

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 *As Engrossed: S3/2/09 S3/9/09 S3/17/09 S3/19/09*

2 87th General Assembly

A Bill

3 Regular Session, 2009

SENATE BILL 399

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5 By: Senator Wyatt

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For An Act To Be Entitled

9 AN ACT TO UPDATE THE PROCEDURE FOR ACQUIRING AN
10 ACCESS EASEMENT; AND FOR OTHER PURPOSES.

11

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Subtitle

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14 TO UPDATE THE PROCEDURE FOR ACQUIRING AN
15 ACCESS EASEMENT.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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SECTION 1. Arkansas Code Title 27, Chapter 66, Subchapter 4 is amended to read as follows:

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27-66-401. Establishment.

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(a)(1) When the lands, dwelling house, or plantation of any owner is so situated as to render it necessary to have a ~~private~~ road from such lands, dwelling house, or plantation to any public road or navigable watercourse over the lands of any other person and the other person refuses to allow that owner the ~~private~~ road, ~~then it shall be the duty of~~ the owner may petition the county court to appoint viewers to lay off the road, provided the owner+

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~~(1) Gives gives written~~ notice to ~~such~~ the person twenty (20) days before application to the court, and attaches the written notice to the petition.

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27

~~(2) Petitions the court;~~

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~~(3) Shows necessity for the private road;~~

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~~(4) Shows that the person refuses to allow the road; and~~

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~~(5) Deposits with the clerk of the court sufficient money to pay~~

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~~all costs and expenses accruing on account of the petition, notice, view, and survey of the private road.~~



1 (2) The written notice shall include the amount of payment the
2 owner offers for the road.

3 (b) The petition for an easement for ingress and egress to and from
4 the petitioner's lands over, through, and across the respondent's lands to
5 any public road or navigable watercourse shall be filed with the clerk of the
6 county court and shall allege with particularity facts demonstrating that:

7 (1) The written notice was provided by the petitioner to the
8 respondent twenty (20) days before application to the court;

9 (2) The respondent refused to convey to the petitioner the
10 requested access easement; and

11 (3) The petitioner lacked the legal right of ingress and egress
12 to and from his or her lands across the respondent's lands or otherwise to a
13 public road.

14 (c) Copies of abstracts, deeds, or plats referenced in the petition
15 shall be attached to the petition.

16 (d) After the petition is filed, the county court shall issue a notice
17 setting the time, date, and location of a preliminary hearing.

18 (e)(1) In accordance with the Arkansas Rules of Civil Procedure, the
19 petitioner shall serve the resident or nonresident respondent with a:

20 (A) Summons;

21 (B) Copy of the petition and any exhibits; and

22 (C) Copy of the court notice of the preliminary hearing.

23 (2) If service is not obtained, the notice shall be published
24 one (1) time per week for two (2) consecutive weeks in a newspaper of general
25 circulation in the county at the petitioner's expense. If there is no
26 newspaper of general circulation in the county, the notice shall be posted at
27 the county courthouse.

28 (f)(1) The court may dismiss the case without prejudice and allow the
29 petition to be refiled within one (1) year from dismissal if the court
30 determines at the preliminary hearing that:

31 (A) Required notices and service have not been provided to
32 the respondent; or

33 (B) The petition fails to sufficiently demonstrate the
34 requirements of subsection (b) of this section.

35 (2)(A) If the court determines at the preliminary hearing that
36 required notices and service have been provided to the respondent and the

1 petition sufficiently demonstrates the requirements of subsection (b) of this
2 section, the court shall appoint viewers.

3 (B) If viewers are appointed by the court, the court
4 shall:

5 (i) Issue a preliminary order directing the
6 petitioner to deposit into the registry of the court an estimated sum
7 sufficient for payment of damages and for payment of the costs and expenses
8 accruing on account of the petition, notice, view, and survey for the access
9 easement; and

10 (ii) Set the time, date, and location of the
11 evidentiary hearing.

12 (C) Either party may file with the court legal
13 instruments, plats, surveys, or other documentary evidence to be reviewed by
14 the viewers.

15 (D) The parties shall immediately open their property to
16 inspection by the viewers and surveyors.

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18 27-66-402. Duty of viewers.

19 (a) Viewers shall take the same oath and shall be governed in all
20 respects as viewers appointed to public roads are governed under this act.

21 (b) They shall examine the route proposed for the road and any other
22 route which they may deem proper.

23 (c) If they or a majority of them ~~shall be~~ are of the opinion that a
24 ~~private~~ road is necessary and proper, as prayed in the petition, they shall
25 lay out and describe the road in a manner that produces the least
26 inconvenience to the parties through whose land the road shall pass.

27 (d)(1)(A) The viewers shall make a written report to the county court,
28 describing the route of the road and the land through which it shall pass to
29 allow location and identification of the access easement by land records,
30 naming the owner, if known, and by decision of a majority of the viewers the
31 damages sustained by each owner of lands through which the road passes. The
32 damages shall include the value of ~~the land of each owner~~ each owner's land
33 sought to be appropriated.

