

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0194.01 Jery Payne x2157

SENATE BILL 21-164

SENATE SPONSORSHIP

Gardner,

HOUSE SPONSORSHIP

(None),

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 CONCERNING THE "UNIFORM EASEMENT RELOCATION ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Easement Relocation Act", drafted by the Uniform Law Commission. The bill sets procedures to relocate an easement established by express grant, reservation, prescription, implication, necessity, estoppel, or other method, but the procedures may not be used to relocate a public utility easement, conservation easement, or negative easement.

To relocate an easement, the relocation must not:

- Encroach on an area of an estate burdened by a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

conservation easement or interfere with the use or enjoyment of a public utility easement or an easement appurtenant to a conservation easement;

- Lessen the utility of the easement;
- After the relocation, increase the burden in the reasonable use and enjoyment of the easement;
- Impair the purpose for which the easement was created;
- During or after the relocation, impair the safety of the use and enjoyment of the easement;
- During the relocation, disrupt the use and enjoyment of the easement, unless the servient estate owner substantially mitigates the duration and nature of the disruption;
- Impair the physical condition, use, or value of or improvements on the dominant estate; or
- Impair the value of the collateral of a security-interest holder in the servient estate or dominant estate, impair a real property interest of a lessee in the dominant estate, or impair a real property interest of any other person in the servient estate or dominant estate.

To obtain an order to relocate an easement, a servient estate owner must commence a civil action and serve a summons and petition on:

- The easement holder;
- A security-interest holder in the servient estate or dominant estate;
- A lessee of the dominant estate; and
- Any other owner of a real property interest if the relocation would encroach on an area of the servient estate or dominant estate burdened by the interest.

Service of a summons and petition is not required for the owner of real property interest in oil, gas, or minerals unless the interest includes an easement to facilitate oil, gas, or mineral development.

The petition must state:

- The intent of the servient estate owner to seek the relocation;
- The nature, extent, and anticipated dates of commencement and completion of the relocation;
- The current and proposed locations of the easement;
- The reason the easement is eligible for relocation under the bill;
- The reason the proposed relocation satisfies the conditions for relocation under the bill; and
- That the servient estate owner has made a reasonable attempt to notify the holders of any public utility easement, conservation easement, or negative easement on the servient estate or dominant estate of the proposed

relocation.

At any time before the court renders a final order in the action, a person who was served may file a document to waive its rights to contest or obtain relief in connection with the relocation or subordinate its interests to the relocation. On filing of the document, the court may order that the person need not answer or participate further in the action.

A court order approving relocation of an easement must:

- State that the order is issued in accordance with the bill;
- Identify the immediately preceding location of the easement;
- Describe the new location of the easement;
- Describe the mitigation required during relocation;
- Refer in detail to the plans and specifications of improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;
- Specify conditions to be satisfied to relocate the easement and construct improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;
- Include a provision for payment of expenses required by the bill;
- Include a provision requiring the parties to the civil action to act in good faith; and
- Instruct the servient estate owner to record an affidavit, if required by the bill, when the servient estate owner substantially completes relocation.

Before a servient estate owner proceeds with relocation of an easement, the owner must record, in the appropriate land records, a certified copy of the order.

The servient estate owner is responsible for reasonable expenses of relocation of an easement.

Each party to the civil action is obligated to act in good faith.

If an order requires building an improvement to relocate an easement, relocation is substantially complete, and the easement holder is able to use the moved easement, the servient estate owner is required to:

- Record, in the appropriate land records, an affidavit certifying that the easement has been relocated; and
- Send, by certified mail, a copy of the recorded affidavit to the easement holder and parties to the civil action.

Until the affidavit is recorded and sent to the parties, the easement holder may use the easement in the current location, subject to any court's order approving relocation. If a court order does not require building an improvement, recording of the order constitutes relocation.

The bill clarifies that relocation of an easement:

- Is not a new transfer or a new grant of a property interest;
- Is not a breach of a security instrument, except as otherwise determined by a court;
- Is not a breach of a lease, except as otherwise determined by a court;
- Is not a breach by the servient estate owner of a recorded document affected by the relocation, except as otherwise determined by a court;
- Does not affect the priority of the easement with respect to other recorded real property interests burdening the area of the servient estate; and
- Is not a fraudulent conveyance or voidable transaction under law.

