

1 **Senate Bill No. 72**

2 (By Senator Beach)

3 _____
4 [Introduced January 11, 2012; referred to the Committee on
5 Transportation and Infrastructure; and then to the Committee on
6 Finance.]
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**FISCAL
NOTE**

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §17-17B-1, §17-17B-2,
13 §17-17B-3, §17-17B-4, §17-17B-5, §17-17B-6, §17-17B-7,
14 §17-17B-8 and §17-17B-9, all relating to Parkways Authority
15 collection enforcement; creating the Safe and Efficient
16 Parkways Act; authorizing the electronic enforcement of
17 collection of tolls; establishing penalties for nonpayment and
18 damage to facilities; keeping certain information collected
19 confidential and not subject to the Freedom of Information
20 Act; allowing limited restricted and confidential access to
21 certain information pursuant to subpoenas and court orders on
22 a strictly confidential basis; granting rule-making authority;
23 and defining terms.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §17-17B-1, §17-17B-2,
4 §17-17B-3, §17-17B-4, §17-17B-5, §17-17B-6, §17-17B-7, §17-17B-8
5 and §17-17B-9, all to read as follows:

6 **ARTICLE 17B. ELECTRONIC TOLL COLLECTION.**

7 **§17-17B-1. Legislative findings and purpose; Short title;**

8 **Definitions.**

9 (a) The Legislature finds and declares that the use of
10 electronic and video technology for parkways projects will benefit
11 the citizens of the state by making parkways projects in the state
12 safer and more efficient, by easing traffic congestion, by
13 improving traffic flow, by furthering economic development and by
14 promoting and enhancing more efficient commercial traffic and the
15 shipment of goods in the state. This article shall be known as and
16 may be cited as the "Safe and Efficient Parkway Act."

17 (b) The following words and phrases have the following
18 meanings when used in this article:

19 (1) "Authority" or "Parkways Authority" means the West
20 Virginia Parkway Authority established by article sixteen-a of
21 this chapter.

22 (2) "Division" means the Division of Highways, except where
23 another division is clearly identified.

1 (3) "Owner" means any person, corporation, firm, partnership,
2 agency, association, organization or lessor who:

3 (A) Is the beneficial or equitable owner of the vehicle;

4 (B) Holds title to the vehicle;

5 (C) Is the registrant or coregistrant of the vehicle
6 registered with the Division of Motor Vehicles or a comparable
7 agency of another jurisdiction or uses the vehicle in its vehicle
8 renting or leasing business; or

9 (D) Is a person entitled to the use and possession of a
10 vehicle subject to a security interest held by another person.

11 (4) "Electronic toll collection" means a system of collecting
12 tolls or charges that has or includes the capability of charging an
13 account holder, owner or operator of a vehicle for the prescribed
14 toll: (A) By electronic transmission of information between a
15 device on a vehicle and a device located in a toll lane or
16 otherwise used at a toll collection facility; or (B) by means of a
17 video collection system.

18 (5) "Parkway project" has the meaning set forth in section
19 five, article sixteen-a, chapter seventeen of this code, and
20 includes a highway project designated under sections five-a and
21 five-b of article seventeen-a, chapter seventeen of this code.

22 (6) "Toll collection facility" means any facility, including
23 all related structures, equipment, systems and software, used in

1 connection with collecting or charging tolls for a parkway project,
2 regardless of whether such facility is located on, over or adjacent
3 to the highway included in the parkway project and regardless of
4 whether the facility has toll lanes with toll booths and toll
5 collection equipment that require passing vehicles to stop or slow
6 down in order to pay a toll or uses additional or different
7 methods, structures, technology and equipment in order to charge or
8 collect tolls from some vehicles passing under or by the facility
9 at highway speeds.

