prior jurisprudence was unclear whether a gratuitous right of passage was always owed by the estate that caused the enclosure or only when passage had clearly been exercised previously over the estate of the owner who caused the enclosure. This revision clarifies that when an estate is enclosed due to a judicial partition, passage should be provided where it was previously exercised, but when an estate is enclosed due to a voluntary alienation, the estate of the owner who caused the enclosure must furnish the passage. See *Patin v. Richard*, 291 So. 2d 879 (La. App. 3 Cir. 1974); *Langevin v. Howard*, 363 So. 2d 1209 (La. App. 2 Cir. 1978), writ denied, 366 So. 2d 560 (La. 1979); *Petrovich v. Trabeau*, 780 So. 2d 1258 (La. App. 4 Cir. 2001), writ denied, 793 So. 2d 1251 (La. 2001). See also *Yiannopoulos*, 4 La. Civ. L. Treatise, Predial Servitudes §5:20 (2013).

(b) The rule that passage shall be furnished by the owner of the land on which passage was previously exercised applies only to judicial partitions; it does not apply to extrajudicial partitions. Prior law did not distinguish between judicial and extrajudicial partitions. Accordingly, enclosed estates created through extrajudicial partitions prior to this revision continue to be governed by prior law.

(c) This Article does not apply to a right of passage created under Article 689. Instead, Article 692 provides the rule for where a right of passage created under Article 689 should be located.

(d) This revision is modeled in part after French Civil Code Article 684.

Art. 695. Relocation of servitude:

The owner of the enclosed estate has no right to the relocation of ~~this~~ the servitude of passage after it is fixed. The owner of the servient estate has the right to demand relocation of the servitude to a more convenient place at his own expense, provided that it affords the same facility to the owner of the new location is equally convenient to the enclosed estate.

Revision Comments – 2025

(a) This revision clarifies that in relocating the servitude, the owner of the servient estate must ensure that the new location of the servitude is equally convenient for the owner of the enclosed estate.

(b) The requirement that the relocated servitude must be equally convenient for the owner of the enclosed estate is similar to the requirement for the owner of a servient estate to relocate a conventional predial servitude under Article 748. Unlike under Article 748, however, in order for the owner of a servient estate to relocate a legal predial servitude of passage under Article 689 et seq., the owner of the servient estate need not show that the original location of the servitude is more burdensome for him.

Art. 696. ~~Prescriptibility of action for indemnity.~~ Indemnity

A. The owner of an enclosed estate having a right of passage is bound to

indemnify the owner of the servient estate for any damage caused by the exercise of the right of passage.

B. The right ~~for~~ to demand indemnity against the owner of the enclosed estate may ~~be lost~~ become barred by prescription. The accrual of ~~this~~ prescription has no effect on the right of passage.

Revision Comments – 2025

(a) This revision does not change the law. The requirement to indemnify one's neighbor for any damage caused by the exercise of the right of passage was previously located in Article 689 but has been moved to Article 696 to clarify that the right for indemnification applies to all rights of passage acquired under this Article, including rights of passage acquired under Articles 689 and 694.

(b) The indemnity required under Article 696 is for damage caused to the servient estate due to the exercise of the servitude. See Yiannopoulos, 4 La. Civ. L. Treatise, Predial Servitudes §5:15 (2013). Damages may be caused to the servient estate in the construction of works built by the owner of the enclosed estate or the owner's use of the servitude.

(c) Indemnification for damages is distinct from the compensation required in Article 689. Whereas compensation under Article 689 is the fair market value of the right of passage, the amount of the indemnity is fixed in light of the damage occasioned to the servient estate. See, e.g., Dickerson v. Coon, 71 So. 3d 1135 (La. App. 2 Cir. 2011) (discussing the removal of timber to build a right of passage); Robertson v. Arledge, 328 So. 3d 551 (La. App. 2 Cir. 2021) (discussing the forced relocation and replacement of deer stands). If the owner of the servient estate cannot prove damage resulting from the exercise of the servitude, no indemnity may be owed. See Altemus v. Boudreaux, 184 So. 3d 142 (La. App. 3 Cir. 2015).

Section 2. Chapter 3 of Code Title IV of Code Book II of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:1281 through 1289, is hereby enacted to read as follows:

CHAPTER 3. UTILITY SERVITUDES

§1281. Definition

As used in this Chapter, a utility is a service, such as electricity, water, sewer, gas, telephone, cable, and power and communication networks, of the kind commonly used in the operation of an ordinary household, whether the service is provided to a household or business.

Revision Comments – 2025

(a) This revision does not change the law but simply relocates existing law on utility servitudes from the Civil Code to the Revised Statutes. The only utilities for which a servitude may be claimed under this Chapter are those of the nature described in this Section. A utility of the nature described in this Section may, however, be claimed for any type of dominant estate regardless of whether it is used for residential, agricultural, or commercial purposes.

(b) The reference to an "ordinary household" does not mean that only an

estate on which an ordinary household is located is entitled to a utility servitude, nor that the utility may be used only for household purposes.

§1282. Estate having no access to utility; utility servitude

A. The owner of an estate that has no access to a utility may claim a utility servitude over neighboring property to the nearest utility. The owner of the dominant estate is bound to compensate the neighbor for the utility servitude acquired.

B. The right to demand compensation from the owner of the dominant estate may become barred by prescription. The accrual of prescription has no effect on the utility servitude due to the owner of the dominant estate.

Revision Comments – 2025

(a) A utility servitude is a predial servitude and regulated by application of the rules governing predial servitudes to the extent that their application is compatible with the rules governing a utility servitude.

