

1 **ENGROSSED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4156**

5
6 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

7 [By Request of the Executive]

8 (Originating in the Committee on the Judiciary)

9 [February 21, 2014]

10

11 A BILL to amend the Code of West Virginia, 1931, as amended, by
12 adding thereto a new article, designated §17-16D-1, §17-16D-2,
13 §17-16D-3, §17-16D-4, §17-16D-5, §17-16D-6, §17-16D-7,
14 §17-16D-8, §17-16D-9, §17-16D-10, §17-16D-11, §17-16D-12, §17-
15 16D-13 and §17-16D-14, all relating to electronic collection
16 and enforcement of tolls; defining terms; authorizing the West
17 Virginia Parkways Authority to electronically collect and
18 enforce tolls; establishing liability of the registered owner
19 for violation as a rebuttable inference; providing civil
20 penalties for nonpayment of tolls; providing exceptions when
21 the registered owner is a lessor; providing that certain
22 information collected is confidential and not subject to the
23 Freedom of Information Act; allowing limited restricted and
24 confidential access to certain information pursuant to
25 subpoenas and court orders on a strictly confidential basis;

1 providing criminal penalties for damage to facilities;
2 providing for nonrenewal of vehicle registration; authorizing
3 reciprocal agreements with other jurisdictions for
4 enforcement; and granting rule-making authority.

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

6 That the Code of West Virginia, 1931, as amended, be amended
7 by adding thereto a new article, designated §17-16D-1, §17-16D-2,
8 §17-16D-3, §17-16D-4, §17-16D-5, §17-16D-6, §17-16D-7, §17-16D-8,
9 §17-16D-9, §17-16D-10, §17-16D-11, §17-16D-12, §17-16D-13, and §17-
10 16D-14, all to read as follows:

11 **ARTICLE 16D. ELECTRONIC TOLL COLLECTION.**

12 **§17-16D-1. Legislative findings and purpose.**

13 The Legislature finds and declares that the use of electronic
14 and video technology for collection of tolls on roads, highways and
15 bridges will benefit the citizens of this state by making toll
16 roads, highways and bridges in this state safer and collection of
17 tolls more efficient, by easing traffic congestion, by improving
18 traffic flow, by furthering economic development and by promoting
19 and enhancing more efficient commercial traffic and the shipment of
20 goods in the state. This article shall be known as and may be
21 cited as the "Electronic Toll Collection Act."

22 **§17-16D-2. Definitions.**

23 The following words and phrases have the following meanings
24 when used in this article:

25 (1) "Authority" or "Parkways Authority" means the West

1 Virginia Parkways Authority established by article sixteen-a of
2 this chapter.

3 (2) "Division" means the Division of Highways of the West
4 Virginia Department of Transportation, except where another
5 division is clearly identified.

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

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

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

14 (4) "Owner" means any person in whose name a motor vehicle is
15 registered under:

16 (A) Article three, chapter seventeen-a of this code;

17 (B) The laws of another state;

18 (C) The laws of a foreign county; or

19 (D) The International Registration Plan.

20 (5) "Toll collection facility" or "toll facility" means any
21 facility, including all related structures, equipment, systems and
22 software, used in connection with collecting or charging tolls for
23 a toll road, highway or bridge in this state, regardless of whether
24 the facility is located on, over or adjacent to the toll road,
25 highway or bridge and regardless of whether the facility has toll
26 lanes with toll booths and toll collection equipment that require

1 passing vehicles to stop or slow down in order to pay a toll or
2 uses additional or different methods, structures, technology and
3 equipment in order to charge or collect tolls from some vehicles
4 passing under or by the facility at highway speeds: *Provided, That*
5 any such facility shall have the ability to accept cash for the
6 payment of tolls.

7 (6) "Toll road" means any road, highway or bridge in this
8 state upon which there is a toll administered, collected and
9 enforced by the Parkways Authority or on behalf of the Authority.

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 or 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: (A) Any other technology
18 which identifies a vehicle by photographic, electronic or other
19 method; and (B) all related toll invoices, billing notices and
20 other toll collection and violation enforcement efforts made using
21 any such technology and information.

