

## CHAPTER 318

## OBSTRUCTIONS IN HIGHWAY RIGHTS-OF-WAY

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**318.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Department*” means the state department of transportation.
2. “*Highway authority*” means the county board of supervisors, in the case of secondary roads, and the department, in the case of primary roads.
3. “*Highway right-of-way*” means the total area of land, whether reserved by public ownership or easement, that is reserved for the operation and maintenance of a legally established public roadway. This area shall be deemed to consist of two portions, a central traveled way including the shoulders and that remainder on both sides of the road, between the outside shoulder edges and the outer boundaries of the right-of-way.
4. “*Obstruction*” means an obstacle in the highway right-of-way or an impediment or hindrance which impedes, opposes, or interferes with free passage along the highway right-of-way, not including utility structures installed in accordance with an approved permit.
5. “*Officer*” means any department employee, county employee, or elected county official.
6. “*Traveled portion of the right-of-way*” means that area of the highway right-of-way, not including the shoulders, on which vehicles normally travel.
7. “*Utility*” means all private, public, municipal, or cooperative owned systems for water, sewer, natural gas, electric, telegraph, telephone, transit, pipeline, heating plants, railroads, bridges, street lights, or traffic control signals.
8. “*Utility structures*” means the aboveground devices, required by a utility, including poles, lines, and wires, used for telephone, electric, natural gas, and other distribution or transmission purposes, and natural gas and electrical substations.

2006 Acts, ch 1097, §1

**318.2 Purpose.**

The purpose of this chapter is to enhance public safety for those traveling the public roads and allow economical maintenance of highway rights-of-way.

2006 Acts, ch 1097, §2

**318.3 Obstructions in highway right-of-way.**

A person shall not place, or cause to be placed, an obstruction within any highway right-of-way. This prohibition includes, but is not limited to, the following actions:

1. The excavation, filling, or making of any physical changes to any part of the highway right-of-way, except as provided under section 318.8.
2. The cultivation or growing of crops within the highway right-of-way.
3. The destruction of plants placed within the highway right-of-way.
4. The placing of fences or ditches within the highway right-of-way.
5. The alteration of ditches, water breaks, or drainage tiles within the highway right-of-way.
6. The placement of trash, litter, debris, waste material, manure, rocks, crops or crop residue, brush, vehicles, machinery, or other items within the highway right-of-way.
7. The placement of billboards, signs, or advertising devices within the highway right-of-way.

8. The placement of any red reflector, or any object or other device which shall cause the effect of a red reflector on the highway right-of-way which is visible to passing motorists.

2006 Acts, ch 1097, §3

[P] See also §318.5, 318.10, and 318.11

#### **318.4 Duty of highway authorities.**

The highway authority shall cause all obstructions in a highway right-of-way under its jurisdiction to be removed.

2006 Acts, ch 1097, §4

#### **318.5 Removal and cost.**

1. An obstruction in a highway right-of-way which constitutes an immediate and dangerous hazard shall, without notice or liability in damages, be removed by the highway authority.

2. An obstruction not constituting an immediate and dangerous hazard shall be removed by the highway authority without liability after forty-eight-hour notice served in the same manner in which an original notice is served, or in writing by certified mail, or in any other manner reasonably calculated to apprise the person responsible for the obstruction that the obstruction will be removed at the person's expense. The highway authority shall assess the removal cost.

3. Upon removal of the obstruction, the highway authority may immediately send a statement of the cost to the person responsible for the obstruction. If within ten days after sending the statement the cost is not paid, the highway authority may institute legal proceedings to collect the cost of removal. The removal costs shall be assessed against the following persons, as applicable:

a. The vehicle owner in the case of an abandoned vehicle.

b. The abutting property owner in the case of a fence, other than a right-of-way line fence, or other temporary obstruction placed within the highway right-of-way by the owner or tenant of the abutting property.

c. The owner or person responsible for placement of any other obstruction.

4. All removals shall be without liability on the part of any officer ordering or effecting such removal.

2006 Acts, ch 1097, §5

[P] Manner of service, R.C.F. 1.302 – 1.315

#### **318.6 Public nuisance.**

1. Any person who places, or causes to be placed, any obstruction in a highway right-of-way as prohibited under section 318.3 is deemed to have created a public nuisance punishable as provided in chapter 657.

2. If a person is found guilty of placing an obstruction within a highway right-of-way, the court may, in addition to any fine imposed, or judgment for damages or costs for which a separate execution may issue, order that the obstruction be abated or removed at the expense of the defendant. The costs for abatement or removal of the obstruction may be entered as a personal judgment against the defendant or assessed against the property where the obstruction occurred, or both.