A servient estate owner may not waive the right to relocate an easement. The bill should be interpreted in such a way as to promote uniformity among the states. The bill supersedes the federal "Electronic Signatures in Global and National Commerce Act" except for consumer disclosures. The changes apply to easements created before, on, or after the bill takes effect.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 30.3 to
 3 title 38 as follows:

4 **ARTICLE 30.3**

5 **Uniform Easement Relocation Act**

6 **38-30.3-101. Short title.** THIS ARTICLE 30.3 MAY BE CITED AS THE
 7 "UNIFORM EASEMENT RELOCATION ACT".

8 **38-30.3-102. Definitions.** IN THIS ARTICLE 30.3:

9 (1) "APPURTENANT EASEMENT" MEANS AN EASEMENT TIED TO OR
 10 DEPENDENT ON OWNERSHIP OR OCCUPANCY OF A UNIT OR A PARCEL OF
 11 REAL PROPERTY.

12 (2) "CONSERVATION EASEMENT" MEANS A NONPOSSESSORY
 13 PROPERTY INTEREST CREATED FOR ONE OR MORE OF THE FOLLOWING
 14 CONSERVATION PURPOSES:

1 (a) RETAINING OR PROTECTING THE NATURAL, SCENIC, WILDLIFE,
2 WILDLIFE HABITAT, BIOLOGICAL, ECOLOGICAL, OR OPEN SPACE VALUES OF
3 REAL PROPERTY;

4 (b) ENSURING THE AVAILABILITY OF REAL PROPERTY FOR
5 AGRICULTURAL, FOREST, OUTDOOR RECREATIONAL, OR OPEN SPACE USES;

6 (c) PROTECTING NATURAL RESOURCES, INCLUDING WETLANDS,
7 GRASSLANDS, AND RIPARIAN AREAS;

8 (d) MAINTAINING OR ENHANCING AIR OR WATER QUALITY;

9 (e) PRESERVING THE HISTORICAL, ARCHITECTURAL,
10 ARCHAEOLOGICAL, PALEONTOLOGICAL, OR CULTURAL ASPECTS OF REAL
11 PROPERTY; OR

12 (f) ANY OTHER PURPOSE UNDER ARTICLE 30.5 OF THIS TITLE 38.

13 (3) "DOMINANT ESTATE" MEANS AN ESTATE OR INTEREST IN REAL
14 PROPERTY BENEFITED BY AN APPURTENANT EASEMENT.

15 (4) "EASEMENT" MEANS A NONPOSSESSORY PROPERTY INTEREST
16 THAT:

17 (a) PROVIDES A RIGHT TO ENTER, USE, OR ENJOY REAL PROPERTY
18 OWNED BY OR IN THE POSSESSION OF ANOTHER; AND

19 (b) IMPOSES ON THE OWNER OR POSSESSOR A DUTY NOT TO
20 INTERFERE WITH THE ENTRY, USE, OR ENJOYMENT PERMITTED BY THE
21 INSTRUMENT CREATING THE EASEMENT OR, IN THE CASE OF AN EASEMENT
22 NOT ESTABLISHED BY EXPRESS GRANT OR RESERVATION, THE ENTRY, USE,
23 OR ENJOYMENT AUTHORIZED BY LAW.

24 (5) "EASEMENT HOLDER" MEANS:

25 (a) IN THE CASE OF AN APPURTENANT EASEMENT, THE DOMINANT
26 ESTATE OWNER; OR

27 (b) IN THE CASE OF AN EASEMENT IN GROSS, PUBLIC UTILITY

1 EASEMENT, CONSERVATION EASEMENT, OR NEGATIVE EASEMENT, THE
2 GRANTEE OF THE EASEMENT OR A SUCCESSOR.

3 (6) "EASEMENT IN GROSS" MEANS AN EASEMENT NOT TIED TO OR
4 DEPENDENT ON OWNERSHIP OR OCCUPANCY OF A UNIT OR A PARCEL OF
5 REAL PROPERTY.