22 **§17-16D-3. Electronic toll collection authorized.**

23 Notwithstanding the provisions of article sixteen-a and
24 section five-b, article seventeen-a of this chapter and section
25 seven-a, article six, chapter seventeen-c of this code to the
26 contrary, the collection of tolls for the use of roads, highways

1 and bridges and the enforcement of toll violations may be enforced
2 by electronic toll collection as provided in this article and in
3 rules promulgated by authority of this article: *Provided*, That the
4 application of this article should not apply to:

5 (1) Future highway construction provided for in the Division
6 of Highways' Statewide Transportation Improvement Plan at the time
7 of the enactment of this article; and

8 (2) Existing toll roads.

9 **§17-16D-4. Advanced warning signs.**

10 Before enforcing a toll, the Parkways Authority, or the
11 operator of the toll facility, must install advance warning signs
12 along the toll road, highway or bridge preceding the location at
13 which the toll collection facility is located.

14 **§17-16D-5. Imposition of liability for payment of tolls.**

15 (a) If, as evidenced by a video collection system, a violation
16 of this article occurs, the following applies:

17 (1) The Parkways Authority will prepare and mail a notice of
18 violation as follows:

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

21 (B) The notice shall be mailed, postage prepaid, to the
22 address shown on the vehicle registration, which is presumed to be
23 the last known address of the owner.

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

26 (i) The violation; or

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

3 (D) Personal service is not required.

4 (E) The notice shall contain the following:

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

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

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

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

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

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

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

22 (b) If an owner of a vehicle receives a notice of violation of
23 this article for any time period during which the vehicle was
24 reported to a police department as having been stolen, that owner
25 may not be held liable for the violation under this article if he
26 or she provides a certified copy of the police report on the stolen

1 vehicle to the Parkways Authority within thirty days after
2 receiving the notice of violation.

3 (c) A certified report or a facsimile report of an authorized
4 agent or employee of the Parkways Authority reporting a violation
5 of section six of this article based upon the recorded information
6 obtained from electronic toll collection system is prima facie
7 evidence of the facts contained in the report and is admissible as
8 an official record kept in the ordinary course of business.

9 (d) Notwithstanding any provision in the code to the contrary,
10 videotapes, photographs, microphotographs or other recorded images,
11 written records, reports or facsimiles prepared pursuant to this
12 article are allowed and are for the exclusive use of the Parkways
13 Authority, its authorized agents, its employees and law-enforcement
14 officials for the purpose of discharging duties under this article.
15 Except as may be necessary to enforce collection of tolls, civil
16 penalties, administrative fees, administrative hearing costs and
17 collection fees and costs from persons to whom a notice of
18 violation is sent as provided in this section, or to whom any
19 billing invoice, reminder letter or other toll collection or
20 violation enforcement communication is sent using information from
21 the electronic toll collection system, all images and records
22 created or retained as provided herein that identify individual
23 vehicles or vehicle registration plates, must be destroyed within
24 sixty days after payment in full of the applicable toll or after
25 any toll collection or enforcement action under this article
26 involving the images or records has been resolved. This information

1 may not be considered a public record under chapter twenty-nine-b
2 of this code. The information is not discoverable by court order
3 and it may not be offered in evidence in any action or proceeding
4 that is not directly related to a violation of this article or
5 indemnification permitted by this article. However, these
6 restrictions:

7 (1) Do not preclude a court of competent jurisdiction from
8 issuing an order directing that the information be provided to
9 law-enforcement officials if the information is reasonably
10 described and is requested in connection with a criminal
11 law-enforcement action;

12 (2) Do not preclude the exchange of the information between
13 any entities with jurisdiction over or that operate an electronic
14 toll collection system in this state or any other jurisdiction
15 within or outside of the United States; and

16 (3) Do not prohibit the use of information exclusively for the
17 purpose of billing electronic toll collection account holders,
18 deducting toll charges from the account of an account holder,
19 enforcing toll collection provisions of this code or enforcing the
20 provisions of an account holder agreement.

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

25 (1) Remitting the amount of the unpaid toll and any
26 administrative fee assessed; or

1 (2) Requesting an administrative hearing in accordance with
2 rules promulgated by Authority of this article.

3 (f) In addition to the amount of any unpaid tolls, the
4 Authority shall assess a reasonable administrative fee, in the
5 amount determined by rule promulgated by the Authority, for each
6 notification for each separate violation of this article. Persons
7 who are found to be liable for payment of tolls and the
8 administrative fees in an administrative hearing shall also be
9 liable payment of the costs of the hearing, except where the
10 judgment of the hearing examiner is reversed or set aside by a
11 court of competent jurisdiction on appeal.

