

1 **H. B. 2785**

2
3 (By Delegates Staggers, L. Phillips, Barill
4 and Boggs)

5 (By Request of the Department of Transportation)

6 [Introduced March 1, 2013; referred to the
7 Committee on Roads and Transportation then the
8 Judiciary.]
9

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

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

24 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §17-17B-1, §17-17B-2,
2 §17-17B-3, §17-17B-4, §17-17B-5, §17-17B-6, §17-17B-7, §17-17B-8
3 and §17-17B-9, all to read as follows:

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

5 **§17-17B-1. Legislative findings and purpose; Short title;**

6 **Definitions.**

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

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

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

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

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

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

1 (B) Holds title to the vehicle;

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

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

8 (4) "Electronic toll collection" means a system of collecting
9 tolls or charges that has or includes the capability of charging an
10 account holder, owner or operator of a vehicle for the prescribed
11 toll:

12 (A) By electronic transmission of information between a device
13 on a vehicle and a device located in a toll lane or otherwise used
14 at a toll collection facility; or

15 (B) By means of a video collection system.

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

21 (6) "Toll collection facility" means any facility, including
22 all related structures, equipment, systems and software, used in
23 connection with collecting or charging tolls for a parkway project,
24 regardless of whether the facility is located on, over or adjacent

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

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

20 **§17-17B-2. Electronic toll collection authorized.**

21 Notwithstanding the provisions of article sixteen-a and
22 section five-b, article seventeen-a of this chapter and section
23 seven-a, article six, chapter seventeen-c of this code to the
24 contrary, the collection of tolls and the enforcement of toll

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

15 **§17-17B-3. Liability of owner.**

16 (a) All owners and operators of motor vehicles must pay the
17 posted toll when on any toll road, highway or bridge authorized by
18 article sixteen-a and section five-b, article seventeen-a of this
19 chapter, either by paying the toll at a toll collection facility on
20 the toll road, highway or bridge at the time of travel thereon or
21 by paying the toll within the time prescribed for toll payment in
22 a toll billing notice or invoice generated by an electronic toll
23 collection system. These tolls may be collected by electronic toll
24 collection. If an owner or operator of a vehicle fails to pay the

1 prescribed toll when due, the owner of the vehicle is in violation
2 of this article.

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

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

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

11 (3) Supplies the name and address, if known, of the operator
12 of the vehicle.

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

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

19 (e) Nothing in this section prohibits: (i) A law-enforcement
20 officer from issuing a citation to a person in control of a vehicle
21 for a violation of this article or other provisions of law at the
22 time of the violation; or (ii) the division or the Parkways
23 Authority from issuing reminder notices or making other
24 communications directly or indirectly in connection with toll

1 collection efforts or efforts to enforce violations of this
2 article, and the division and authority are authorized to use
3 secondary sources of information and services including, but not
4 limited to, services such as the National Change of Address Service
5 or skip tracing services.

6 **§17-17B-4. Imposition of liability.**

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

9 (1) The Division or the Parkways Authority, as applicable,
10 will prepare and mail a notice of violation as follows:

11 (A) The notice of violation shall be sent by first class mail
12 to each person listed as owner;

13 (B) The notice shall be mailed to the address shown on the
14 vehicle registration or at the address of the operator, as
15 applicable.

16 (C) Notice shall be mailed no later than one hundred twenty
17 days after:

18 (i) The violation;

19 (ii) The date the inference is overcome by the owner pursuant
20 to subsection (b), section three of this article; or

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

23 (D) Personal service is not required.

24 (E) The notice shall contain the following:

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

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

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

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

7 (III) That a violation of this article may subject the owner
8 or operator to civil penalties, administrative fees, administrative
9 hearing costs, and collection fees and costs as provided in this
10 article; and

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

14 (F) A manual or automatic record of mailing prepared in the
15 ordinary course of business is prima facie evidence of the mailing
16 of notice.

17 (2) If an owner of a vehicle receives a notice of violation of
18 this article for any time period during which the vehicle was
19 reported to a police department as having been stolen, that owner
20 may not be liable if he or she provides a certified copy of the
21 police report on the stolen vehicle to the division or the Parkways
22 Authority within thirty days after receiving the notice of
23 violation.

24 (3) If an owner of a vehicle receives a notice of violation of

1 this article for any time period during which the vehicle was being
2 leased or rented, that owner may not be liable if he or she
3 provides a copy of the rental, lease or other contract document
4 that contains the name and address of the lessee to the division or
5 the Parkways Authority within thirty days after receiving the
6 notice of violation.

