

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4156**

4
5 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

6 [By Request of the Executive]

7 (Originating in the Committee on the Judiciary)

8 [February 21, 2014]

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

1 reciprocal agreements with other jurisdictions for
2 enforcement; and granting rule-making authority.

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

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

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

10 **§17-16D-1. Legislative findings and purpose.**

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

20 **§17-16D-2. Definitions.**

21 The following words and phrases have the following meanings
22 when used in this article:

23 (1) "Authority" or "Parkways Authority" means the West
24 Virginia Parkways Authority established by article sixteen-a of
25 this chapter.

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

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

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

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

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

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

15 (B) The laws of another state;

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

17 (D) The International Registration Plan.

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

1 equipment in order to charge or collect tolls from some vehicles
2 passing under or by the facility at highway speeds: *Provided*, That
3 any such facility shall have the ability to accept cash for the
4 payment of tolls.

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

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

20 **§17-16D-3. 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 for the use of roads, highways
25 and bridges and the enforcement of toll violations may be enforced
26 by electronic toll collection as provided in this article and in

1 rules promulgated by authority of this article: *Provided*, That the
2 application of this article should only apply to future highway
3 construction not already provided for in the Division of Highways'
4 Statewide Transportation Improvement Plan at the time of the
5 enactment of this article or existing toll roads.

6 **§17-16D-4. Advanced warning signs.**

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

11 **§17-16D-5. Imposition of liability for payment of tolls.**

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

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

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

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

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

23 (i) The violation; or

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

26 (D) Personal service is not required.

1 (E) The notice shall contain the following:

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

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

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

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

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

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

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

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

26 (c) A certified report or a facsimile report of an authorized

1 agent or employee of the Parkways Authority reporting a violation
2 of section six of this article based upon the recorded information
3 obtained from electronic toll collection system is prima facie
4 evidence of the facts contained in the report and is admissible as
5 an official record kept in the ordinary course of business.

6 (d) Notwithstanding any provision in the code to the contrary,
7 videotapes, photographs, microphotographs or other recorded images,
8 written records, reports or facsimiles prepared pursuant to this
9 article are allowed and are for the exclusive use of the Parkways
10 Authority, its authorized agents, its employees and law-enforcement
11 officials for the purpose of discharging duties under this article.
12 Except as may be necessary to enforce collection of tolls, civil
13 penalties, administrative fees, administrative hearing costs and
14 collection fees and costs from persons to whom a notice of
15 violation is sent as provided in this section, or to whom any
16 billing invoice, reminder letter or other toll collection or
17 violation enforcement communication is sent using information from
18 the electronic toll collection system, all images and records
19 created or retained as provided herein that identify individual
20 vehicles or vehicle registration plates, must be destroyed within
21 sixty days after payment in full of the applicable toll or after
22 any toll collection or enforcement action under this article
23 involving the images or records has been resolved. This information
24 may not be considered a public record under chapter twenty-nine-b
25 of this code. The information is not discoverable by court order
26 and it may not be offered in evidence in any action or proceeding

1 that is not directly related to a violation of this article or
2 indemnification permitted by this article. However, these
3 restrictions:

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

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

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

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

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

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

26 (f) In addition to the amount of any unpaid tolls, the

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

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

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

5 (i) A person found to have violated this article is liable
6 for:

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

11 (2) An administrative fee per notification for each separate
12 violation;

13 (3) Administrative hearing costs assessed under this article;
14 and

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

17 **§17-16D-6. Liability of owner.**

18 (a) All owners and operators of motor vehicles shall pay the
19 posted toll when on any toll road, highway or bridge authorized by
20 the Legislature either by paying the toll at a toll collection
21 facility on the toll road, highway or bridge at the time of travel
22 thereon or by paying the toll within the time prescribed for toll
23 payment in a toll billing notice or invoice generated by an
24 electronic toll collection system. These tolls may be collected by
25 electronic toll collection. If an owner or operator of a vehicle
26 fails to pay the prescribed toll when due, the owner of the vehicle

1 is in violation of this article.

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

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

16 (d) Nothing in this section prohibits: (1) A law-enforcement
17 officer from issuing a citation to a person in control of a vehicle
18 for a violation of this article or other provisions of law at the
19 time of the violation; or (2) the Parkways Authority from issuing
20 reminder notices or making other communications directly or
21 indirectly in connection with toll collection efforts or efforts to
22 enforce violations of this article. The Parkways Authority is
23 authorized to use secondary sources of information and services
24 including, but not limited to, services such as the National Change
25 of Address Service or skip tracing services.