2006 Acts, ch 1097, §6

#### **318.7 Injunction to restrain obstructions.**

A highway authority may maintain a suit in equity aided by injunction to restrain an obstruction in a highway right-of-way. In such actions, the highway authority may cause the legal boundary lines of the highway to be adjudicated provided all interested parties are impleaded.

2006 Acts, ch 1097, §7

#### **318.8 Permit required.**

A person shall not excavate, fill, or make a physical change within a highway right-of-way without obtaining a permit from the applicable highway authority. At the request of a

permittee, a modification may be granted in the discretion of the highway authority. Work performed under the permit shall be performed in conformity with the specifications prescribed by the highway authority. If the work does not conform to permit specifications, the person shall be notified to make the conforming changes. If after twenty days the changes have not been made, the highway authority may make the necessary changes and immediately send a statement of the cost to the responsible person. If within thirty days after sending the statement the cost is not paid, the highway authority may institute legal proceedings to collect the cost of correction. A violation of the permit specifications shall be considered a violation of section 318.3. A public utility subject to section 306A.3 is exempt from this section.

2006 Acts, ch 1097, §8

### **318.9 Utility structures.**

1. a. A utility structure in a highway right-of-way used for telephone, electric, natural gas, or other distribution or transmission purposes shall be removed by the owner or operator of the transmission lines upon written notice from the highway authority of not less than ninety days, to the owner and operator. The notice shall, with reasonable certainty, specify the utility structure to be removed and shall be served in the same manner that original notices are required to be served. If the owner or operator of the transmission line is unable to remove the utility structure within the required time due to circumstances beyond the control of the owner or operator, the owner or operator shall file a request with the highway authority for an extension of time to complete the work.

b. If the owner or operator of a transmission line needs authorization from the utilities board or other governmental authority to relocate a utility structure or to obtain a new private easement right for relocation of the utility structure, the owner or operator shall request an extension of time within which to remove the utility structure. The highway authority shall grant an extension of time for at least ninety days following the date authorization is granted or the easement right is obtained.

2. Upon written application, the highway authority shall locate the construction of new telephone, electric, or transmission lines or parts of lines, including natural gas pipeline, for the roads within the highway authority's jurisdiction, subject to the jurisdiction of the utilities board under chapters 476, 478, and 479, as follows:

a. The county engineer, or the board of supervisors if a county engineer is not available, shall locate the lines for secondary roads.

b. The department shall locate the lines for primary roads.

3. The department and the county engineer, or the board of supervisors if a county engineer is not available, may designate the location of a utility structure within a highway right-of-way. A utility structure that is not properly located within the highway right-of-way shall be removed within a time prescribed to a designated location. If not so removed, the highway authority may remove the utility structure and recover costs as provided in section 318.5.

2006 Acts, ch 1097, §9

[P] Manner of service, R.C.P. 1.302 – 1.315

### **318.10 Fences.**

1. A fence which constitutes an immediate and dangerous hazard shall, without notice or liability in damages, be removed by the highway authority. In all other cases where a fence is an obstruction in a highway right-of-way, notice in writing of not less than thirty days shall be given to the owner, occupant, or agent of the land enclosed by the fence.

2. The notice shall, with reasonable certainty, specify the line to which the fences shall be removed and shall be served in the same manner that original notices are required to be served, or in writing by certified mail, or in any other manner reasonably calculated to apprise the person responsible for the fence.

3. The department and the county engineer, or the board of supervisors if a county engineer is not available, may designate the location of a fence within a highway right-of-way. A fence that is not properly located within the highway right-of-way shall be removed within

a time prescribed to a designated location. If not so removed, the highway authority may remove the fences and recover costs as provided in section 318.5.

2006 Acts, ch 1097, §10

[P] Manner of service. R.C.P. 1.302 – 1.315

### **318.11 Billboards and signs.**

1. No billboard or advertising sign or device, except a sign or device authorized by law or approved by the highway authority, shall be placed or erected upon a highway right-of-way.

2. A billboard or advertising sign, whether on public or private property, that obstructs the view of any portion of a public highway or of a railway track making the use of the traveled portion of the right-of-way dangerous is a public nuisance and shall be abated. The person responsible for the erection and maintenance of the billboard or sign may be punished as provided in chapter 657.

2006 Acts, ch 1097, §11

### **318.12 Enforcement.**

A highway authority shall enforce the provisions of this chapter by appropriate civil or criminal proceeding or by both such proceedings.

2006 Acts, ch 1097, §12

[P] Nuisances in general, chapter 657