

## HIGHWAY OBSTRUCTIONS AND ENCROACHMENTS; USE OF HIGHWAY BY PUBLIC UTILITIES

### Act 368 of 1925

AN ACT to prohibit obstructions and encroachments on public highways; to provide for the removal of obstructions and encroachments on public highways; to prescribe the conditions under which telegraph, telephone, power, and other public utility companies, cable television companies, broadband companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, power, cable television, or broadband lines, pipe lines, wires, cables, poles, conduits, sewers, and like structures upon, over, across, or under public roads, bridges, streets, and waters; and to prescribe penalties and provide remedies.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972 ;-- Am. 2018, Act 450, Eff. Mar. 21, 2019

*The People of the State of Michigan enact:*

#### **247.171 Encroachments; removal order, service; temporary permit.**

##### Sec. 1.

In every case where a public highway has been or shall be encroached upon by any fence, building, or other encroachment, the commissioner or commissioners having jurisdiction over the road may make an order under his or their hand requiring the owner or occupant of the land through or by which such highway runs, and of which such fence, building, or other encroachment forms a part of the enclosure, to remove such encroachment from such highway within 30 days. A copy of such order shall be served upon such owner or occupant, and every such order shall specify the width of the road, the nature of the encroachment and its location with relation to the center line of the road, and the township, section and fraction thereof in which it may be: Provided, The commissioner or commissioners having the matter in charge may issue temporary permits for fences for the protection of improvements on the adjacent land.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4041 ;-- CL 1948, 247.171

**Former Law:** See section 1 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4401.

#### **247.171a Rights-of-way, bridges, towers, and welcome centers; use to provide travel-related information through electronic technologies.**

##### Sec. 1a.

This act does not prohibit the use of rights-of-way, bridges, towers, welcome centers, and rest stops to provide through the use of electronic technologies, including electronic kiosks, travel-related information or assistance and advance traffic information systems.

**History:** Add. 2002, Act 151, Imd. Eff. Apr. 8, 2002

#### **247.172 Encroachments; removal by commissioner, penalty, expense charged to occupant, collection by tax; limitation.**

##### Sec. 2.

If such encroachment shall not be removed within 30 days after the service of a copy of such order, such owner or occupant shall forfeit the sum of 1 dollar for every day after the expiration of that time during which such encroachment shall continue unremoved, to be recovered in an action of trespass before any justice of the peace of the township, or of an adjoining township in the same county, and the commissioner or commissioners may proceed to remove such encroachment in such manner as to cause the least damage to the property or loss to the owner, and the person at fault shall be liable for the costs and expenses of such removal. The highway commissioner or commissioners shall keep an accurate account of the expenses incurred by him or them in carrying out the provisions hereof and shall present a full and complete statement thereof, verified by oath, together with a full and legal description of the lands entered upon, to the occupants of such lands, requiring the said occupant to pay the amount therein set forth; and in case such owner or occupant shall refuse or neglect to pay the same within 30 days after such notice and demand, the highway commissioner or commissioners shall present a duly verified copy of said statement to the township clerk of the township in which such expense was incurred, and thereupon the amount of all such costs and expenditures shall be certified to the supervisor and shall be assessed and levied on the lands described in the statement of the commissioner or commissioners, and shall be collected in the same manner as other taxes are collected, but no person shall be required to remove any fence under the provisions of this section between the first day of May and the first day of September unless such fence shall have been made within 3 months next before the making of the order for the removal thereof, or interferes with the construction, improvement or maintenance of the road.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4042 ;-- CL 1948, 247.172

**Former Law:** See section 2 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4402.

#### **247.173 Encroachments; denied, notice to commissioner; trespass action.**

##### **Sec. 3.**

If the person upon whom the copy of such order shall be served at any time before the expiration of said 30 days, by a written notice served upon the commissioner or commissioners, deny such encroachment either in whole or in part, or shall deny the existence of a highway where such encroachment is claimed to exist, the commissioner or commissioners, instead of proceeding to remove such encroachment, shall commence an action of trespass against the person upon whom the copy of such order was served, as hereinafter provided.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4043 ;-- CL 1948, 247.173

