

Chapter 47.32 RCW
OBSTRUCTIONS ON RIGHT-OF-WAY

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Removal of disabled vehicle: RCW 46.55.113.

RCW 47.32.010 Order to remove obstructions—Removal by state.

Whenever the department determines and orders that it is necessary for the convenience and safety of public travel and the use of (or construction, alteration, repair, improvement, or maintenance of) any state highway to have the full width of right-of-way of any such state highway or of any portion of the right-of-way of any such state highway free from any and all obstructions, encroachments, and occupancy, other than pole lines, pipe lines, or other structures maintained thereon for public or quasi-public utilities by virtue of a valid franchise, and causes due notice of the order to be given as provided by law, the obstructions, encroachments, and means of occupancy, and any structure, building, improvement, or other means of occupancy of any of the right-of-way of the state highway not removed within the time allowed by law shall become an unlawful property and may be confiscated, removed, and sold or destroyed by the state of Washington according to procedure as provided in this chapter, without any right in anyone to make any claim therefor, either by reason of the removal thereof or otherwise. It is unlawful for any person to keep, maintain, or occupy any such unlawful structure. [1984 c 7 § 176; 1961 c 13 § 47.32.010. Prior: 1937 c 53 § 68; RRS § 6400-68.]

RCW 47.32.020 Notice of order, contents, posting—Return.

Whenever the department determines that the right-of-way of any state highway or any portion of the right-of-way of any state highway shall be made free from any and all obstructions, encroachments, and occupancy it shall forthwith cause to be posted, by a competent person eighteen years of age or over upon any and all structures, buildings, improvements, and other means of occupancy of the state highway or portion thereof, other than property of public or quasi-public utilities, by virtue of a valid franchise, a notice bearing a copy of the order and dated as of the date of posting, to all whom it may concern to vacate the right-of-way and to remove all property from the right-of-way within ten days after the posting of the notice, exclusive of the date of posting. The department shall also require the filing of duplicate affidavits in proof of the postings, showing upon what structures, buildings, improvements, or other means of occupancy of the state highway or portions thereof, respectively, copies of the notice were posted and the date of each such posting, sworn to by the person making the posting. [1984 c 7 § 177; 1971 ex.s. c 292 § 46; 1961 c 13 § 47.32.020. Prior: 1937 c 53 § 69; RRS § 6400-69.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

RCW 47.32.030 Proceedings in rem authorized—Records certified.

In case the property or any portion thereof described in the notice is not removed from the right-of-way within ten days after the date of the posting, exclusive of the date of posting, all such property upon the right-of-way of the state highway or portion thereof becomes unlawful, and the department shall commence proceedings in the name of the state of Washington for the removal thereof by court action. The department shall thereupon prepare two original copies of the order together with two copies each of the notice posted and of the affidavits in proof of posting thereof and duplicate copies of a certificate by the department describing with reasonable certainty and with due reference to the center line stationing of the state highway and to proper legal subdivisional points, each structure, building, improvement, encroachment, or other means of occupancy, other than pole lines, pipe lines, or other structures maintained for public and quasi-public utilities, on the state highway or portion thereof specified in the order that remain upon the right-of-way as aforesaid. Thereupon action shall be commenced in rem for the purpose of removal of all such unlawful property, in the superior court of the county in which the state highway or portion thereof containing the structures is situated, entitled and in the name of the state of Washington as plaintiff and describing each unlawful structure, building, improvement, encroachment, or other means of occupancy, which structures, buildings, improvements, encroachments, or other means of occupancy shall be briefly named as defendants. [1984 c 7 § 178; 1961 c 13 § 47.32.030. Prior: 1937 c 53 § 70; RRS § 6400-70; prior: 1925 ex.s. c 131 § 3; RRS § 6837-3.]

