

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2826

FISCAL
NOTE

2015 Carryover

(BY DELEGATES BUTLER, TRECOST, J. NELSON,
ELDRIDGE, LONGSTRETH, BOGGS, SUMMERS, WAGNER,
R. SMITH, PERDUE AND ZATEZALO)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That §17-4-49 of the Code of West Virginia, 1931, as amended, be amended and
 2 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 points; review of and changes in existing points; commissioner's preliminary determination; criminal penalty for violations; designating as Sarah Nott's Law.

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

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

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

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

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

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

21 (c) (1) Existing points of access to and from state highways from and to real property used
22 for commercial, industrial or mercantile purposes may be reviewed by the commissioner to
23 determine whether such points of access comply with the policies stated in section forty-seven of
24 this article and with any regulations issued by the commissioner under section forty-eight of this
25 article. The commissioner may direct reasonable changes in existing points of access to and
26 from state highways from and to property used for commercial, industrial or mercantile purposes
27 if he or she determines from accident reports or traffic surveys that the public safety is seriously
28 affected by such points of access and that such reasonable changes would substantially reduce
29 the hazard to public safety. When such changes require construction, reconstruction or repair,
30 such work shall be done at state expense as any other construction, reconstruction or repair.

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

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

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

41 (d) For business, industrial or mercantile establishments where the driveway entrance or
42 access is more than fifty feet wide and is along a roadway with a speed limit of more than forty-
43 five miles per hour, and there is apparent danger, in the judgment of the commissioner, due to
44 heavy traffic or other circumstances created by vehicles being parked on the state right-of-way,
45 the commissioner shall place no parking signs at each end of the driveway entrance and clearly
46 mark that right-of-way with yellow paint with the words "no parking" and hash marks to clearly
47 notify the public that parking is forbidden. The commissioner may also mark such right-of-ways at
48 specific locations as suggested by county commissions.

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

57 (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.