10 (7) "Video collection system" means a vehicle sensor, placed
11 in a location to work in conjunction with a toll collection
12 facility, that automatically produces a videotape or photograph,
13 microphotograph or other recorded image of the front and rear
14 portion, or both front and rear portion, of each vehicle at the
15 time the vehicle is used or operated on the toll facility in order
16 to charge or collect tolls or detect violations of this article.
17 This phrase includes, without limitation: (i) Any other technology
18 which identifies a vehicle by photographic, electronic or other
19 method; and (ii) all related toll invoices, billing notices and
20 other toll collection and violation enforcement efforts made using
21 that kind of technology and information.

22 **§17-17B-2. Electronic toll collection authorized.**

23 Notwithstanding the provisions of article sixteen-a and

1 section five-b, article seventeen-a of this chapter and section
2 seven-a, article six, chapter seventeen-c of this code to the
3 contrary, the collection of tolls and the enforcement of toll
4 violations may be enforced by electronic toll collection as
5 provided in this article and in rules promulgated by authority of
6 this article. In connection with any toll road in this state
7 authorized by section five-b, article seventeen-a of this chapter,
8 and in addition to any powers granted to the Commissioner of
9 Highways in this code, the commissioner, on behalf of the division,
10 is authorized and empowered to enter into cooperative agreements
11 and arrangements with any agency or other entity that handles or
12 assists in the collection or enforcement of tolls on the adjacent
13 state's connecting toll highway, whereby that agency or entity
14 would assist the division in the collection of tolls for the toll
15 roads in this state, or enforcement of toll violations for the toll
16 roads in this state, or both collection of tolls and enforcement of
17 toll violations, utilizing electronic toll collection.

18 **§17-17B-3. Liability of owner.**

19 (a) All owners and operators of motor vehicles must pay the
20 posted toll when on any toll road, highway or bridge authorized by
21 article sixteen-a and section five-b, article seventeen-a of this
22 chapter, either by paying the toll at a toll collection facility on
23 such toll road, highway or bridge at the time of travel thereon or

1 by paying the toll within the time prescribed for toll payment in
2 a toll billing notice or invoice generated by an electronic toll
3 collection system. These tolls may be collected by electronic toll
4 collection. If an owner or operator of a vehicle fails to pay the
5 prescribed toll when due, the owner of the vehicle is in violation
6 of this article.

7 (b) If a violation occurs, the registration plate number of
8 the vehicle as recorded by a video collection system establishes an
9 inference for civil enforcement purposes that the owner of the
10 vehicle was operating the vehicle at that time. The inference may
11 be overcome if the owner:

12 (1) States that he or she was not operating the vehicle at the
13 time of the violation;

14 (2) Identifies who was operating the vehicle; and

15 (3) Supplies the name and address, if known, of the operator
16 of the vehicle.

17 (c) If an action or proceeding is commenced in a county other
18 than that of the residence of the owner, a sworn statement that
19 contains the information set forth in subsection (b) of this
20 section is sufficient to overcome the inference.

21 (d) If the inference is overcome, the identified operator of
22 the vehicle may be found to have violated this article.

23 (e) Nothing in this section prohibits: (i) A law-enforcement

1 officer from issuing a citation to a person in control of a vehicle
2 for a violation of this article or other provisions of law at the
3 time of the violation; or (ii) the division or the Parkways
4 Authority from issuing reminder notices or making other
5 communications directly or indirectly in connection with toll
6 collection efforts or efforts to enforce violations of this
7 article, and the division and authority are authorized to use
8 secondary sources of information and services including, but not
9 limited to, services such as the National Change of Address Service
10 or skip tracing services.

11 **§17-17B-4. Imposition of liability.**

12 If, as evidenced by a video collection system, a violation of
13 this article occurs the following applies:

14 (1) The division or the Parkways Authority, as applicable,
15 will prepare and mail a notice of violation as follows:

16 (A) The notice of violation must be sent by first class mail
17 to each person listed as owner;

18 (B) The notice must be mailed at the address shown on the
19 vehicle registration or at the address of the operator, as
20 applicable.

21 (C) Notice shall be mailed no later than sixty days after:

22 (i) The violation;

23 (ii) The date the inference is overcome by the owner pursuant

1 to subsection (b), section three of this article; or

2 (iii) The date that a lessor provides sufficient information
3 to identify who is the actual owner.