RCW 47.32.040 Complaint, contents. The complaint shall, in such action, describe the property unlawfully remaining upon the right-of-way of the state highway or portion thereof with reasonable certainty

by reference to the certificate of the department, which shall be attached to and filed with the complaint, and pray that an order be entered for the removal from the right-of-way of the state highway or portion thereof of all the described property unlawfully thereon and the disposal thereof. [1984 c 7 § 179; 1961 c 13 § 47.32.040. Prior: 1937 c 53 § 71; RRS § 6400-71; prior: 1925 ex.s. c 131 § 4; RRS § 6837-4.]

RCW 47.32.050 Notice, action, service, contents—Proceedings void when. Service of such complaint shall be given by publication of notice thereof once a week for two successive weeks in a newspaper of general circulation in the county in which such action is commenced, which notice shall briefly state the objects of the action and contain a brief description of each structure, building, improvement, encroachment or other means of occupancy sought to be removed from the right-of-way of the state highway, describe such state highway or portion thereof by number and location and state the time and place when and where the action will come before the court or judge thereof; and a copy of such notice shall also be posted at least ten days before the date of hearing of such action upon each such structure, building, improvement, encroachment or other means of occupancy described therein. Posting may be made by any person qualified to serve legal process. Want of posting upon, or failure to describe any such structure, building, improvement, encroachment or other means of occupancy shall render subsequent proceedings void as to those not posted upon or described but all others described and posted upon shall be bound by the subsequent proceedings. [1961 c 13 § 47.32.050. Prior: 1937 c 53 § 72; RRS 6400-72; prior: 1925 ex.s. c 131 § 5; RRS § 6837-5.]

RCW 47.32.060 Hearing—Findings—Order—Appellate review. At the time and place appointed for hearing upon the complaint, which hearing shall be by summary proceedings, if the court or judge thereof finds that due notice has been given by posting and publication and that the order of the department was duly made, and is further satisfied and finds that the state highway or portion thereof described is legally a state highway having the width of right-of-way specified in the order and that the structure, buildings, improvements, or other means of occupancy of the state highway or portion thereof as stated in the certificate of the department do in fact encroach, or that any portion thereof encroach, upon the state highway right-of-way, the court or judge thereof shall thereupon make and enter an order establishing that each of the structures, buildings, improvements, and other means of occupancy specified in the order is unlawfully maintained within the right-of-way and is subject to confiscation and sale and that they be forthwith confiscated, removed from the right-of-way, and sold, and providing that six days after the entry of the order, a writ shall issue from the court directed to the sheriff of the county, commanding the sheriff to seize and remove from the right-of-way of the state highway each such structure, building, improvement, or other means of occupancy specified in the order forthwith on receipt of a writ based on the order and to take and hold the property in his or her custody for a period of ten days, unless redelivered earlier as provided for by law, and if not then so redelivered to sell the property at public

or private sale and to pay the proceeds thereof into the registry of the court within sixty days after the issuance of the writ, and further in such action, including costs of posting original notices of the department, the costs of posting and publishing notices of hearing as part thereof and any cost of removal, be paid by the clerk to the state treasurer and credited to the motor vehicle fund. The order shall be filed with the clerk of the court and recorded in the minutes of the court, and is final unless appellate review thereof is sought within five days after filing of the order. [2010 c 8 § 10010; 1988 c 202 § 45; 1984 c 7 § 180; 1961 c 13 § 47.32.060. Prior: 1937 c 53 § 73; RRS § 6400-73; prior: 1925 ex.s. c 131 § 7; RRS § 6837-7.]