12 (g) Failure to remit the unpaid toll, assessed administrative
13 fees and assessed hearing costs or to request a hearing shall
14 result in entry of an administrative default judgment. The Parkways
15 Authority may cause notice of the default judgment to be served on
16 the person to whom the notice of violation was sent by certified
17 mail, return receipt requested, advising the person that failure to
18 pay the unpaid tolls, assessed administrative fees and assessed
19 hearing costs within thirty days of receipt of the notice of
20 default judgment will result in denial of an application for a new
21 vehicle registration in this state. If the unpaid tolls, assessed
22 administrative fees, and assessed administrative hearing costs are
23 not paid as provided in the notice of default judgment, or if the
24 judgment is not set aside by a court of competent jurisdiction, the
25 Authority may take all lawful actions to collect on the judgment
26 and may notify the Commissioner of the Division of Motor Vehicles,

1 who shall refuse the registration or renewal of registration of the
2 vehicle in this state as provided in section eleven of this
3 article.

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

8 (i) A person found to have violated this article is liable
9 for:

10 (1) The amount of the toll evaded or attempted to be evaded;
11 if the amount can be determined, or if it cannot be determined, the
12 minimum toll from the nearest point of entry on the toll facility
13 to the actual point of exit;

14 (2) An administrative fee per notification for each separate
15 violation;

16 (3) Administrative hearing costs assessed under this article;
17 and

18 (4) Reasonable fees and costs of attempting to collect on a
19 judgment under subsection (g) of this section.

20 **§17-16D-6. Liability of owner.**

21 (a) All owners and operators of motor vehicles shall pay the
22 posted toll when on any toll road, highway or bridge authorized by
23 the Legislature either by paying the toll at a toll collection
24 facility on the toll road, highway or bridge at the time of travel
25 thereon or by paying the toll within the time prescribed for toll
26 payment in a toll billing notice or invoice generated by an

1 electronic toll collection system. These tolls may be collected by
2 electronic toll collection. If an owner or operator of a vehicle
3 fails to pay the prescribed toll when due, the owner of the vehicle
4 is in violation of this article.

5 (b) If a violation occurs, the registration plate number of
6 the vehicle as recorded by a video collection system establishes a
7 rebutable presumption for civil enforcement purposes that the owner
8 of the vehicle was operating the vehicle, or had consented to
9 another person operating the vehicle, at that time. This
10 presumption may be overcome only if the owner (1) proves by a
11 preponderance of the evidence that he or she was not in fact
12 operating the vehicle at the time; (2) identifies by name and
13 mailing address the person who was operating the vehicle.

14 (c) If the presumption is not overcome by a preponderance of
15 the evidence, the owner of the vehicle shall be found to have
16 violated this article and be held responsible for payment of the
17 tolls and the administrative fees and money penalties imposed by
18 this article for failure to timely pay the tolls.

19 (d) Nothing in this section prohibits: (1) 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 (2) the Parkways Authority from issuing
23 reminder notices or making other communications directly or
24 indirectly in connection with toll collection efforts or efforts to
25 enforce violations of this article. The Parkways Authority is
26 authorized to use secondary sources of information and services

1 including, but not limited to, services such as the National Change
2 of Address Service or skip tracing services.

3 **§17-16D-7. Owner who is lessor.**

4 (a) An owner of a vehicle who is a lessor of the vehicle used
5 in violation of the toll collection monitoring system regulations
6 of the authority shall not be responsible for the violation of this
7 article if the lessor submits to the Parkways Authority, in a
8 timely manner, a copy of the rental agreement, lease or other
9 contract document covering that vehicle on the date of the
10 violation, with the name and address of the lessee clearly legible
11 to the Authority and to the court having jurisdiction over the
12 violation.

13 (b) If the lessor fails to provide the information in a timely
14 manner, the lessor shall be held responsible for the violation of
15 this article. If the lessor provides the required information to
16 the Parkways Authority, the lessee of the vehicle on the date of
17 the violation shall be deemed to be the owner of the vehicle for
18 the purposes of enforcement of the violation of this article.