6 (7) "LESSEE OF RECORD" MEANS A PERSON HOLDING A LESSEE'S
7 INTEREST UNDER A RECORDED LEASE OR MEMORANDUM OF LEASE.

8 (8) "NEGATIVE EASEMENT" MEANS A NONPOSSESSORY PROPERTY
9 INTEREST WHOSE PRIMARY PURPOSE IS TO IMPOSE ON A SERVIENT ESTATE
10 OWNER A DUTY NOT TO ENGAGE IN A SPECIFIED USE OF THE ESTATE.

11 (9) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
12 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
13 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
14 LEGAL ENTITY.

15 (10) "PUBLIC UTILITY EASEMENT" MEANS A NONPOSSESSORY
16 PROPERTY INTEREST IN WHICH THE EASEMENT HOLDER IS A PUBLICLY
17 REGULATED OR PUBLICLY OWNED UTILITY UNDER FEDERAL LAW OR LAW
18 OF THIS STATE OR A MUNICIPALITY. THE TERM INCLUDES AN EASEMENT
19 BENEFITING AN INTRASTATE UTILITY, AN INTERSTATE UTILITY, OR A
20 UTILITY COOPERATIVE.

21 (11) "REAL PROPERTY" MEANS AN ESTATE OR INTEREST IN, OVER,
22 OR UNDER LAND, INCLUDING STRUCTURES, FIXTURES, AND OTHER THINGS
23 THAT BY CUSTOM, USAGE, OR LAW PASS WITH A CONVEYANCE OF LAND
24 WHETHER OR NOT DESCRIBED OR MENTIONED IN THE CONTRACT OF SALE
25 OR INSTRUMENT OF CONVEYANCE. THE TERM INCLUDES THE INTEREST OF
26 A LESSOR AND LESSEE AND, UNLESS THE INTEREST IS PERSONAL PROPERTY
27 UNDER LAW OF THIS STATE OTHER THAN THIS ARTICLE 30.3, AN INTEREST

1 IN A COMMON INTEREST COMMUNITY.

2 (12) "RECORD", USED AS A NOUN, MEANS INFORMATION THAT IS
3 INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC
4 OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

5 (13) "SECURITY INSTRUMENT" MEANS A MORTGAGE, DEED OF
6 TRUST, SECURITY DEED, CONTRACT FOR DEED, LEASE, OR OTHER RECORD
7 THAT CREATES OR PROVIDES FOR AN INTEREST IN REAL PROPERTY TO
8 SECURE PAYMENT OR PERFORMANCE OF AN OBLIGATION, WHETHER BY
9 ACQUISITION OR RETENTION OF A LIEN, A LESSOR'S INTEREST UNDER A
10 LEASE, OR TITLE TO THE REAL PROPERTY. THE TERM INCLUDES:

11 (a) A SECURITY INSTRUMENT THAT ALSO CREATES OR PROVIDES
12 FOR A SECURITY INTEREST IN PERSONAL PROPERTY;

13 (b) A MODIFICATION OR AMENDMENT OF A SECURITY INSTRUMENT;
14 AND

15 (c) A RECORD CREATING A LIEN ON REAL PROPERTY TO SECURE AN
16 OBLIGATION UNDER A COVENANT RUNNING WITH THE REAL PROPERTY OR
17 OWED BY A UNIT OWNER TO A COMMON INTEREST COMMUNITY
18 ASSOCIATION.

19 (14) "SECURITY-INTEREST HOLDER OF RECORD" MEANS A PERSON
20 HOLDING AN INTEREST IN REAL PROPERTY CREATED BY A RECORDED
21 SECURITY INSTRUMENT.

22 (15) "SERVIENT ESTATE" MEANS AN ESTATE OR INTEREST IN REAL
23 PROPERTY THAT IS BURDENED BY AN EASEMENT.

