

By: Flynn

H.B. No. 4618

Substitute the following for H.B. No. 4618:

By: Elkins

C.S.H.B. No. 4618

A BILL TO BE ENTITLED

AN ACT

relating to limitations on certain non-express easements.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 10, Property Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. EASEMENTS

CHAPTER 191. NON-EXPRESS EASEMENTS

Sec. 191.001. APPLICABILITY OF CHAPTER. This chapter applies to an easement that:

(1) permits a right-of-way over a servient tenement for the benefit of a dominant tenement; and

(2) is not established by an express agreement between the owners of the dominant and servient tenements, including an easement by estoppel, implication, or prescription or an easement or way of necessity.

Sec. 191.002. SIZE OF CERTAIN EASEMENTS. In a suit regarding the scope of an easement permitting the use of a road over the servient tenement for the benefit of the dominant tenement, the area subject to the easement may not be extended by the court beyond the traveled surface of the road at the time the suit is filed, as determined by a professional survey.

Sec. 191.003. LIMITATION ON FUTURE IMPACT OF EASEMENT. (a) An easement imposed by a court must be limited by the court in a manner that prevents a future increase in the impact of the easement

1 on the servient tenement.

2 (b) For the purposes of this section, an increase in the
3 impact of an easement on a servient tenement includes:

4 (1) an increase in traffic on a road over the servient
5 tenement caused by the use of the road for the benefit of the
6 dominant tenement;

7 (2) an increase in the effect of traffic on a road over
8 the servient tenement directly or indirectly caused by the use of
9 the road for the benefit of the dominant tenement, including an
10 increase in dust, litter, or potential criminal activity;

11 (3) any change in the nature or boundaries of a road
12 over the servient tenement that is used for the benefit of the
13 dominant tenement; and

14 (4) any other increase in the frequency or length of
15 time of use of an easement for the benefit of the dominant tenement
16 or change in the nature of the use of an easement for the benefit of
17 the dominant tenement.

18 Sec. 191.004. PLACEMENT AND OPERATION OF GATES, FENCES, AND
19 OTHER MATERIALS ON OR ALONG EASEMENT. (a) An easement imposed by a
20 court may not limit the right of the owner or the servient tenement
21 to place and operate manual or electronic gates or fences, trees or
22 other vegetation, or stones or other material along the border of
23 the area subject to the easement.

24 (b) A person who uses an easement imposed by a court for the
25 benefit of the dominant tenement shall keep a gate or fence placed
26 along the border of the area subject to the easement open or closed
27 as directed by the owner of the servient tenement.

1 (c) If the owner of the servient tenement installs a manual
2 gate and an electronic gate along the border of an area subject to
3 an easement imposed by a court:

4 (1) the electronic gate may be used for the benefit of
5 the dominant tenement only with the permission of the owner of the
6 servient tenement; and

7 (2) the owner of the dominant tenement, or another
8 person using the electronic gate for the benefit of the dominant
9 tenement, if applicable, shall make any payment imposed for the use
10 of the gate by the owner of the servient tenement.

11 SECTION 2. The change in law made by this Act applies to an
12 action concerning an easement filed on or after the effective date
13 of this Act or pending on the effective date of this Act.

14 SECTION 3. This Act takes effect September 1, 2009.