19 (c) Except as otherwise provided in this subsection, a
20 certified report of an employee or agent of the authority reporting
21 a violation of the toll collection monitoring system rules and
22 regulations and any information obtained from a toll collection
23 monitoring system shall be available for the exclusive use of the
24 Parkways Authority and any law enforcement official for the
25 purposes of discharging their duties under this article and the
26 toll collection monitoring system rules and regulations. Any such

1 report or information shall not be deemed a public record under
2 article one, chapter twenty-nine-b of this code or the common law
3 concerning access to public records. The certified reports and
4 information, including but not limited to, any recorded image of
5 any motor vehicle, the license plate of any motor vehicle or the
6 operator or any passenger in any motor vehicle, shall not be
7 discoverable as a public record by any person, entity or
8 governmental agency, except pursuant to a properly issued subpoena
9 or by an order of a court of competent jurisdiction, nor shall they
10 be offered in evidence in any civil or administrative proceeding,
11 not directly related to a violation of the toll collection
12 monitoring system rules and regulations, or in any municipal court
13 prosecution for a violation of the motor vehicle laws of this
14 state. However, in the event that, notwithstanding the provisions
15 of subsection (c), section nine of this article, a recorded image
16 of the face of the operator or any passenger in a motor vehicle is
17 produced by the toll collection monitoring system, that image shall
18 not be used by the Parkways Authority for any purpose nor shall the
19 image or any record or copy thereof be transmitted or communicated
20 to any person, governmental, non-governmental, or judicial or
21 administrative entity.

22 **§17-16D-8. Placement of electronic toll collection devices.**

23 An electronic toll collection device that is properly affixed
24 to the front windshield of a vehicle in accordance with rules
25 promulgated by the Parkways Authority, or is mounted elsewhere on
26 a vehicle in accordance with mounting instructions of the

1 manufacturer of the device included with the device, or is
2 otherwise used in a manner that makes it operate as intended, is
3 not a violation of section thirty-six, article fifteen, chapter
4 seventeen-c of this code.

5 **§17-16D-9. Privacy of electronic toll collection account holder**
6 **information; subpoenas and court orders and related**
7 **confidentiality protections.**

8 (a) Except as provided in subsection (b) of this section, and
9 notwithstanding any provision in the code to the contrary,
10 videotapes, photographs, microphotographs, other recorded images,
11 written records, reports or facsimiles prepared pursuant to this
12 article are for the exclusive use of the Parkways Authority, its
13 authorized agents, its employees and law-enforcement officials for
14 the purpose of discharging their duties under this article. This
15 information includes names, addresses, account numbers, account
16 balances, personal financial information, vehicle movement records
17 and other information compiled from transactions with the account
18 holders. The information in the hands of the Authority, its
19 authorized agents, its employees and law enforcement officials may
20 not be considered a public record under chapter twenty-nine-b of
21 this code.

22 (b) Notwithstanding subsection (a) of this section,
23 videotapes, photographs, microphotographs, other recorded images,
24 written records, reports or facsimiles prepared and retained
25 pursuant to this article may be discoverable pursuant to a properly

1 issued subpoena or by an order of a court of competent jurisdiction
2 directing that the information be produced in a civil or criminal
3 action or proceeding: *Provided*, That any such information required
4 to be produced in response to a properly issued subpoena or court
5 order shall at all times be confidential and may not be disclosed
6 by the Parkways Authority other than in connection with, and only
7 for the purposes of, the underlying civil action or criminal
8 proceeding, and subject to compliance with the provisions of
9 subsections (c), (d) and (e) of this section.

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

1 established under this section.

2 (d) Prior to the production of any information under this
3 section with any court of competent jurisdiction, the Parkways
4 Authority shall file a motion with the court seeking to have the
5 documents sealed and withheld from the public record throughout the
6 action or proceeding.

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

12 **§17-16D-10. Evading tolls; damaging, interfering with or**
13 **obstructing video toll collection or infrastructure;**
14 **violations and criminal penalties.**

15 (a) Any person who knowingly or intentionally evades or seeks
16 to evade the payment of tolls, rents, fees or charges established
17 by the Parkways Authority for the use of any toll facility under
18 the jurisdiction of the Authority is guilty of a misdemeanor and,
19 upon conviction, shall be fined not more than \$50 for each
20 violation of this article.