24 (16) "TITLE EVIDENCE" MEANS A TITLE INSURANCE POLICY,
25 PRELIMINARY TITLE REPORT OR BINDER, TITLE INSURANCE COMMITMENT,
26 ABSTRACT OF TITLE, ATTORNEY'S OPINION OF TITLE BASED ON
27 EXAMINATION OF PUBLIC RECORDS OR AN ABSTRACT OF TITLE, OR ANY

1 OTHER MEANS OF REPORTING THE STATE OF TITLE TO REAL PROPERTY
2 THAT IS CUSTOMARY IN THE LOCALITY.

3 (17) "UNIT" MEANS A PHYSICAL PORTION OF A COMMON INTEREST
4 COMMUNITY DESIGNATED FOR SEPARATE OWNERSHIP OR OCCUPANCY WITH
5 BOUNDARIES DESCRIBED IN A DECLARATION ESTABLISHING THE COMMON
6 INTEREST COMMUNITY.

7 (18) "UTILITY COOPERATIVE" MEANS A NONPROFIT ENTITY WHOSE
8 PURPOSE IS TO DELIVER A UTILITY SERVICE, SUCH AS ELECTRICITY, OIL,
9 NATURAL GAS, WATER, SANITARY SEWER, STORM WATER, OR
10 TELECOMMUNICATIONS, TO ITS CUSTOMERS OR MEMBERS AND INCLUDES
11 AN ELECTRIC COOPERATIVE, RURAL ELECTRIC COOPERATIVE, RURAL
12 WATER DISTRICT, AND RURAL WATER ASSOCIATION.

13 **38-30.3-103. Scope - exclusions.** (1) EXCEPT AS OTHERWISE
14 PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS ARTICLE 30.3 APPLIES
15 TO AN EASEMENT ESTABLISHED BY EXPRESS GRANT OR RESERVATION OR
16 BY PRESCRIPTION, IMPLICATION, NECESSITY, ESTOPPEL, OR OTHER
17 METHOD.

18 (2) THIS ARTICLE 30.3 MAY NOT BE USED TO RELOCATE:

19 (a) A PUBLIC UTILITY EASEMENT, CONSERVATION EASEMENT, OR
20 NEGATIVE EASEMENT; OR

21 (b) AN EASEMENT IF THE PROPOSED LOCATION WOULD ENCROACH
22 ON AN AREA OF AN ESTATE BURDENED BY A CONSERVATION EASEMENT OR
23 WOULD INTERFERE WITH THE USE OR ENJOYMENT OF A PUBLIC UTILITY
24 EASEMENT OR AN EASEMENT APPURTENANT TO A CONSERVATION
25 EASEMENT.

26 (3) THIS ARTICLE 30.3 DOES NOT APPLY TO RELOCATION OF AN
27 EASEMENT BY CONSENT.

1 **38-30.3-104. Right of servient estate owner to relocate**

2 **easement.** (1) A SERVICENT ESTATE OWNER MAY RELOCATE AN EASEMENT
3 UNDER THIS ARTICLE 30.3 ONLY IF THE RELOCATION DOES NOT
4 MATERIALLY:

5 (a) LESSEN THE UTILITY OF THE EASEMENT;

6 (b) AFTER THE RELOCATION, INCREASE THE BURDEN ON THE
7 EASEMENT HOLDER IN ITS REASONABLE USE AND ENJOYMENT OF THE
8 EASEMENT;

9 (c) IMPAIR AN AFFIRMATIVE, EASEMENT-RELATED PURPOSE FOR
10 WHICH THE EASEMENT WAS CREATED;

11 (d) DURING OR AFTER THE RELOCATION, IMPAIR THE SAFETY OF
12 THE EASEMENT HOLDER OR ANOTHER ENTITLED TO USE AND ENJOY THE
13 EASEMENT;

14 (e) DURING THE RELOCATION, DISRUPT THE USE AND ENJOYMENT
15 OF THE EASEMENT BY THE EASEMENT HOLDER OR ANOTHER ENTITLED TO
16 USE AND ENJOY THE EASEMENT, UNLESS THE SERVICENT ESTATE OWNER
17 SUBSTANTIALLY MITIGATES THE DURATION AND NATURE OF THE
18 DISRUPTION;

19 (f) IMPAIR THE PHYSICAL CONDITION, USE, OR VALUE OF THE
20 DOMINANT ESTATE OR IMPROVEMENTS ON THE DOMINANT ESTATE; OR

21 (g) IMPAIR THE VALUE OF THE COLLATERAL OF A
22 SECURITY-INTEREST HOLDER OF RECORD IN THE SERVICENT ESTATE OR
23 DOMINANT ESTATE, IMPAIR A REAL PROPERTY INTEREST OF A LESSEE OF
24 RECORD IN THE DOMINANT ESTATE, OR IMPAIR A RECORDED REAL
25 PROPERTY INTEREST OF ANY OTHER PERSON IN THE SERVICENT ESTATE OR
26 DOMINANT ESTATE.

