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H. B. 2826

(By Delegates Butler, Trecost, J. Nelson, Eldridge, Longstreth, Boggs,
Summers, Wagner, R. Smith, Perdue and Zatezalo)

[Introduced February 19, 2015; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §17-4-49 of the Code of West Virginia, 1931, as amended, relating to access from commercial, industrial or mercantile purposes; requiring that the Commissioner of the Division of Highways approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; designating the method of notifying the public where parking is prohibited on such accesses to and from highways or rights-of-way; providing misdemeanor penalty for violations and a felony penalty for violations resulting in injury or death; and designating this as "Sarah Nott's Law".

Be it enacted by the Legislature of West Virginia:

That §17-4-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. STATE ROAD SYSTEM.

§17-4-49. Access from commercial, etc., property and subdivisions to highways -- Points of commercial, etc.; access to comply; plans, objections and procedures for new

1 **points; review of and changes in existing points; commissioner's preliminary**
2 **determination; criminal penalty for violations; designating as Sarah Nott's Law.**

3 (a) No new points of access to and from state highways from and to real property used or to
4 be used for commercial, industrial or mercantile purposes may be opened, constructed or maintained
5 without first complying with this section and sections forty-seven and forty-eight of this article.
6 Access points opened, constructed or maintained without compliance are unauthorized.

7 (b) Plans for any new point of access shall be submitted to the Commissioner of Highways
8 directly and the following rules shall apply:

9 (1) Notice of the proposed new point of access shall be filed with the commissioner, along
10 with a plan of the proposed new point of access.

11 (2) The commissioner shall review the plan to ensure compliance with the policies stated in
12 section forty-seven of this article and with any regulations issued by the commissioner under section
13 forty-eight of this article.

14 (3) If the commissioner objects to a plan, he or she shall reduce his or her objections to the
15 proposed new point of access to writing and promptly furnish notice of the objection to the owner
16 or owners of the real property affected and advise the owner or owners of the right to demand a
17 hearing on the proposed plan and the objections. If a plan is not objected to within six weeks from
18 the time it is filed with the commissioner, it is considered approved by the commissioner.

19 (4) In any case where the commissioner objects to the proposed new point of access, the
20 owner or owners of the real property affected shall have reasonable opportunity for a hearing on such
21 objections.

22 (c) (1) Existing points of access to and from state highways from and to real property used

1 for commercial, industrial or mercantile purposes may be reviewed by the commissioner to
2 determine whether such points of access comply with the policies stated in section forty-seven of this
3 article and with any regulations issued by the commissioner under section forty-eight of this article.
4 The commissioner may direct reasonable changes in existing points of access to and from state
5 highways from and to property used for commercial, industrial or mercantile purposes if he or she
6 determines from accident reports or traffic surveys that the public safety is seriously affected by such
7 points of access and that such reasonable changes would substantially reduce the hazard to public
8 safety. When such changes require construction, reconstruction or repair, such work shall be done
9 at state expense as any other construction, reconstruction or repair.

10 (2) If the commissioner makes a preliminary determination that any changes should be made,
11 the following rules apply:

12 (A) The commissioner shall reduce his or her preliminary determination to writing and
13 promptly furnish notice of such preliminary determination to the owner or owners of the real
14 property affected and of their right to demand a hearing on the preliminary determination. The
15 commissioner's notice shall include a description of suggested changes suitable for reducing the
16 hazard to the public safety.

17 (B) In any case where the commissioner makes a preliminary determination that any changes
18 should be made, the owner or owners of the real property affected shall have reasonable opportunity
19 for a hearing on the preliminary determination.

20 (d) For business, industrial or mercantile establishments where the driveway entrance or
21 access is more than fifty feet wide and is along a roadway with a speed limit of more than forty-five
22 miles per hour, and there is apparent danger, in the judgment of the commissioner, due to heavy

1 traffic or other circumstances created by vehicles being parked on the state right-of-way, the
2 commissioner shall place no parking signs at each end of the driveway entrance and clearly mark that
3 right-of-way with yellow paint with the words "no parking" and hash marks to clearly notify the
4 public that parking is forbidden. The commissioner may also mark such right-of-ways at specific
5 locations as suggested by county commissions.

6 Any person violating the "no parking" prohibitions of subsection (b) of this section is guilty
7 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100; upon a second
8 conviction within one year thereafter, shall be fined not more than \$200; and upon a third or
9 subsequent conviction, shall be fined not more than \$500: *Provided, That where the no parking*
10 violation results in a serious injury or death to someone other than the person violating this
11 subsection (b), that person violating the no parking prohibition is guilty of a felony and, upon
12 conviction thereof, shall be fined not more than \$1,000 or imprisoned in a state correctional facility
13 not less than one year, or both fined and imprisoned.

14 (e) This shall be known as "Sarah Nott's Law".

NOTE: The purpose of this bill is to require the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes. The bill designates the method of notifying the public where parking is prohibited on such accesses to and from highways or right-of-ways; The bill provides a misdemeanor penalty for violations and felony penalty for violations resulting in injury or death. And, the bill designates this as "Sarah Nott's Law".

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