21 (b) Any person who deliberately damages, defaces or obstructs
22 a video collection system infrastructure or power supply with the
23 intent to interfere with or alter or prevent the functioning of the
24 system or electronic toll collection, or who obstructs a license
25 plate or causes it to be unreadable by the video collection system,

1 or who causes a transponder or other device used in an electronic
2 toll system to be inoperable or unreadable thereby causing no toll
3 to be charged, is guilty of a misdemeanor and, in addition to any
4 other penalties provided by the code, and upon conviction, shall be
5 fined not more than \$500 for each such action and, if applicable,
6 is additionally liable to the Parkways Authority for all costs
7 incurred by the Authority to repair the damaged, defaced or
8 obstructed property.

9 **§17-16D-11. Nonrenewal of vehicle registration; effect of civil**
10 **or criminal violation.**

11 (a) Upon receipt of a notice from the Parkways Authority that
12 a vehicle owner failed to pay tolls and costs in accordance with a
13 notice of default judgment, or court order, the Commissioner of
14 Motor Vehicles shall refuse to register, or renew the registration
15 of any vehicle of which the person committing the violation is a
16 registered owner or co-owner until such time as the Commissioner of
17 Motor Vehicles receives notice from the Parkways Authority that all
18 fees, penalties and costs imposed on that person pursuant to this
19 article have been paid or satisfied.

20 (b) The Commissioner of Motor Vehicles shall refuse or suspend
21 the registration of any motor vehicle incurring a toll violation
22 under this article if:

23 (1) The Commissioner is notified by the Parkways Authority
24 that a registered owner has been served with a citation in
25 accordance with this article and:

26 (A) Has failed to pay the electronic toll, administrative fee

1 and the civil penalty for the toll violation by the date specified
2 in the citation; or

3 (B) Has failed to contest liability for the toll violation by
4 the date identified and in the manner specified in the citation; or

5 (2) The Commissioner is notified by the Parkways Authority or
6 the circuit court that a person who elected to contest liability
7 for a toll violation under this article has failed to appear for
8 trial or hearing or has been determined to be responsible for the
9 toll violation and has failed to pay the electronic toll and
10 related civil penalty.

11 (c) In conjunction with any rule promulgated by the Parkways
12 Authority, the Commissioner of Motor Vehicles may adopt regulations
13 and develop procedures to carry out the refusal or suspension of a
14 registration as authorized by this section.

15 (d) The procedures specified in this section are in addition
16 to any other penalty provided by law for toll violations.

17 (e) The provisions of this section may be applied to enforce
18 a reciprocal agreement entered into by this state and another
19 jurisdiction in accordance with section thirteen of this article.

20 (f) The provisions of this section shall only become effective
21 when the Parkways Authority and the Commission have reciprocal
22 enforcement agreements with all of the states sharing a common
23 border with this state.

24 **§17-16D-12. Cooperative agreements.**

25 In connection with any toll road, highway or bridge in this
26 state authorized by the Legislature and in addition to any powers

1 granted to the Parkways Authority, or to the Commissioner of
2 Highways, in this code, the Authority and the Commissioner may
3 individually or jointly enter into cooperative agreements and
4 arrangements with any agency or other entity that handles or
5 assists in the collection or enforcement of tolls on the adjacent
6 state's connecting toll highway, whereby that agency or entity
7 would assist the Authority in the collection of tolls for the toll
8 roads and bridges in this state or enforcement of toll violations
9 for the toll roads and bridges in this state or both collection of
10 tolls and enforcement of toll violations utilizing electronic toll
11 collection.

12 **§17-16D-13. Reciprocal enforcement agreements.**

13 (a) The Parkways Authority and the Commissioner of Highways
14 may individually or jointly enter into agreements with any other
15 jurisdiction that provides for reciprocal enforcement of toll
16 violations between this state and the other jurisdiction.

17 (b) An agreement made under this section shall provide that
18 drivers and vehicles licensed in this state, while operating on the
19 highways of another jurisdiction, shall receive benefits,
20 privileges, and exemptions of a similar kind with regard to toll
21 enforcement as are extended to drivers and vehicles licensed or
22 registered in the other jurisdiction while operated in the state.

23 (c) A reciprocal agreement under this section may provide for
24 enforcement of toll violations by refusal to renew or suspension of
25 the registration of a motor vehicle in accordance with section
26 eleven of this article.

1 **§17-16D-14. Rule-making authority.**

2 The Commissioner of Motor Vehicles and the Parkways Authority
3 shall propose rules for legislative approval in accordance with the
4 provisions of article three, chapter twenty-nine-a of the code to
5 implement this article.