

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

# A Bill

HOUSE BILL 2725

4  
5 By: Representative Davenport  
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7

## For An Act To Be Entitled

9 AN ACT TO PRESCRIBE THE PROPERTY RIGHTS CONFERRED  
10 BY EASEMENTS IN, ACROSS, OR RELATED TO WATER; AND  
11 FOR OTHER PURPOSES  
12

## Subtitle

13 THE WATER EASEMENT ACT.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code Title 18, Chapter 11 is amended to add an  
20 additional subchapter to read as follows:

21 18-11-601. Purpose.

22 The purpose of this subchapter is to regulate all easements in, across,  
23 or related to water, whether created by express grant, prescription, or  
24 implication of law.  
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26 18-11-602. Definition.

27 (a) As used in this subchapter, "navigable body of water" includes  
28 only bodies of water that met the federal definition of navigability stated  
29 in *The Daniel Ball*, 10 Wall. 557, on the date that Arkansas became a state of  
30 the United States.

31 (b) The concept of "navigability for use" shall not be applied to  
32 easements in, across, or related to waters under this subchapter.  
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34 18-11-603. Limitations on easements in water.

35 (a) Except as stated expressly in the instrument by which an express  
36 easement is granted, the grant or conveyance of an express easement in water



1 shall not include or imply any right of hunting, fishing, or other  
2 recreational use of the water or the lands adjacent to the water.

3 (b) Any easements in water implied by law or created by prescription  
4 shall not include any right of hunting, fishing, or other recreational use of  
5 the water or the lands adjacent to the water.

6 (c) All rights of hunting, fishing, or other recreational use of  
7 waters subject to an easement are reserved to the person who owns the land  
8 beneath the waters.

9 (d) All rights of hunting, fishing, or other recreational use of the  
10 lands adjacent to waters subject to an easement are reserved to the person  
11 who owns the land.

12 (e) The rights of hunting, fishing, or other recreational use of  
13 waters subject to an easement or the lands adjacent to those waters may only  
14 be conveyed by a written instrument that expressly and particularly describes  
15 the rights to be granted.

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17 18-11-604. Narrow construction.

18 Flowage easements shall be construed narrowly pursuant to the express  
19 language of the instrument by which the easements are created and shall not  
20 be construed to include rights of hunting, fishing, or other recreational use  
21 unless expressly stated in the instrument.

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23 18-11-605. Limitations on travel over easements in water implied by  
24 law.

25 All easements in water implied by law or created by prescription are  
26 limited a right of ingress and egress by only the most direct route across  
27 the surface of the water either from:

28 (1) Public land to public land connected by the watercourse;

29 (2) Public land to a navigable body of water connected by the  
30 watercourse; or

31 (3) One (1) navigable body of water to another navigable body of  
32 water connected by the watercourse.

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34 18-11-606. Limitations on easements in water implied by law.

35 (a) An easement in water may only be implied by law upon a finding  
36 that there is no other feasible means of ingress and egress to the land owned

1 or leased by the person seeking to establish the easement.

2 (b) An easement implied by law shall be limited to a right of ingress  
3 and egress and shall not extend to any other use of the water.

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5 18-11-607. Prescriptive easements in water.

6 (a) A prescriptive easement in water may only be created for a  
7 watercourse if the use of the watercourse is continuous open, hostile, and  
8 notorious for a period of seven (7) years.

9 (b) Neither hunting, fishing or other recreational use constitutes  
10 open, hostile, or notorious use.

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