4 (D) Personal service is not required.

5 (E) The notice must contain the following:

6 (i) Information advising the person of the violation, when and
7 where it occurred and that the violation may be contested.

8 (ii) A warning advising the person receiving the notice:

9 (I) That failure to contest in the manner and time provided is
10 an admission of liability;

11 (II) That a default judgment may be entered on the notice;

12 (III) That a violation of this article may subject the owner
13 or operator to civil penalties, administrative fees, administrative
14 hearing costs, and collection fees and costs as provided in this
15 article; and

16 (IV) That failure to pay civil penalties imposed pursuant to
17 this article shall result in denial of an application for a new or
18 renewal of vehicle registration in this state.

19 (F) A manual or automatic record of mailing prepared in the
20 ordinary course of business shall be prima facie evidence of the
21 mailing of notice.

22 (2) If an owner of a vehicle receives a notice of violation of
23 this article for any time period during which the vehicle was

1 reported to a police department as having been stolen, that owner
2 may not be liable if he or she provides a certified copy of the
3 police report on the stolen vehicle to the division or the Parkways
4 Authority within thirty days after receiving the notice of
5 violation.

6 (3) If an owner of a vehicle receives a notice of violation of
7 this article for any time period during which the vehicle was being
8 leased or rented, that owner may not be liable if he or she
9 provides a copy of the rental, lease or other contract document
10 that contains the name and address of the lessee to the division or
11 the Parkways Authority within thirty days after receiving the
12 notice of violation.

13 (4) A certified report or a facsimile report of an authorized
14 agent or employee of the division or the Parkways Authority
15 reporting a violation of section three of this article based upon
16 the recorded information obtained from a video collection system
17 shall be prima facie evidence of the facts contained in the report
18 and is admissible as an official record kept in the ordinary course
19 of business.

20 (5) Notwithstanding any provision in the code to the contrary,
21 videotapes, photographs, microphotographs or other recorded images,
22 written records, reports or facsimiles prepared pursuant to this
23 article are allowed and are for the exclusive use of the division

1 or the Parkways Authority, as applicable, its authorized agents,
2 its employees and law-enforcement officials for the purpose of
3 discharging duties under this article. Except as may be necessary
4 to enforce collection of tolls, civil penalties administrative
5 fees, administrative hearing costs and collection fees and costs
6 from persons to whom a notice of violation is sent as provided in
7 this section, or to whom any billing invoice, reminder letter or
8 other toll collection or violation enforcement communication is
9 sent using electronic toll collections, all images and records
10 created or retained as provided herein that identify individual
11 vehicles or vehicle registration plates must be destroyed within
12 sixty days after payment in full of the applicable toll. The images
13 and records must be destroyed within sixty days after any toll
14 collection or enforcement action under this article involving the
15 images or records has been resolved. This information is not a
16 public record under chapter twenty-nine-b of this code. The
17 information is not discoverable by court order and it may not be
18 offered in evidence in any action or proceeding that is not
19 directly related to a violation of this article or indemnification
20 permitted by this article. However, these restrictions:

21 (A) Do not preclude a court of competent jurisdiction from
22 issuing an order directing that the information be provided to law-
23 enforcement officials if the information is reasonably described

1 and is requested in connection with a criminal law enforcement
2 action;

3 (B) Do not preclude the exchange of the information between
4 any entities with jurisdiction over or that operate an electronic
5 toll collection system in this state or any other jurisdiction
6 within or outside of the United States; and

7 (C) Do not prohibit the use of information exclusively for the
8 purpose of billing electronic toll collection account holders,
9 deducting toll charges from the account of an account holder,
10 enforcing toll collection provisions of this code or enforcing the
11 provisions of an account holder agreement.

12 (6) Civil liability under this article is to be based upon a
13 preponderance of evidence. Persons receiving a notice of violation
14 as provided in this section must respond within thirty days of the
15 date the notice was mailed by:

16 (A) Remitting the amount of the unpaid toll and any
17 administrative fee assessed; or

18 (B) Requesting an administrative hearing in accordance with
19 rules promulgated by authority of this article.