**Former Law:** See section 2 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4402.

#### **247.174 Trespass action; brought by commissioner.**

##### **Sec. 4.**

Such action shall be brought by the commissioner or commissioners in his or their name of office, claiming nominal damages only in the sum of 6 cents, before any justice of the peace of the township, or of any adjoining township in the same county. The summons in such action may be in the same form, and shall be issued and served, and a jury shall be impaneled when demanded, and all proceedings had as near as may be, as in cases of personal actions of trespass, and full costs shall be taxed by the justice and paid by the losing party, except that if the commissioner or commissioners demand a jury he or they shall not be required to advance the jury fee.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4044 ;-- CL 1948, 247.174

**Former Law:** See sections 3 and 4 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§Å§ 4403 and 4404.

#### **247.175 Trespass action; pleadings and trial.**

Sec. 5.

The declaration in such action shall follow the order required by section 1 of this chapter, in describing such encroachment. The defendant may plead denying the encroachment in whole or in part, and may also deny the existence of a highway where such encroachment is claimed to be, but otherwise the legal existence of the highway shall not be questioned on the trial, and the fact of such encroachment, and where the true line of the highway is, shall only be tried.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4045 ;-- CL 1948, 247.175

**Former Law:** See section 3 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4403.

**247.176 Trespass action; trial and verdict.**

Sec. 6.

The trial of said action may be adjourned for not to exceed 10 days. The jury shall specify in their verdict, if they find the defendant guilty of causing or maintaining the encroachment as charged, and the extent thereof, and if the existence of the highway has been denied, they shall also specify, if they find a highway to exist, whether it be such by public use or by having been regularly laid out and established as a public highway. In the trial of any cause involving the existence of any highway, the burden of proof shall be upon the contestants to show that the same has not been regularly laid out and established as a public highway, or has not become such by public use.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4046 ;-- CL 1948, 247.176

**Former Law:** See section 4 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4404.

**247.177 Trespass action; trial and appeal.**

Sec. 7.

Either party may appeal to the circuit court of the proper county in the same manner that appeals are taken from justices' courts in other cases, but in case of an appeal taken by the commissioner or commissioners, he or they shall not be required to pay the costs or furnish an appeal bond. In case of such appeal, trial shall be had on the issue joined in the justice court, and in case of a judgment in any court against the commissioner or commissioners no execution shall issue, but the judgment shall be certified to the proper supervisor and the amount thereof assessed and collected as in case of judgments against townships and counties.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4047 ;-- CL 1948, 247.177

**Former Law:** See section 5 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4405.

**247.178 Encroachment; removal by commissioner; penalty on owner or occupant for neglect.**

Sec. 8.

In all cases of final judgment against any person for causing or maintaining an encroachment, the commissioner or commissioners may proceed to remove the same within 10 days after such judgment, in the same manner that he may do under section 2 of this chapter, where the encroachment or the existence of the highway is not denied, and the penalty prescribed in section 2 shall attach and continue from and after the expiration of the 30 days mentioned therein, until such encroachment be removed.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4048 ;-- CL 1948, 247.178

**Former Law:** See section 6 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4406.

#### **247.179 Encroachment; removal, interference, penalty.**

Sec. 9.

In all cases of final judgment against any person or persons for causing or maintaining an encroachment or obstruction upon a highway, if such person shall, subsequent to such final judgment, by force or otherwise, interfere with any commissioner or commissioners in the performance of his or their duties under this chapter, or if such person shall replace or cause to be replaced any of the encroachments or obstructions which had been removed, or in any way interfere with the said highway, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding 100 dollars, or by imprisonment in the county jail not exceeding 3 months, or by both such fine and imprisonment, in the discretion of the court.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4049 ;-- CL 1948, 247.179

**Former Law:** See section 6 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4406.

#### **247.180 Loose obstructions, logs, or wood; notice to remove; removal; removal by commissioner, sale; proceeds, disposition.**

Sec. 10.