(b) A utility servitude is based on the rules governing a right of passage for an enclosed estate in Civil Code Article 689 et seq. To the extent applicable, the Civil Code articles on enclosed estates and jurisprudence interpreting those articles may be applied by analogy to a utility servitude.

§1283. Extent of the utility servitude

The utility servitude shall be limited to the rights reasonably necessary to provide the utility to the dominant estate. The burden imposed on the servient estate shall not be substantially different from that required to provide the utility to an ordinary household.

Revision Comments – 2025

A utility servitude may be claimed regardless of whether the dominant estate is used for residential, agricultural, or commercial purposes. The burden imposed upon the servient estate in any case cannot, however, be substantially different from the burden necessary to provide the utility to an ordinary household. See R.S. 9:1281.

§1284. Necessary works

The owner of the dominant estate may construct on the location of the utility servitude the works that are reasonably necessary for the exercise of the servitude. The works shall be constructed, maintained, and operated in a manner that reasonably minimizes hazards posed by the servitude.

Revision Comments – 2025

(a) This Section permits the owner of the dominant estate to construct upon the servient estate the works that are reasonably necessary to the exercise of the utility servitude. Because of the limitations imposed by R.S. 9:1281 and 1283, however, those works cannot be substantially different from the works that would be required to provide the utility to an ordinary household.

(b) This Section does not require the owner of the dominant estate to construct the works on the servient estate. The owner may execute a juridical act granting to a third person, such as a utility provider, the right to enter upon the servient estate for the purpose of constructing or maintaining the necessary works, but the juridical act may not grant the third person any rights greater than those enjoyed by the owner of the dominant estate.

§1285. Location of the utility servitude

The owner of the dominant estate may not demand the location of the utility servitude anywhere that the owner chooses. The location of the utility servitude generally shall be taken along the shortest route that is the least injurious to the servient estate and intervening lands.

Revision Comments – 2025

(a) In determining the extent to which a location is injurious to the servient estate and intervening lands, consideration should be given to whether the location causes a significant threat to the safety of the operations on the servient estate, unreasonably interferes with the enjoyment of the servient estate, interferes with natural or man-made impediments on the servient estate, or imposes unreasonable costs on the owner of the dominant estate or the utility provider. Courts may also consider whether it would be less injurious to the servient estate to place a utility servitude at the location of other existing servitudes, including other utility servitudes.

(b) In determining the location of the utility servitude, this Section recognizes that there may be multiple estates, or intervening lands, that could serve as the servient estate, all of which may allow an equidistant utility servitude to the public road. In such a case, the court must determine which estate will be the servient estate and where on that estate the servitude will be located. In both instances, the court should ensure that the shortest route that is the least injurious is selected.

§1286. Voluntary loss of utility access

If an estate loses access to a utility as a result of a voluntary act of its owner, the neighbors are not bound to furnish a utility servitude to the owner or the owner's successors.

Revision Comments – 2025

(a) The owner of an estate deprives himself of access to a utility only if the estate had access to that utility at the time of the alienation that caused the estate to lose access. Thus, the preclusion of this Section does not apply unless the utility actually existed before the estate became enclosed, and the estate had access to the utility at the time of the alienation.

(b) The utility servitude is based on the rules governing a right of passage for an enclosed estate in Civil Code Article 689. An estate may, however, lose access to a utility while having access to a public road. For this Section to apply, the estate

1 must lose access to a utility as a result of a voluntary act of its owner.

2 **§1287. Voluntary alienation or partition**

3 **A. When in the case of judicial partition, or a voluntary alienation of an**
4 **estate or a part thereof, property alienated or partitioned loses access to a**
5 **utility, a utility servitude shall be furnished gratuitously to the owner and the**
6 **owner's successors even if it is not the location that otherwise would be selected**
7 **in accordance with R.S. 9:1285, and even if the act of alienation or partition**
8 **does not mention a utility servitude.**

9 **B. In the case of judicial partition, a utility servitude shall be furnished**
10 **by the owner of the land on which the utility servitude was previously exercised.**
11 **In the case of a voluntary alienation, a utility servitude shall be furnished on the**
12 **estate whose owner caused the enclosure.**

13 Revision Comments – 2025

14 (a) Rules of statutory construction require that words used in the singular
15 number include the plural. See R.S. 1:7. An estate could lose access to a utility due
16 to a voluntary alienation of multiple estates or a partition involving multiple co-
17 owners, such that a utility servitude must be furnished gratuitously over multiple
18 estates whose owners caused the enclosure.

19 (b) The utility servitude is based on the rules governing a right of passage for
20 an enclosed estate in Civil Code Article 689. An estate may, however, lose access
21 to a utility while having access to a public road. For this Article to apply, the estate
22 must lose access to a utility as a result of a partition or alienation of the estate or a
23 part thereof.

24 **§1288. Relocation of the utility servitude**

25 **The owner of the dominant estate has no right to the relocation of the**
26 **utility servitude after it is fixed. The owner of the servient estate has the right**
27 **to demand relocation of the utility servitude to a more convenient place at his**
28 **own expense, provided that the new location is equally convenient to the**
29 **dominant estate.**

30 **§1289. Indemnity**

31 **A. The owner of a dominant estate having a utility servitude under this**
32 **Chapter is bound to indemnify the owner of the servient estate for any damage**
33 **caused by the exercise of the servitude.**

34 **B. The right to demand indemnity against the owner of the dominant**

1 **estate may become barred by prescription. The accrual of prescription has no**
2 **effect on the utility servitude.**
3 Section 3. Civil Code Art. 696.1 is hereby repealed in its entirety.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____