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 47.32.070 Writ, execution of—Return—Disposition of unsold property. Six days after filing of the order above provided for, if no review thereof be taken to the supreme court or the court of appeals of the state, the clerk of the court shall issue under seal of such court a writ directed to the sheriff of the county in which such court is held commanding him or her to remove, take into custody and dispose of the property described in such order and make returns thereof as provided for such writ by said order. On receipt of such writ it shall be the duty of such sheriff to obey the command thereof, proceed as therein directed and make return within the time fixed by such writ; and said sheriff shall be liable upon his or her official bond for the faithful discharge of such duties. Upon filing of such return the clerk of court shall make payments as provided for in the order of court. If by the sheriff's return any of the property seized and removed pursuant to such writ is returned as unsold and as of no sale value, and if the court or judge thereof be satisfied that such is the fact, the court or judge thereof may make further order directing the destruction of such property, otherwise directing the sheriff to give new notice and again offer the same for sale, when, if not sold, the same may on order of court be destroyed. [2010 c 8 § 10011; 1971 c 81 § 115; 1961 c 13 § 47.32.070. Prior: 1937 c 53 § 74; RRS § 6400-74; prior: 1925 ex.s. c 131 § 8; RRS § 6837-8.]

RCW 47.32.080 Property reclaimed—Bond. At any time within ten days after the removal by virtue of such writ of any such property from the right-of-way of such state highway any person, firm, association or corporation claiming ownership or right of possession of any such property may have the right to demand and to receive the same from the sheriff upon making an affidavit that such claimant owns such property or is entitled to possession thereof, stating on oath the value thereof satisfactory to said sheriff, or which value shall be raised to a value satisfactory to said sheriff, which value shall be indorsed on said affidavit and signed both by said claimant and said sheriff before such sheriff shall be required to accept the bond hereinafter provided for, and deliver to the sheriff a bond with sureties in double the value of such property, conditioned that such claimant will appear in the superior court of such county within ten days after the bond is accepted by the sheriff and make good such claim of title thereto and pay all accrued costs of service of notice to remove, all costs and disbursements to be assessed to such property

and the costs of removal and custody thereof and will hold said sheriff and the state of Washington free from any and all claims on account of such property or will return such property or pay its value to said sheriff, and that such claimant will at all times thereafter keep such property off the right-of-way of the state highway in question. [1961 c 13 § 47.32.080. Prior: 1937 c 53 § 75; RRS § 6400-75; prior: 1925 ex.s. c 131 § 9; RRS § 6837-9.]

RCW 47.32.090 Sureties on bond—Hearing on claim. The sureties on such bond shall justify as in other cases if the sheriff requires it and in case they do not so justify when required, the sheriff shall retain and sell or dispose of the property; and if the sheriff does not require the sureties to justify, he or she shall stand good for their sufficiency. He or she shall date and indorse his or her acceptance upon the bond, and shall return the affidavit, bond and justification, if any, to the office of the clerk of such superior court, whereupon such clerk shall set the hearing thereof as a separate case for trial, in which such claimant shall be the plaintiff and the sheriff and the state of Washington defendants: PROVIDED, That no costs shall, in such case, be assessed against the sheriff or the state of Washington in the event the plaintiff should prevail. [2010 c 8 § 10012; 1961 c 13 § 47.32.090. Prior: 1937 c 53 § 76; RRS § 6400-76; prior: 1925 ex.s. c 131 § 10; RRS § 6837-10.]

RCW 47.32.100 Procedure when claimant wins or loses. If the claimant makes good the claimant's title to or right to possession of the property, upon payment into the registry of the court of the costs of service or posting of original notice issued by the department with respect to the property, the cost of posting notice of hearing in the court and such proportion of the cost of publication of the notice as the court may fix and direct to be entered and the clerk's fees of filing the affidavit and bond as a separate action and of entry of judgment therein at the amounts provided for in civil actions, judgment shall be entered restoring the property to the claimant without any confirmation of title as to any other claimant thereto, relieving the sheriff from necessity of selling the property and making return thereon, and continuing the effect of the bond for a period of six years thereafter for the benefit of such adverse claimants to the property, if any, as may thereafter make claim to the property. If the claimant does not make good such claim of title to or right to possession of the property, judgment shall be rendered against the claimant and the sureties of the claimant for the value of the property as finally shown by the affidavit as above provided for, together with such fees for filing the affidavit and bond as a separate action and for entry of judgment therein and other costs and disbursements as taxed in any civil action including the statutory attorney fee as part thereof, for all of which execution may accordingly issue, and relieving the sheriff from the necessity of selling the property or making return thereon. [1984 c 7 § 181; 1961 c 13 § 47.32.100. Prior: 1937 c 53 § 77; RRS § 6400-77; prior: 1925 ex.s. c 131 § 11; RRS § 6837-11.]