In case any saw logs, cordwood, or other loose obstruction shall be upon any highway, the commissioner or commissioners may notify the owner, if known, to remove the same within 2 days, and if not so removed, or the owner is unknown, the commissioner or commissioners may remove such obstruction to some convenient place, and if it has a value he or they shall hold it for 30 days subject to the order of the owner upon payment of the necessary expenses of removal, after which time he or they may sell the property removed, and such sale, notice of sale and application of the proceeds thereof shall be the same as is now required by law of constables' sale under execution, and the expense of removal, care of property and sale shall be deducted from the proceeds of sale, and the balance paid to the owner of such property, or deposited with the township clerk to be by him paid to the owner.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4050 ;-- CL 1948, 247.180

**Former Law:** See section 11 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4411.

#### **247.181 Loose obstructions, logs, or wood; no value, compensation for removing.**

Sec. 11.

In case the article or thing have no value or is not of sufficient value to pay for the removal, the commissioner or commissioners shall be entitled to compensation for the expense of removing it, and the expense of removal may be recovered from the owner in the name of the commissioner or commissioners in an action of assumpsit, or the same may be assessed upon any property of such owner and collected in the same manner as is provided in section 2 hereof.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4051 ;-- CL 1948, 247.181

**Former Law:** See section 11 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4411.

## **247.182 Obstructions; road fence if dangerous, penalty.**

Sec. 12.

It shall hereafter be unlawful for any person, firm or corporation to erect a fence along any road, of any material which, by reason of its construction or otherwise, is dangerous in itself or by reason of causing an obstruction to the highway. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than 15 dollars, nor more than 50 dollars, or by imprisonment in the county jail for a period not exceeding 30 days or by both such fine and imprisonment in the discretion of the court.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4052 ;-- CL 1948, 247.182

**Former Law:** See section 13 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4413.

## **247.183 Public utilities, cable television companies, broadband companies, and municipalities; construction and maintenance of structures; consent of governing body; construction and maintenance of utility lines and structures longitudinally within limited access highway rights-of-way; standards; charges; use of revenue; relocation permit; use of electronic devices within limited access and rights-of-way to provide travel-related information.**

Sec. 13.

(1) Except as otherwise provided under subsection (2), telegraph, telephone, power, and other public utility companies, cable television companies, broadband companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines, pipelines, wires, cables, poles, conduits, sewers or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, longitudinally within limited access highway rights-of-way, and across or under any of the waters in this state, with all necessary erections and fixtures for that purpose. A telegraph, telephone, power, and other public utility company, cable television company, broadband company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township through or along which these lines and poles are to be constructed and maintained.

(2) A utility as defined in 23 CFR 645.105 may enter upon, construct, and maintain utility lines and structures, including pipelines, longitudinally within limited access highway rights-of-way and under any public road, street, or other subsurface that intersects any limited access highway at a different grade, in accordance with standards approved by the state transportation commission and the Michigan public service commission that conform to governing federal laws and regulations and is not required to obtain the consent of the governing body of the city, village, or township as required under subsection (1). The standards must require that the lines and structures be underground and be placed in a manner that will not increase highway maintenance costs for the state transportation department. The standards may provide for the imposition of a reasonable charge for longitudinal use of limited access highway rights-of-way. The imposition of a reasonable charge is a governmental function, offsetting a portion of the capital, maintenance, and permitting expense of the limited access highway, and is not a proprietary function. The charge must be calculated to reflect a 1-time installation permit fee that does not exceed \$1,000.00 per mile of longitudinal use of limited access highway rights-of-way with a minimum fee of \$5,000.00 per permit. If the 1-time installation permit fee does not cover the reasonable and actual costs to the department in issuing the permit, the department may assess the utility for the remaining balance. All revenue received under this subsection must be used for capital and maintenance expenses incurred for limited access highways, including the cost of issuing the permit.