27 **38-30.3-105. Commencement of civil action.** (1) TO OBTAIN AN

1 ORDER TO RELOCATE AN EASEMENT UNDER THIS ARTICLE 30.3, A SERVIENT
2 ESTATE OWNER MUST COMMENCE A CIVIL ACTION.

3 (2) A SERVIENT ESTATE OWNER THAT COMMENCES A CIVIL ACTION
4 UNDER SUBSECTION (1) OF THIS SECTION:

5 (a) SHALL SERVE A SUMMONS AND PETITION ON:

6 (I) THE EASEMENT HOLDER WHOSE EASEMENT IS THE SUBJECT OF
7 THE RELOCATION;

8 (II) A SECURITY-INTEREST HOLDER OF RECORD OF AN INTEREST IN
9 THE SERVIENT ESTATE OR DOMINANT ESTATE;

10 (III) A LESSEE OF RECORD OF AN INTEREST IN THE DOMINANT
11 ESTATE; AND

12 (IV) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2)(b) OF
13 THIS SECTION, ANY OTHER OWNER OF A RECORDED REAL PROPERTY
14 INTEREST IF THE RELOCATION WOULD ENCROACH ON AN AREA OF THE
15 SERVIENT ESTATE OR DOMINANT ESTATE BURDENED BY THE INTEREST;
16 AND

17 (b) IS NOT REQUIRED TO SERVE A SUMMONS AND PETITION ON THE
18 OWNER OF A RECORDED REAL PROPERTY INTEREST IN OIL, GAS, OR
19 MINERALS UNLESS THE INTEREST INCLUDES AN EASEMENT TO FACILITATE
20 OIL, GAS, OR MINERAL DEVELOPMENT.

21 (3) A PETITION UNDER THIS SECTION MUST STATE:

22 (a) THE INTENT OF THE SERVIENT ESTATE OWNER TO SEEK THE
23 RELOCATION;

24 (b) THE NATURE, EXTENT, AND ANTICIPATED DATES OF
25 COMMENCEMENT AND COMPLETION OF THE PROPOSED RELOCATION;

26 (c) THE CURRENT AND PROPOSED LOCATIONS OF THE EASEMENT;

27 (d) THE REASON THE EASEMENT IS ELIGIBLE FOR RELOCATION

1 UNDER SECTION 38-30.3-103;

2 (e) THE REASON THE PROPOSED RELOCATION SATISFIES THE
3 CONDITIONS FOR RELOCATION UNDER SECTION 38-30.3-104; AND

4 (f) THAT THE SERVIENT ESTATE OWNER HAS MADE A REASONABLE
5 ATTEMPT TO NOTIFY THE HOLDERS OF ANY PUBLIC UTILITY EASEMENT,
6 CONSERVATION EASEMENT, OR NEGATIVE EASEMENT ON THE SERVIENT
7 ESTATE OR DOMINANT ESTATE OF THE PROPOSED RELOCATION.

8 (4) AT ANY TIME BEFORE THE COURT RENDERS A FINAL ORDER IN
9 AN ACTION UNDER SUBSECTION (1) OF THIS SECTION, A PERSON SERVED
10 UNDER SUBSECTION (2)(a)(II), (2)(a)(III), OR (2)(a)(IV) OF THIS SECTION
11 MAY FILE A DOCUMENT, IN RECORDABLE FORM, THAT WAIVES ITS RIGHTS
12 TO CONTEST OR OBTAIN RELIEF IN CONNECTION WITH THE RELOCATION OR
13 SUBORDINATES ITS INTERESTS TO THE RELOCATION. ON FILING OF THE
14 DOCUMENT, THE COURT MAY ORDER THAT THE PERSON IS NOT REQUIRED
15 TO ANSWER OR PARTICIPATE FURTHER IN THE ACTION.