RCW 47.32.110 Merchandising structures—Permit—Removal. It is unlawful for any person to build, erect, establish, operate, maintain, or conduct along and upon the right-of-way of any state highway any platform, box, stand, or any other temporary or permanent device or structure used or to be used for the purpose of receiving, vending, or delivering any milk, milk cans, vegetables, fruits, merchandise, produce, or any other thing or commodity of any nature unless a permit therefor has first been obtained from the department. The department shall in each instance determine where any platform, box, stand, or any other temporary or permanent device or structure shall be permitted. Upon the existence of any such device or structure without a permit having been first obtained, it shall be considered an obstruction unlawfully upon the right-of-way of the state highway, and the department may proceed to effect its removal. [1984 c 7 § 182; 1961 c 13 § 47.32.110. Prior: 1937 c 53 § 78; RRS § 6400-78; 1927 c 309 § 48; RRS § 6362-48; 1923 c 181 § 10; RRS § 6358-1.]

RCW 47.32.120 Business places along highway. Except as provided in RCW 47.04.270, it is unlawful for any person to erect a structure or establishment or maintain a business, the nature of which requires the use by patrons or customers of property adjoining the structure or establishment unless the structure or establishment is located at a distance from the right-of-way of any state highway so that none of the right-of-way thereof is required for the use of the patrons or customers of the establishment. Any such structure erected or business maintained that makes use of or tends to invite patrons to use the right-of-way or any portion thereof of any state highway by occupying it while a patron is a public nuisance, and the department may fence the right-of-way of the state highway to prevent such unauthorized use thereof. [2006 c 324 § 2; 1984 c 7 § 183; 1961 c 13 § 47.32.120. Prior: 1937 c 53 § 79; RRS § 6400-79.]

RCW 47.32.130 Dangerous objects and structures as nuisances—Logs—Abatement—Removal. (1) Whenever there exists upon the right-of-way of any state highway or off the right-of-way thereof in sufficiently close proximity thereto, any structure, device, or natural or artificial thing that threatens or endangers the state highway or portion thereof, or that tends to endanger persons traveling thereon, or obstructs or tends to obstruct or constitutes a hazard to vehicles or persons traveling thereon, the structure, device, or natural or artificial thing is declared to be a public nuisance, and the department is empowered to take such action as may be necessary to effect its abatement. Any such structure, device, or natural or artificial thing considered by the department to be immediately or eminently dangerous to travel upon a state highway may be forthwith removed, and the removal in no event constitutes a breach of the peace or trespass.

(2) Logs dumped on any state highway roadway or in any state highway drainage ditch due to equipment failure or for any other reason shall be removed immediately. Logs remaining within the state highway right-of-way for a period of thirty days shall be confiscated and removed or disposed of as directed by the department. [1984 c 7 § 184; 1961 c 13 § 47.32.130. Prior: 1947 c 206 § 3; 1937 c 53 § 80; Rem. Supp. 1947 § 6400-80.]

Obstructing highway, public nuisance: RCW 9.66.010.

Placing dangerous substances or devices on highway: RCW 9.66.050, 46.61.645, 70A.200.060.

RCW 47.32.140 Railroad grade crossings, obstructions—Hearing.