34 (B) The parties shall stipulate to or dispute the report
35 of the viewers.

36 (2) The measure of damages shall be the difference in the fair

1 market value of the lands immediately before the access easement is ordered
2 and the fair market value of the lands after the access easement is ordered.

3 (e) The report shall be ~~recorded on~~ filed with the county clerk for
4 the records of the county court.

5 (f)(1) A person who renders services under this subchapter as a viewer
6 or reviewer, chain carrier, marker, or surveyor shall be paid reasonable
7 costs and expenses based upon the current market rate for each day
8 necessarily employed.

9 (2) Payments are to be charged as costs and expenses against the
10 funds deposited by the petitioner.

11 (3) The amount due each person and the number of days employed
12 shall be certified under oath by the viewers.

13 (4) The court by order may direct the county clerk to receipt
14 payment by the petitioner of the directed sum into the registry of the court
15 and to issue payment.

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17 27-66-403. Court order.

18 (a)(1) If the petitioner has not complied with the court's order under
19 § 27-66-401 and paid into the registry of the county court the estimated sum,
20 the court may dismiss the case without prejudice and provide that the matter
21 may be refiled within one (1) year from dismissal in accordance with the
22 Arkansas Rules of Civil Procedure.

23 (2) If during the pendency of the proceedings the county court
24 determines that the circuit court has jurisdiction over the matter, the
25 county court may stay the proceedings or dismiss the case without prejudice
26 and provide that the matter may be refiled within one (1) year from dismissal
27 in accordance with the Arkansas Rules of Civil Procedure.

28 (3)(A) If the petitioner complies with the court's order under §
29 27-66-401 and deposits into the registry of the county court the estimated
30 sum, the evidentiary hearing may be held and the opportunity to present
31 evidence and cross-examine witnesses.

32 (B)(i) If, upon the return after considering the report of
33 the viewers, the evidence, the law, and all other proper and sufficient
34 matters the court shall be is of the opinion that it is necessary for the
35 petitioner to have the road from his or her lands, dwelling house, or
36 plantation to the public road, or navigable watercourse, an order shall is to

1 be made establishing the road as a private road not exceeding thirty feet
2 ~~(30')~~ wide not to exceed fifty feet (50') in width and determining the
3 damages sustained by each owner of lands through which the access easement
4 passes.

5 (ii)(a) The petitioner may proceed to open the
6 road, provided that the petitioner pays access easement of ingress and egress
7 to and from the petitioner's lands to, through, over, and across the
8 respondent's lands shall be described in the final order or judgment of the
9 court and shall be appurtenant to the petitioner's lands.

10 (b)(1) The order shall direct return of excess
11 funds, if any, to the petitioner and any further deposits necessary to be
12 made by the petitioners for the payment of all costs and expenses, including
13 reasonable attorney's fees and costs, accruing and remaining unpaid on
14 account of the petition for the private road, and all things relating thereto
15 and following therefrom, including the view and survey of the road and
16 damages sustained by each owner of the lands over which the road passes.

17 (2)(A) If the respondent substantially
18 prevails on the disputed issues in the case, the court shall award reasonable
19 attorney's fees and costs to the respondent.

20 (B) In determining whether the
21 respondent substantially prevails on the disputed issues, the court shall
22 consider the respondent's success on the merits regarding the:

23 (i) Necessity of the road;
24 (ii) Route of the road;
25 (iii) Width of the road; and
26 (iv) Damages to the lands
27 over which the road passes.

28 (c) The order shall state that:

29 (1) The respondent retains title to the
30 lands over which the road passes; and

31 (2) The road is for an access easement
32 only and is not an easement for any other purpose, including a public
33 utility.

34 (iii) The petitioner shall be solely responsible for
35 the maintenance of the road established under this subchapter.

36 (iv) The respondent shall have no responsibility for

1 the maintenance of the road established under this subchapter.

2 (v) A user of the road does so at his or her own
3 risk and peril and does not have the right to file a cause of action against
4 the petitioner or respondent for any injury to the user or the user's
5 property.

6 (b) Either party may appeal to the circuit court from the final order
7 or judgment of the county court within ~~sixty (60)~~ thirty (30) days from the
8 rendition entry of the order and not thereafter.

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10 27-66-404. Penalty for obstructing.

11 (a) If any person ~~shall obstruct any~~ obstructs a private road
12 established under the laws of this state by felling any trees across it or by
13 placing any an obstruction ~~thereon~~ on the road, he or she shall be guilty of
14 a Class C misdemeanor. ~~Upon conviction, he shall be fined in any sum not~~
15 exceeding fifty dollars (\$50.00) and

16 (b) The person also shall forfeit ~~two dollars (\$2.00)~~ one hundred
17 dollars (\$100) for every day he or she ~~shall allow~~ allows the obstruction to
18 remain after he or she has been notified to remove it.

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20 27-66-405. Limitation of authority.

21 A county court may not grant an easement for ingress and egress over,
22 through, or across a railroad right-of-way under this subchapter.

23 /s/ Wyatt
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