26 **§17-16D-7. Owner who is lessor.**

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

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

16 (c) Except as otherwise provided in this subsection, a
17 certified report of an employee or agent of the authority reporting
18 a violation of the toll collection monitoring system rules and
19 regulations and any information obtained from a toll collection
20 monitoring system shall be available for the exclusive use of the
21 Parkways Authority and any law enforcement official for the
22 purposes of discharging their duties under this article and the
23 toll collection monitoring system rules and regulations. Any such
24 report or information shall not be deemed a public record under
25 article one, chapter twenty-nine-b of this code or the common law
26 concerning access to public records. The certified reports and

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

19 **§17-16D-8. Placement of electronic toll collection devices.**

20 An electronic toll collection device that is properly affixed
21 to the front windshield of a vehicle in accordance with rules
22 promulgated by the Parkways Authority, or is mounted elsewhere on
23 a vehicle in accordance with mounting instructions of the
24 manufacturer of the device included with the device, or is
25 otherwise used in a manner that makes it operate as intended, is
26 not a violation of section thirty-six, article fifteen, chapter

1 seventeen-c of this code.

2 **§17-16D-9. Privacy of electronic toll collection account holder**
3 **information; subpoenas and court orders and related**
4 **confidentiality protections.**

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

19 (b) Notwithstanding subsection (a) of this section,
20 videotapes, photographs, microphotographs, other recorded images,
21 written records, reports or facsimiles prepared and retained
22 pursuant to this article may be discoverable pursuant to a properly
23 issued subpoena or by an order of a court of competent jurisdiction
24 directing that the information be produced in a civil or criminal
25 action or proceeding: Provided, That any such information required

1 to be produced in response to a properly issued subpoena or court
2 order shall at all times be confidential and may not be disclosed
3 by the Parkways Authority other than in connection with, and only
4 for the purposes of, the underlying civil action or criminal
5 proceeding, and subject to compliance with the provisions of
6 subsections (c), (d) and (e) of this section.

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

25 (d) Prior to the production of any information under this
26 section with any court of competent jurisdiction, the Parkways

1 Authority shall file a motion with the court seeking to have the
2 documents sealed and withheld from the public record throughout the
3 action or proceeding.

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

9 **§17-16D-10. Evading tolls; damaging, interfering with or**
10 **obstructing video toll collection or infrastructure;**
11 **violations and criminal 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 Parkways Authority for the use of any toll facility under
15 the jurisdiction of the Authority is guilty of a misdemeanor and,
16 upon conviction, shall be fined not more than \$50 for each
17 violation of this article.

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

1 other penalties provided by the code, and upon conviction, shall be
2 fined not more than \$500 for each such action and, if applicable,
3 is additionally liable to the Parkways Authority for all costs
4 incurred by the Authority to repair the damaged, defaced or
5 obstructed property.

6 **§17-16D-11. Nonrenewal of vehicle registration; effect of civil**
7 **or criminal violation.**

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

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

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

23 (A) Has failed to pay the electronic toll, administrative fee
24 and the civil penalty for the toll violation by the date specified
25 in the citation; or

26 (B) Has failed to contest liability for the toll violation by

1 the date identified and in the manner specified in the citation; or

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

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

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

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

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

21 **§17-16D-12. Cooperative agreements.**

22 In connection with any toll road, highway or bridge in this
23 state authorized by the Legislature and in addition to any powers
24 granted to the Parkways Authority, or to the Commissioner of
25 Highways, in this code, the Authority and the Commissioner may
26 individually or jointly enter into cooperative agreements and

1 arrangements with any agency or other entity that handles or
2 assists in the collection or enforcement of tolls on the adjacent
3 state's connecting toll highway, whereby that agency or entity
4 would assist the Authority in the collection of tolls for the toll
5 roads and bridges in this state or enforcement of toll violations
6 for the toll roads and bridges in this state or both collection of
7 tolls and enforcement of toll violations utilizing electronic toll
8 collection.

9 **§17-16D-13. Reciprocal enforcement agreements.**

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

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

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

24 **§17-16D-14. Rule-making authority.**

25 The Commissioner of Motor Vehicles and the Parkways Authority
26 shall propose rules for legislative approval in accordance with the

1 provisions of article three, chapter twenty-nine-a of the code to
2 implement this article.