

HIGHWAY RIGHTS-OF-WAY AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill modifies the Rights-Of-Way Act by amending provisions relating to public uses constituting an abandonment and dedication of a highway to the public.

Highlighted Provisions:

This bill:

- ▶ provides that a highway, street, or road, for purposes of determining whether a highway is abandoned and dedicated to the use of the public, does not include an area principally used as a parking lot;
- ▶ repeals the requirement that a barricade be manned for it to be considered an interruption of the continuous use as a public thoroughfare; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-5-104, as last amended by Laws of Utah 2011, Chapter 341

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section **72-5-104** is amended to read:

29 **72-5-104. Public use constituting dedication -- Scope.**

30 (1) As used in this section, "highway," "street," or "road" does not include an area
31 principally used as a parking lot.

32 ~~[(1)]~~ (2) (a) A highway is dedicated and abandoned to the use of the public when it has
33 been continuously used as a public thoroughfare for a period of 10 years.

34 (b) Dedication to the use of the public under Subsection ~~[(1)]~~ (2) does not require an
35 act of dedication or implied dedication by the property owner.

36 ~~[(2)]~~ (3) The requirement of continuous use under Subsection ~~[(1)]~~ (2) is satisfied if the
37 use is as frequent as the public finds convenient or necessary and may be seasonal or follow
38 some other pattern.

39 ~~[(3)]~~ (4) Continuous use as a public thoroughfare under Subsection ~~[(1)]~~ (2) is
40 interrupted only when:

41 (a) the regularly established pattern and frequency of public use for the given road has
42 actually been interrupted to a degree that reasonably puts the traveling public on notice; or

43 (b) for interruptions by use of a ~~[manned]~~ barricade on or after May 10, 2011:

44 (i) the person or entity interrupting the continuous use gives not less than 72 hours
45 advance written notice of the interruption to the highway authority having jurisdiction of the
46 highway, street, or road; and

47 (ii) the ~~[manned]~~ barricade is ~~[maintained]~~ in place for at least 24 consecutive hours.

48 ~~[(4)]~~ (5) Installation of gates and posting of no trespassing signs are relevant forms of
49 evidence but are not solely determinative of whether an interruption has occurred.

50 ~~[(5)]~~ (6) If the highway authority having jurisdiction of the highway, street, or road
51 demands that an interruption cease or that a barrier or barricade blocking public access be
52 removed and the property owner accedes to the demand, the attempted interruption does not
53 constitute an interruption under Subsection ~~[(3)]~~ (4).

54 ~~[(6)]~~ (7) (a) The burden of proving dedication under Subsection ~~[(1)]~~ (2) is on the party
55 asserting the dedication.

56 (b) The burden of proving interruption under Subsection ~~[(3)]~~ (4) is on the party
57 asserting the interruption.

58 ~~[(7)]~~ (8) The dedication and abandonment creates a right-of-way held by the state in

59 accordance with Sections [72-3-102](#), [72-3-104](#), [72-3-105](#), and [72-5-103](#).

60 ~~[(8)]~~ (9) The scope of the right-of-way is that which is reasonable and necessary to
61 ensure safe travel according to the facts and circumstances.

62 ~~[(9)]~~ (10) (a) The provisions of this section apply to any claim under this section for
63 which a court of competent jurisdiction has not issued a final unappealable judgment or order.

64 (b) The Legislature finds that the application of this section:

65 (i) does not enlarge, eliminate, or destroy vested rights; and

66 (ii) clarifies legislative intent in light of Utah Supreme Court rulings in Wasatch
67 County v. Okelberry, 179 P.3d 768 (Utah 2008), Town of Leeds v. Prisdrey, 179 P.3d 757
68 (Utah 2008), and Utah County v. Butler, 179 P.3d 775 (Utah 2008).

Legislative Review Note
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Office of Legislative Research and General Counsel