Each railroad company shall keep its right-of-way clear of all brush and timber in the vicinity of a railroad grade crossing with a state highway for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train or other on-track equipment. The department shall cause brush and timber to be cleared from the right-of-way of a state highway in the proximity of a railroad grade crossing for a distance of one hundred feet from the crossing in such manner as to permit a person upon the highway to obtain an unobstructed view in both directions of an approaching train or other on-track equipment. It is unlawful to erect or maintain a sign, signboard, or billboard, except official highway signs and traffic devices and railroad warning or operating signs, outside the corporate limits of any city or town within a distance of one hundred feet from the point of intersection of the highway and railroad grade crossing unless, after thirty days notice to the Washington utilities and transportation commission and the railroad operating the crossing, the department determines that it does not obscure the sight distance of a person operating a vehicle or train approaching the grade crossing.

When a person who has erected or who maintains such a sign, signboard, or billboard or when a railroad company permits such brush or timber in the vicinity of a railroad grade crossing with a state highway or permits the surface of a grade crossing to become inconvenient or dangerous for passage and who has the duty to maintain it, fails, neglects, or refuses to remove or cause to be removed such brush, timber, sign, signboard, or billboard, or maintain the surface of the crossing, the utilities and transportation commission upon complaint of the department or upon complaint of any party interested, or upon its own motion, shall enter upon a hearing in the manner now provided for hearings with respect to railroad-highway grade crossings, and make and enforce proper orders for the removal of the brush, timber, sign, signboard or billboard, or maintenance of the crossing. However, nothing in this section prevents the posting or maintaining of any legal notice or sign, signal, or traffic device required or permitted to be posted or maintained, or the placing and maintaining thereon of highway or road signs or traffic devices giving directions or distances for the information of the public when the signs are approved by the department. The department shall inspect highway grade crossings and make complaint of the violation of any provisions of this section. [2017 c 87 § 6; 1983 c 19 § 2; 1961 c 13 § 47.32.140. Prior: 1955 c 310 § 7; 1937 c 53 § 81; RRS § 6400-81; prior: 1923 c 129 §§ 1-6; RRS §§ 10510-1—10510-6.]

Railroad grade crossings, obstructions: RCW 36.86.100.

RCW 47.32.150 Approach roads, other appurtenances—Permit. No person, firm, or corporation may be permitted to build or construct on

state highway rights-of-way any approach road or any other facility, thing, or appurtenance not heretofore permitted by law, without first obtaining written permission from the department. [1984 c 7 § 185; 1961 c 13 § 47.32.150. Prior: 1947 c 201 § 1; Rem. Supp. 1947 § 6402-50.]

RCW 47.32.160 Approach roads, other appurtenances—Rules—Construction, maintenance of approach roads. The department is hereby authorized and empowered at its discretion to adopt reasonable rules governing the issuance of permits under RCW 47.32.150 for the construction of any approach road, facility, thing, or appurtenance, upon state highway rights-of-way. The rules shall be designed to achieve and preserve reasonable standards of highway safety and the operational integrity of the state highway facility. Any permit issued may contain such terms and conditions as may be prescribed. All such construction shall be under the supervision of the department and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing, or appurtenance, it shall be maintained at the expense of the applicant and in accordance with the directions of the department. [1987 c 227 § 1; 1984 c 7 § 186; 1961 c 13 § 47.32.160. Prior: 1947 c 201 § 2; Rem. Supp. 1947 § 6402-51.]

RCW 47.32.170 Approach roads, other appurtenances—Removal of installations from right-of-way for default. Upon failure of the applicant to construct or maintain the particular approach road, facility, thing, or appurtenance in accordance with the conditions of the permit and in accordance with the rules of the department, the department may, after the expiration of thirty days following transmittal of a written notice to the applicant, remove all installations upon the right-of-way at the expense of the applicant, which expense may be recovered from the applicant by the department for the state in any court of competent jurisdiction. [1984 c 7 § 187; 1961 c 13 § 47.32.170. Prior: 1947 c 201 § 3; Rem. Supp. 1947 § 6402-52.]