16 **38-30.3-106. Required findings - order.** (1) THE COURT MAY
17 NOT APPROVE RELOCATION OF AN EASEMENT UNDER THIS ARTICLE 30.3
18 UNLESS THE SERVIENT ESTATE OWNER:

19 (a) ESTABLISHES THAT THE EASEMENT IS ELIGIBLE FOR
20 RELOCATION UNDER SECTION 38-30.3-103; AND

21 (b) SATISFIES THE CONDITIONS FOR RELOCATION UNDER SECTION
22 38-30.3-104.

23 (2) AN ORDER UNDER THIS ARTICLE 30.3 APPROVING RELOCATION
24 OF AN EASEMENT MUST:

25 (a) STATE THAT THE ORDER IS ISSUED IN ACCORDANCE WITH THIS
26 ARTICLE 30.3;

27 (b) IDENTIFY THE IMMEDIATELY PRECEDING LOCATION OF THE

1 EASEMENT;

2 (c) DESCRIBE IN A LEGALLY SUFFICIENT MANNER THE NEW
3 LOCATION OF THE EASEMENT;

4 (d) DESCRIBE MITIGATION REQUIRED OF THE SERVIENT ESTATE
5 OWNER DURING RELOCATION;

6 (e) REFER IN DETAIL TO THE PLANS AND SPECIFICATIONS OF
7 IMPROVEMENTS NECESSARY FOR THE EASEMENT HOLDER TO ENTER, USE,
8 AND ENJOY THE EASEMENT IN THE NEW LOCATION;

9 (f) SPECIFY CONDITIONS TO BE SATISFIED BY THE SERVIENT ESTATE
10 OWNER TO RELOCATE THE EASEMENT AND CONSTRUCT IMPROVEMENTS
11 NECESSARY FOR THE EASEMENT HOLDER TO ENTER, USE, AND ENJOY THE
12 EASEMENT IN THE NEW LOCATION;

13 (g) INCLUDE A PROVISION FOR PAYMENT BY THE SERVIENT ESTATE
14 OWNER OF EXPENSES UNDER SECTION 38-30.3-107;

15 (h) INCLUDE A PROVISION FOR COMPLIANCE BY THE PARTIES WITH
16 THE OBLIGATION OF GOOD FAITH UNDER SECTION 38-30.3-108; AND

17 (i) INSTRUCT THE SERVIENT ESTATE OWNER TO RECORD AN
18 AFFIDAVIT, IF REQUIRED UNDER SECTION 38-30.3-109 (1), WHEN THE
19 SERVIENT ESTATE OWNER SUBSTANTIALLY COMPLETES RELOCATION.

20 (3) AN ORDER UNDER SUBSECTION (2) OF THIS SECTION MAY
21 INCLUDE ANY OTHER PROVISION CONSISTENT WITH THIS ARTICLE 30.3 FOR
22 THE FAIR AND EQUITABLE RELOCATION OF THE EASEMENT.

23 (4) BEFORE A SERVIENT ESTATE OWNER PROCEEDS WITH
24 RELOCATION OF AN EASEMENT UNDER THIS ARTICLE 30.3, THE OWNER
25 MUST RECORD, IN THE LAND RECORDS OF EACH JURISDICTION WHERE THE
26 SERVIENT ESTATE IS LOCATED, A CERTIFIED COPY OF THE ORDER UNDER
27 SUBSECTION (2) OF THIS SECTION.

1 **38-30.3-107. Expenses of relocation.** (1) A SERVIENT ESTATE
2 OWNER IS RESPONSIBLE FOR REASONABLE EXPENSES OF RELOCATION OF AN
3 EASEMENT UNDER THIS ARTICLE 30.3, INCLUDING THE EXPENSE OF:

4 (a) CONSTRUCTING IMPROVEMENTS ON THE SERVIENT ESTATE OR
5 DOMINANT ESTATE IN ACCORDANCE WITH AN ORDER UNDER SECTION
6 38-30.3-106;

7 (b) DURING THE RELOCATION, MITIGATING DISRUPTION IN THE USE
8 AND ENJOYMENT OF THE EASEMENT BY THE EASEMENT HOLDER OR
9 ANOTHER PERSON ENTITLED TO USE AND ENJOY THE EASEMENT;