20 In addition to any unpaid tolls and an administrative fee not
21 to exceed \$35 per notification, persons who are found to be liable
22 in an administrative hearing shall be liable for the costs of the
23 hearing, except where the judgment of the hearing examiner is

1 reversed or set aside by a court of competent jurisdiction.

2 Failure to remit the unpaid toll, assessed administrative fees
3 and assessed hearing costs or to request a hearing will result in
4 entry of an administrative default judgment. The commissioner or
5 the authority, as may be the case, may cause notice of the default
6 judgment to be served on the person to whom the notice of violation
7 was sent by certified mail, return receipt requested, advising the
8 person that failure to pay such unpaid tolls, assessed
9 administrative fees and assessed hearing costs within thirty days
10 of receipt of the notice of default judgment will result in denial
11 of an application for a new vehicle registration in this state. If
12 the unpaid tolls, assessed administrative fees, and assessed
13 administrative hearing costs are not paid as provided in the notice
14 of default judgment, or if the judgment is not set aside by a court
15 of competent jurisdiction, the commissioner or the authority may
16 take all lawful actions to collect on the judgment and may notify
17 the Commissioner of the Division of Motor Vehicles, who shall
18 refuse the registration or renewal of registration of the vehicle
19 in this state as provided in section eight of this article.

20 (7) Civil liability under this article is not a conviction
21 and may not be made part of the owner's motor vehicle operating
22 record. It may not be considered in the provision of motor vehicle
23 insurance coverage.

1 (8) A person found to have violated this article is liable
2 for:

3 (A) The amount of the toll evaded or attempted to be evaded;
4 if the amount can be determined or, if it cannot be determined, the
5 minimum toll from the nearest point of entry on the toll facility
6 to the actual point of exit;

7 (B) An administrative fee not to exceed \$35 per notification;

8 (C) Administrative hearing costs assessed under this article;
9 and

10 (D) Reasonable fees and costs of attempting to collect on a
11 judgment under subsection (6) of section four of this article.

12 **§17-17B-5. Placement of electronic toll collection device.**

13 An electronic toll collection device that is properly affixed
14 to the front windshield of a vehicle in accordance with division
15 rules or is mounted elsewhere on a vehicle in accordance with
16 mounting instructions included with the device, or is otherwise
17 used in a manner that makes it operate as intended, is not a
18 violation of section thirty-six, article fifteen, chapter
19 seventeen-c of this code.

20 **§17-17B-6. Privacy of electronic toll collection account holder**
21 **information; subpoenas and court orders and related**
22 **confidentiality protections.**

1 (a) Except as provided in subsection (b) of this section, and
2 notwithstanding any provision in the code to the contrary,
3 videotapes, photographs, microphotographs, other recorded images,
4 written records, reports or facsimiles prepared pursuant to this
5 article are for the exclusive use of the division or the Parkways
6 Authority, as applicable, its authorized agents, its employees and
7 law-enforcement officials for the purpose of discharging duties
8 under this article. This information includes names, addresses,
9 account numbers, account balances, personal financial information,
10 vehicle movement records and other information compiled from
11 transactions with the account holders. The information is not a
12 public record under chapter twenty-nine-b of this code.

13 (b) Notwithstanding subsection (a) of this section,
14 videotapes, photographs, microphotographs, other recorded images,
15 written records, reports or facsimiles prepared and retained
16 pursuant to this article may be discoverable pursuant to a properly
17 issued subpoena or by an order of a court of competent jurisdiction
18 directing that the information be produced in a civil or criminal
19 action or proceeding: *Provided, That* any such information required
20 to be produced in response to a properly issued subpoena or court
21 order shall at all times be confidential and may not be disclosed
22 by the division or the Parkways Authority other than in connection
23 with, and only for the purposes of, the underlying action and

1 subject to compliance with the provisions of subsection (c), (d)
2 and (e) of this section.