(3) If a city, village, township, county, or county road commission or the state transportation department requests or requires an entity holding a license under the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to 484.2603, or holding a franchise under the uniform video services local franchise act, 2006 PA 480, MCL 484.3301 to 484.3315, to relocate facilities, the city, village, township, county, or county road commission or the state transportation department may require the entity to obtain a permit for the relocation of the facilities but shall waive any permit fees including, but not limited to, any permit fee under subsection (2). This subsection does not apply if the request to relocate facilities was due to an entity placing facilities in a location not authorized by a current or previous permit.

(4) A person engaged in the collection of traffic data or the provision of travel-related information or assistance may enter upon, construct, and maintain electronic devices and related structures within limited access and other

highway rights-of-way in accordance with standards approved by the state transportation commission that conform to governing federal laws and regulations. The standards must require that the devices and structures be placed in a manner that will not impede traffic and will not increase maintenance costs for the state transportation department. The state transportation department may enter into agreements to authorize the use of property acquired for or designated as a highway or acquired for or designated for ancillary purposes for the installation, operation, and maintenance of commercial or noncommercial electronic devices and related structures for the collection of traffic data or to assist in providing travel-related information or assistance to motorists who subscribe to travel-related services, the public, or the department. Any revenue generated by the agreements must be deposited in the state trunk line fund established under section 11 of 1951 PA 51, MCL 247.661. The department may accept facilities or in-kind services to be used for public purposes in lieu of, or in addition to, monetary compensation.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4053 ;-- CL 1948, 247.183 ;-- Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972 ;-- Am. 1989, Act 215, Imd. Eff. Nov. 13, 1989 ;-- Am. 1994, Act 306, Imd. Eff. July 14, 1994 ;-- Am. 2002, Act 151, Imd. Eff. Apr. 8, 2002 ;-- Am. 2005, Act 103, Imd. Eff. July 22, 2005 ;-- Am. 2018, Act 450, Eff. Mar. 21, 2019 ;-- Am. 2018, Act 565, Eff. Mar. 28, 2019

#### **247.184 Consent of county or state to construction.**

##### **Sec. 14.**

(1) A person that proposes to construct a telegraph, telephone, power line or cable television line, broadband line, pipe lines, wires, cables, poles, conduits, sewers, or like structures upon, over or under a county road or bridge, shall obtain the consent of the board of county road commissioners before commencing work.

(2) A person that proposes to construct a telegraph, telephone, power line, cable television line, broadband line, pipe line, wires, cables, poles, conduits, sewers or like structures, upon, over or under a state trunk line highway, or upon, over or under any bridge that this state has participated in constructing, shall obtain the consent of the state highway commissioner before commencing work.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4054 ;-- CL 1948, 247.184 ;-- Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972 ;-- Am. 2018, Act 450, Eff. Mar. 21, 2019

#### **247.184a Surveillance of occupied manhole; exceptions; training and duties of second employee.**

##### **Sec. 14a.**

(1) A person shall not enter a manhole being constructed or being used for repairs to underground utilities or remain inside of the opening unless a person is providing alert surveillance, except that a new manhole under construction is exempted if adequate steps are taken to insure safe working conditions.

(2) A person, firm, or corporation authorized or permitted to construct or repair underground facilities by access through a manhole shall provide alert surveillance until the manhole cover is in place and no person remains in the underground facility. The second employee shall be trained in safety and first aid practices and shall be responsible for alert surveillance of the occupied manhole to afford immediate action in emergencies. The second employee could also perform other duties either above grade or in the manhole provided they did not interfere with the employees surveillance duties. This section does not preclude an employee trained in safety practices, in the absence of a second employee, from entering a manhole for a brief period of time not in excess of 20 minutes for purposes such as inspections, housekeeping, taking readings, or similar work, provided adequate steps have been taken to insure safe working conditions.

**History:** Add. 1978, Act 287, Imd. Eff. July 7, 1978

#### **247.185 Paramount rights of public; injury to trees and shrubs; regulation of rights.**

Sec. 15.