10 (c) OBTAINING A GOVERNMENTAL APPROVAL OR PERMIT TO
11 RELOCATE THE EASEMENT AND CONSTRUCT NECESSARY IMPROVEMENTS;

12 (d) PREPARING AND RECORDING THE CERTIFIED COPY REQUIRED BY
13 SECTION 38-30.3-106 (4) AND ANY OTHER DOCUMENT REQUIRED TO BE
14 RECORDED;

15 (e) ANY TITLE WORK REQUIRED TO COMPLETE THE RELOCATION OR
16 REQUIRED BY A PARTY TO THE CIVIL ACTION AS A RESULT OF THE
17 RELOCATION;

18 (f) APPLICABLE PREMIUMS FOR TITLE INSURANCE RELATED TO THE
19 RELOCATION;

20 (g) ANY EXPERT NECESSARY TO REVIEW PLANS AND
21 SPECIFICATIONS FOR AN IMPROVEMENT TO BE CONSTRUCTED IN THE
22 RELOCATED EASEMENT OR ON THE DOMINANT ESTATE AND TO CONFIRM
23 COMPLIANCE WITH THE PLANS AND SPECIFICATIONS REFERRED TO IN THE
24 ORDER UNDER SECTION 38-30.3-106 (2)(e);

25 (h) PAYMENT OF ANY MAINTENANCE COST ASSOCIATED WITH THE
26 RELOCATED EASEMENT THAT IS GREATER THAN THE MAINTENANCE COST
27 ASSOCIATED WITH THE EASEMENT BEFORE RELOCATION; AND

1 (i) OBTAINING ANY THIRD-PARTY CONSENT REQUIRED TO
2 RELOCATE THE EASEMENT.

3 **38-30.3-108. Duty to act in good faith.** AFTER THE COURT,
4 UNDER SECTION 38-30.3-106, APPROVES RELOCATION OF AN EASEMENT
5 AND THE SERVIENT ESTATE OWNER COMMENCES THE RELOCATION, THE
6 SERVIENT ESTATE OWNER, THE EASEMENT HOLDER, AND OTHER PARTIES
7 IN THE CIVIL ACTION SHALL ACT IN GOOD FAITH TO FACILITATE THE
8 RELOCATION IN COMPLIANCE WITH THIS ARTICLE 30.3.

9 **38-30.3-109. Relocation affidavit.** (1) IF AN ORDER UNDER
10 SECTION 38-30.3-106 REQUIRES THE CONSTRUCTION OF AN IMPROVEMENT
11 AS A CONDITION FOR RELOCATION OF AN EASEMENT, RELOCATION IS
12 SUBSTANTIALLY COMPLETE, AND THE EASEMENT HOLDER IS ABLE TO
13 ENTER, USE, AND ENJOY THE EASEMENT IN THE NEW LOCATION, THE
14 SERVIENT ESTATE OWNER SHALL:

15 (a) RECORD, IN THE LAND RECORDS OF EACH JURISDICTION WHERE
16 THE SERVIENT ESTATE IS LOCATED, AN AFFIDAVIT CERTIFYING THAT THE
17 EASEMENT HAS BEEN RELOCATED; AND

18 (b) SEND, BY CERTIFIED MAIL, A COPY OF THE RECORDED
19 AFFIDAVIT TO THE EASEMENT HOLDER AND PARTIES TO THE CIVIL ACTION.

20 (2) UNTIL AN AFFIDAVIT UNDER SUBSECTION (1) OF THIS SECTION
21 IS RECORDED AND SENT, THE EASEMENT HOLDER MAY ENTER, USE, AND
22 ENJOY THE EASEMENT IN THE CURRENT LOCATION, SUBJECT TO THE
23 COURT'S ORDER UNDER SECTION 38-30.3-106 APPROVING RELOCATION.

24 (3) IF AN ORDER UNDER SECTION 38-30.3-106 DOES NOT REQUIRE
25 AN IMPROVEMENT TO BE CONSTRUCTED AS A CONDITION OF THE
26 RELOCATION, RECORDING THE ORDER UNDER SECTION 38-30.3-106 (4)
27 CONSTITUTES RELOCATION.