7 (4) A certified report or a facsimile report of an authorized
8 agent or employee of the Division or the Parkways Authority
9 reporting a violation of section three of this article based upon
10 the recorded information obtained from a video collection system is
11 prima facie evidence of the facts contained in the report and is
12 admissible as an official record kept in the ordinary course of
13 business.

14 (5) Notwithstanding any provision in the code to the contrary,
15 videotapes, photographs, microphotographs or other recorded images,
16 written records, reports or facsimiles prepared pursuant to this
17 article are allowed and are for the exclusive use of the division
18 or the Parkways Authority, as applicable, its authorized agents,
19 its employees and law-enforcement officials for the purpose of
20 discharging duties under this article. Except as may be necessary
21 to enforce collection of tolls, civil penalties administrative
22 fees, administrative hearing costs and collection fees and costs
23 from persons to whom a notice of violation is sent as provided in
24 this section, or to whom any billing invoice, reminder letter or

1 other toll collection or violation enforcement communication is
2 sent using electronic toll collections, all images and records
3 created or retained as provided herein that identify individual
4 vehicles or vehicle registration plates must be destroyed within
5 sixty days after payment in full of the applicable toll. The images
6 and records must be destroyed within sixty days after any toll
7 collection or enforcement action under this article involving the
8 images or records has been resolved. This information may not be
9 considered a public record under chapter twenty-nine-b of this
10 code. The information is not discoverable by court order and it
11 may not be offered in evidence in any action or proceeding that is
12 not directly related to a violation of this article or
13 indemnification permitted by this article. However, these
14 restrictions:

15 (A) Do not preclude a court of competent jurisdiction from
16 issuing an order directing that the information be provided to law-
17 enforcement officials if the information is reasonably described
18 and is requested in connection with a criminal law-enforcement
19 action;

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

24 (C) Do not prohibit the use of information exclusively for the

1 purpose of billing electronic toll collection account holders,
2 deducting toll charges from the account of an account holder,
3 enforcing toll collection provisions of this code or enforcing the
4 provisions of an account holder agreement.

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

9 (A) Remitting the amount of the unpaid toll and any
10 administrative fee assessed; or,

11 (B) Requesting an administrative hearing in accordance with
12 rules promulgated by authority of this article. In addition to any
13 unpaid tolls and an administrative fee not to exceed \$35 per
14 notification for each separate violation, persons who are found to
15 be liable in an administrative hearing are liable for the costs of
16 the hearing, except where the judgment of the hearing examiner is
17 reversed or set aside by a court of competent jurisdiction.

18 Failure to remit the unpaid toll, assessed administrative fees
19 and assessed hearing costs or to request a hearing will result in
20 entry of an administrative default judgment. The division or the
21 authority, as may be the case, may cause notice of the default
22 judgment to be served on the person to whom the notice of violation
23 was sent by certified mail, return receipt requested, advising the
24 person that failure to pay the unpaid tolls, assessed

1 administrative fees and assessed hearing costs within thirty days
2 of receipt of the notice of default judgment will result in denial
3 of an application for a new vehicle registration in this state. If
4 the unpaid tolls, assessed administrative fees, and assessed
5 administrative hearing costs are not paid as provided in the notice
6 of default judgment, or if the judgment is not set aside by a court
7 of competent jurisdiction, the division or the authority may take
8 all lawful actions to collect on the judgment and may notify the
9 Commissioner of the Division of Motor Vehicles, who shall refuse
10 the registration or renewal of registration of the vehicle in this
11 state as provided in section eight of this article.

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

16 (8) A person found to have violated this article is liable
17 for:

18 (A) The amount of the toll evaded or attempted to be evaded;
19 if the amount can be determined or, if it cannot be determined, the
20 minimum toll from the nearest point of entry on the toll facility
21 to the actual point of exit;

22 (B) An administrative fee not to exceed \$35 per notification
23 for each separate violation;

24 (C) Administrative hearing costs assessed under this article;

1 and

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

4 **§17-17B-5. Placement of electronic toll collection device.**

5 An electronic toll collection device that is properly affixed
6 to the front windshield of a vehicle in accordance with division or
7 authority rules or is mounted elsewhere on a vehicle in accordance
8 with mounting instructions included with the device, or is
9 otherwise used in a manner that makes it operate as intended, is
10 not a violation of section thirty-six, article fifteen, chapter
11 seventeen-c of this code.