3 (c) All information disclosed or produced by the division or
4 the Parkways Authority in accordance with subsection (b) of this
5 section shall be clearly marked "CONFIDENTIAL." Any document or
6 other material which is marked "CONFIDENTIAL" or the contents
7 thereof, may only be used by a party to the underlying action or
8 proceeding or a party's attorney, expert witness, consultant or
9 other person who is actively engaged in working on such action, and
10 only for the purpose of the underlying action or proceeding and not
11 for any other purpose. Prior to a party disclosing any document or
12 other material marked as "CONFIDENTIAL," or the contents thereof,
13 to an attorney, expert witness, consultant or other person actively
14 engaged in working on such action or proceeding, the party making
15 disclosure must first inform such person that he or she is bound by
16 the duty of confidentiality established under this section and such
17 person to whom disclosure is to be made shall sign an
18 acknowledgment that the information is and shall remain at all
19 times confidential and that such person agrees to abide by the duty
20 of confidentiality established under this section.

21 (d) Prior to the production of any information under this
22 section with any court of competent jurisdiction, the division or
23 the Parkways Authority shall file a motion with the court seeking

1 to have the documents sealed and withheld from the public record
2 throughout the action or proceeding.

3 (e) At the conclusion of the action or proceeding, all
4 documents and other material marked as "CONFIDENTIAL" and any
5 copies thereof, and all related notes and memoranda, shall promptly
6 be returned to the division or the Parkways Authority, as
7 applicable, and in any event, within thirty days following the
8 conclusion of the action or proceeding.

9 **§17-17B-7. Evading tolls; damaging, interfering with or**
10 **obstructing video toll collection or**
11 **infrastructure; violations and penalties.**

12 (a) Any person who knowingly or intentionally evades or seeks
13 to evade the payment of tolls, rents, fees or charges established
14 by the division or the Parkways Authority for the use of any toll
15 facility under the jurisdiction of those agencies is guilty of a
16 misdemeanor and, upon conviction, shall be fined not more than \$50.

17 (b) Any person who deliberately damages, defaces or obstructs
18 a video collection system infrastructure or power supply with the
19 intent to interfere with or alter or prevent the functioning of the
20 system or electronic toll collection, or who obstructs a license
21 plate or causes it to be unreadable by the video collection system,
22 or who causes a transponder or other device used in an electronic
23 toll system to be inoperable or unreadable thereby causing no toll

1 to be charged, is guilty of a misdemeanor and, in addition to any
2 other penalties provided by the code, and upon conviction, shall be
3 fined not more than \$500 and, if applicable, is additionally liable
4 to the division or the Parkways Authority for all costs to repair
5 the damaged, defaced or obstructed property.

6 **§17-17B-8. Nonrenewal of vehicle registration; effect of civil or**
7 **criminal violation.**

8 Upon receipt of a notice from the commissioner or the
9 authority that a vehicle owner or operator failed to pay tolls and
10 costs in accordance with a notice of default judgment, the
11 Commissioner of Motor Vehicles shall refuse to register, or renew
12 the registration of any vehicle of which the person committing the
13 violation is a registered owner or coowner until such time as the
14 Commissioner of Motor vehicles receives notice from the
15 commissioner or authority that all fees, penalties and costs
16 imposed on that person pursuant to this article have been paid or
17 satisfied.

18 **§17-17B-9. Rule-making authority.**

19 The Commissioner of the Division of Motor Vehicles, the
20 Commissioner of Highways and the Parkways Authority shall propose
21 rules for legislative approval in accordance with the provisions of
22 article three, chapter twenty-nine-a of the code to implement this
23 article.

NOTE: The purpose of this article is to authorize electronic collection and enforcement of tolls. The bill establishes penalties for nonpayment and damage to facilities. The bill keeps certain information collected confidential and not subject to the Freedom of Information Act. The bill allows certain limited restricted and confidential access to certain information pursuant to subpoenas and court orders on a strictly confidential basis. The bill also grants rule-making authority and defines terms.

This article is new; therefore, strike-throughs and underscoring have been omitted.