1 **38-30.3-110. Limited effect of relocation.** (1) RELOCATION OF
2 AN EASEMENT UNDER THIS ARTICLE 30.3:

3 (a) IS NOT A NEW TRANSFER OR A NEW GRANT OF AN INTEREST IN
4 THE SERVIENT ESTATE OR THE DOMINANT ESTATE;

5 (b) IS NOT A BREACH OR DEFAULT OF, AND DOES NOT TRIGGER, A
6 DUE-ON-SALE CLAUSE OR OTHER TRANSFER-RESTRICTION CLAUSE UNDER
7 A SECURITY INSTRUMENT, EXCEPT AS OTHERWISE DETERMINED BY A
8 COURT UNDER LAW OTHER THAN THIS ARTICLE 30.3;

9 (c) IS NOT A BREACH OR DEFAULT OF A LEASE, EXCEPT AS
10 OTHERWISE DETERMINED BY A COURT UNDER LAW OTHER THAN THIS
11 ARTICLE 30.3;

12 (d) IS NOT A BREACH OR DEFAULT BY THE SERVIENT ESTATE
13 OWNER OF A RECORDED DOCUMENT AFFECTED BY THE RELOCATION,
14 EXCEPT AS OTHERWISE DETERMINED BY A COURT UNDER LAW OTHER THAN
15 THIS ARTICLE 30.3;

16 (e) DOES NOT AFFECT THE PRIORITY OF THE EASEMENT WITH
17 RESPECT TO OTHER RECORDED REAL PROPERTY INTERESTS BURDENING THE
18 AREA OF THE SERVIENT ESTATE WHERE THE EASEMENT WAS LOCATED
19 BEFORE THE RELOCATION; AND

20 (f) IS NOT A FRAUDULENT CONVEYANCE OR VOIDABLE
21 TRANSACTION UNDER LAW.

22 (2) THIS ARTICLE 30.3 DOES NOT AFFECT ANY OTHER METHOD OF
23 RELOCATING AN EASEMENT PERMITTED UNDER LAW OF THIS STATE OTHER
24 THAN THIS ARTICLE 30.3.

25 **38-30.3-111. Nonwaiver.** (1) THE RIGHT OF A SERVIENT ESTATE
26 OWNER TO RELOCATE AN EASEMENT UNDER THIS ARTICLE 30.3 MAY NOT
27 BE WAIVED, EXCLUDED, OR RESTRICTED BY AGREEMENT EVEN IF:

1 (a) THE INSTRUMENT CREATING THE EASEMENT PROHIBITS
2 RELOCATION OR CONTAINS A WAIVER, EXCLUSION, OR RESTRICTION OF
3 THIS ARTICLE 30.3;

4 (b) THE INSTRUMENT CREATING THE EASEMENT REQUIRES
5 CONSENT OF THE EASEMENT HOLDER TO AMEND THE TERMS OF THE
6 EASEMENT; OR

7 (c) THE LOCATION OF THE EASEMENT IS FIXED BY THE INSTRUMENT
8 CREATING THE EASEMENT, ANOTHER AGREEMENT, PREVIOUS CONDUCT,
9 ACQUIESCENCE, ESTOPPEL, OR IMPLICATION.

10 **38-30.3-112. Uniformity of application and construction.** IN
11 APPLYING AND CONSTRUING THIS ARTICLE 30.3, CONSIDERATION MUST BE
12 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
13 TO ITS SUBJECT MATTER AMONG THE STATES THAT ENACT IT.

14 **38-30.3-113. Relation to electronic signatures in global and**
15 **national commerce act.** THIS ARTICLE 30.3 MODIFIES, LIMITS, OR
16 SUPERSEDES THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
17 COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY,
18 LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001
19 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
20 DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

21 **38-30.3-114. Transitional provision.** THIS ARTICLE 30.3 APPLIES
22 TO AN EASEMENT CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF
23 THIS ARTICLE 30.3.

24 **SECTION 2. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly; except that, if a referendum petition is filed pursuant

1 to section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2022 and, in such case, will take
5 effect on the date of the official declaration of the vote thereon by the
6 governor.

7 (2) This act applies to civil actions commenced on or after the
8 applicable effective date of this act.