12 **§17-17B-6. Privacy of electronic toll collection account holder**
13 **information; subpoenas and court orders and related**
14 **confidentiality protections.**

15 (a) Except as provided in subsection (b) of this section, and
16 notwithstanding any provision in the code to the contrary,
17 videotapes, photographs, microphotographs, other recorded images,
18 written records, reports or facsimiles prepared pursuant to this
19 article are for the exclusive use of the division or the Parkways
20 Authority, as applicable, its authorized agents, its employees and
21 law-enforcement officials for the purpose of discharging duties
22 under this article. This information includes names, addresses,
23 account numbers, account balances, personal financial information,

1 vehicle movement records and other information compiled from
2 transactions with the account holders. The information may not be
3 considered a public record under chapter twenty-nine-b of this
4 code.

5 (b) Notwithstanding subsection (a) of this section,
6 videotapes, photographs, microphotographs, other recorded images,
7 written records, reports or facsimiles prepared and retained
8 pursuant to this article may be discoverable pursuant to a properly
9 issued subpoena or by an order of a court of competent jurisdiction
10 directing that the information be produced in a civil or criminal
11 action or proceeding: Provided, That any such information required
12 to be produced in response to a properly issued subpoena or court
13 order shall at all times be confidential and may not be disclosed
14 by the division or the Parkways Authority other than in connection
15 with, and only for the purposes of, the underlying action and
16 subject to compliance with the provisions of subsection (c), (d)
17 and (e) of this section.

18 (c) All information disclosed or produced by subsection (b) of
19 this section shall be clearly marked "CONFIDENTIAL." Any document
20 or other material which is marked "CONFIDENTIAL" or the contents
21 thereof, may only be used by a party to the underlying action or
22 proceeding or a party's attorney, expert witness, consultant or
23 other person who is actively engaged in working on the action, and
24 only for the purpose of the underlying action or proceeding and not

1 for any other purpose. Prior to a party disclosing any document or
2 other material marked as "CONFIDENTIAL," or the contents thereof,
3 to an attorney, expert witness, consultant or other person actively
4 engaged in working on such action or proceeding, the party making
5 disclosure must first inform the person that he or she is bound by
6 the duty of confidentiality established under this section and the
7 person to whom disclosure is to be made shall sign an
8 acknowledgment that the information is and shall remain at all
9 times confidential and that the person agrees to abide by the duty
10 of confidentiality established under this section.

11 (d) Prior to the production of any information under this
12 section with any court of competent jurisdiction, the division or
13 the Parkways Authority shall file a motion with the court seeking
14 to have the documents sealed and withheld from the public record
15 throughout the action or proceeding.

16 (e) At the conclusion of the action or proceeding, all
17 documents and other material marked as "CONFIDENTIAL" and any
18 copies thereof, and all related notes and memoranda, shall promptly
19 be returned to the division or the Parkways Authority, as
20 applicable, and in any event, within thirty days following the
21 conclusion of the action or proceeding.

22 **§17-17B-7. Evading tolls; damaging, interfering with or**
23 **obstructing video toll collection or**
24 **infrastructure; violations and penalties.**

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

6 (b) Any person who deliberately damages, defaces or obstructs
7 a video collection system infrastructure or power supply with the
8 intent to interfere with or alter or prevent the functioning of the
9 system or electronic toll collection, or who obstructs a license
10 plate or causes it to be unreadable by the video collection system,
11 or who causes a transponder or other device used in an electronic
12 toll system to be inoperable or unreadable thereby causing no toll
13 to be charged, is guilty of a misdemeanor and, in addition to any
14 other penalties provided by the code, and upon conviction, shall be
15 fined not more than \$500 and, if applicable, is additionally liable
16 to the division or the Parkways Authority for all costs to repair
17 the damaged, defaced or obstructed property.

18 **§17-17B-8. Nonrenewal of vehicle registration; effect of civil or**
19 **criminal violation.**

20 Upon receipt of a notice from the division or the authority
21 that a vehicle owner or operator failed to pay tolls and costs in
22 accordance with a notice of default judgment, the Commissioner of
23 the Division of Motor Vehicles shall refuse to register, or renew
24 the registration of any vehicle of which the person committing the

1 violation is a registered owner or coowner until such time as the
2 Commissioner of the Division of Motor Vehicles receives notice from
3 the division or authority that all fees, penalties and costs
4 imposed on that person pursuant to this article have been paid or
5 satisfied.

6 **§17-17B-9. Rule-making authority.**

7 The Commissioner of the Division of Motor Vehicles, the
8 Commissioner of Highways on behalf of the division and the Parkways
9 Authority shall propose rules for legislative approval in
10 accordance with the provisions of article three, chapter
11 twenty-nine-a of the code to implement this article.

NOTE: The purpose of this bill is to authorize electronic collection and enforcement of tolls. It establishes penalties for nonpayment and damage to facilities. It 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, it has been completely underscored.