The construction and maintenance of all such telegraph, telephone and power lines, cable television lines, pipe lines, wires, cables, poles, conduits, sewers and like structures shall be subject to the paramount right of the public to use such public places, roads, bridges and waters, and shall not interfere with other public uses thereof and nothing herein contained shall be construed to authorize any telegraph, telephone, power, or other public utility company, cable television company or municipality to cut, destroy, or in anywise injure any tree or shrub planted within any highway right of way or along the margin thereof, or purposely left there for shade or ornament or to bridge across any of the waters of this state. Nor shall anything in this section or sections 13 and 14 be construed to grant any rights whatsoever to any public utilities or cable television companies whatsoever, nor to impair anywise any existing rights granted in accordance with the constitution or laws of this state, but shall be construed as a regulation of the exercise of all such rights.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4055 ;-- CL 1948, 247.185 ;-- Am. 1972, Act 268, Imd. Eff. Oct. 11, 1972

**247.186 Public utility; placing poles, fixtures, wires, or cables.**

Sec. 16.

In no case shall any poles or other structures be placed above the ground or road grade between the curb or road shoulder lines, or closer than 15 feet from the center line of the roadway; and in no case shall any wires, cables or other fixtures be placed, or be permitted to remain, at less height than 15 feet above any part of the traveled portion of the road.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4056 ;-- CL 1948, 247.186

**Former Law:** See section 8 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4408.

**247.187 Encroachments; removal, expense of removal by commissioner.**

Sec. 17.

Any person or persons, firm, corporation or municipality violating any of the provisions of this chapter, shall, upon written demand of the commissioner or commissioners having jurisdiction over the road, remove such encroachments, pipe lines, wires, cables, poles, conduits, sewers and like structures. If removal be not made within 30 days thereafter, then the said commissioner or commissioners shall have the right to remove the same and the person, persons, firm or corporation or municipality so violating, shall be liable for the amount of expense incurred in making such removal, to be collected in an action of assumpsit, or assessed upon the property of such person, persons, firm or corporation and collected in the same manner as other taxes are assessed and collected.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4057 ;-- CL 1948, 247.187

**Former Law:** See section 9 of Ch. 7 of Act 283 of 1909, being CL 1915, Å§ 4409.

**247.188 Obstructions to traffic; moving; permit, bond; penalty.**

Sec. 18.

No building, or other obstruction to traffic shall be moved across, upon or along any road without consent being first obtained from the commissioner or commissioners having jurisdiction over the road, and without first executing to such commissioner or commissioners, a bond in an amount sufficient to cover all possible damage to the road on account of such moving, to be determined by the commissioner or commissioners aforesaid, and

conditioned for the payment of all such damage or injury to the road on account of such moving. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed 100 dollars or by imprisonment in the county jail for not to exceed 30 days or by both such fine and imprisonment in the discretion of the court.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4058 ;-- CL 1948, 247.188

**247.189 Repealed. 2020, Act 264, Eff. Mar. 29, 2021.**

**Compiler's Notes:** The repealed section pertained to obstructions to traffic, removal, and penalties.

**247.190 Width of highway; encroachment does not give right to land.**

Sec. 20.

All public highways for which the right of way has at any time been dedicated, given or purchased, shall be and remain a highway of the width so dedicated, given or purchased, and no encroachments by fences, buildings or otherwise which may have been made since the purchase, dedication or gift nor any encroachments which were within the limits of such right of way at the time of such purchase, dedication or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon.

**History:** 1925, Act 368, Eff. Aug. 27, 1925 ;-- CL 1929, 4060 ;-- CL 1948, 247.190

**247.191 Act inapplicable to encroachments and obstructions erected under MCL 257.1701 et seq.**

Sec. 21.

This act does not apply to encroachments and obstructions erected under the city motor vehicle racing act of 1981.

**History:** Add. 1981, Act 176, Imd. Eff. Dec. 14, 1981