

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
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As Engrossed: S3/8/99 S3/11/99 H3/29/99

A Bill

SENATE BILL 387

5 By: Senator Scott
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For An Act To Be Entitled

9 "AN ACT TO ALLOW CHANCELLORS AND JUDGES TO USE
10 DISCRETION IN ENFORCEMENT OF RESIDENTIAL RESTRICTIVE
11 COVENANTS; AND FOR OTHER PURPOSES."

Subtitle

14 "TO ALLOW CHANCELLORS AND JUDGES TO USE
15 DISCRETION IN ENFORCEMENT OF RESIDENTIAL
16 RESTRICTIVE COVENANTS."
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Chancellors are hereby authorized to exercise their
22 discretion to balance the equities between or among parties when considering
23 whether to award injunctions or damages in cases involving encroachment of
24 interior setback lines in residential subdivision restrictive covenants.
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26 SECTION 2. If the trial judge makes a finding that the violation of an
27 interior setback restriction is de minimis, no attorney's fees shall be
28 awarded to any party seeking to enforce the setback restriction.
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30 SECTION 3. The provisions of this act shall apply to cases currently
31 pending in the courts of Arkansas as well as those filed subsequent to the
32 effective date of this act.
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34 SECTION 4. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
36 Revision Commission shall incorporate the same in the Code.

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SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 6. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 7. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-second General Assembly that there is an immediate and urgent need for revision of the current state law concerning enforcement of interior setback restrictions in residential restrictive covenants. Recent court decisions appear to hold that any violation of such an interior setback restriction, no matter how slight, requires that the structure or part thereof built in violation of the setback restriction be removed. Such an interpretation of the law regarding interior setback restrictions in residential restrictive covenants will result in the needless destruction of property, with resultant displacement of homeowners and their families and substantial expenditures to correct setback restriction violations which, in actuality, cause little or no damage to adjacent land owners. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ Scott