

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 664

BY SENATOR MAYNARD

[Introduced March 18, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §36-1-25, relating to the establishment of a public easement by prescription
3 on private property; providing that the failure of noticed owners to limit or condition use of
4 the road or path for a continuous period of 20 years may create a public easement;
5 providing for circuit court petition and designation of public easements; providing
6 conditions for granting easement by a court; defining terms, and providing for effective
7 date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-25. Public easement prescription.

1 (a) When the owner of private property has notice of the establishment and continued use
2 of the surface of the private property by members of the public as a road or path for a period of
3 20 or more years and does not condition or limit its use, a public easement for that road or path
4 may be established by court order.

5 (b) Any member of the public who uses the road or path may petition the circuit court in
6 the county where the property exists for the establishment of a public easement to traverse the
7 property. The court may establish the public easement if the court finds the following conditions
8 exist:

9 (1) The property owner has actual or constructive notice of the existence of the path or
10 road and has taken no action to prohibit or condition its use;

11 (2) The court finds that there is regular vehicular use of the road or path by members of
12 the public or local community, and not just by adjacent property owners;

13 (3) That granting the public easement will not result in a substantial reduction in the value
14 of the private property, that the public or local community derives benefit from the use of the road
15 or path, and therefore it is in the public interest to the public or the local community to establish a

16 public easement by prescription.

17 (c) For the purposes of this section, the term:

18 (1) "Public easement" means the right of traverse that has vested in the public or a local
19 community by their regular vehicular use of a road or path through private property to another
20 location;

21 (2) "Constructive notice" means that the property owner, through the exercise of
22 reasonable care, would have knowledge of the creation and use of a road or path that has been
23 used by members of the public to traverse through the property; and

24 (3) "Road or path" means an open way or line of travel that is observable and indicated by
25 physical or other evidence of vehicular use of the property as a thruway across the surface of the
26 property.

27 (d) The provisions of this section are effective July 1, 2021, and are retroactive in
28 calculation of the time period necessary for establishing the easement.

NOTE: The purpose of this bill is to allow the establishment of a prescriptive public easement on private property for roads or paths traversed by the public in vehicles over a period of 20 or more years.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.