

**H. B. 4156**

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

[By Request of the Executive]

[Introduced January 14, 2014; referred to the  
Committee on Roads and Transportation then the  
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §17-17B-1, §17-17B-2,  
§17-17B-3, §17-17B-4, §17-17B-5, §17-17B-6, §17-17B-7,  
§17-17B-8 and §17-17B-9, all relating to West Virginia  
Division of Highways-Parkways Authority collection  
enforcement; creating the Safe and Efficient Parkways Act  
(SEPA); making legislative findings; defining terms;  
authorizing the electronic enforcement of collection of tolls;  
establishing criminal and civil penalties for nonpayment and  
damage to facilities; providing that certain information  
collected is confidential and not subject to the Freedom of  
Information Act; allowing limited restricted and confidential  
access to certain information pursuant to subpoenas and court  
orders on a strictly confidential basis; providing for  
nonrenewal of vehicle registration; and granting rule-making

1 authority.

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

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

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

8 **§17-17B-1. Short title; legislative findings and purpose;**  
9 **definitions.**

10 (a) This article may be known and cited as the "Safe and  
11 Efficient Parkways Act."

12 (b) The Legislature finds and declares that the use of  
13 electronic and video technology for parkways projects will benefit  
14 the citizens of the state by making parkways projects in the state  
15 safer and more efficient, easing traffic congestion, improving  
16 traffic flow, furthering economic development and promoting and  
17 enhancing more efficient commercial traffic and the shipment of  
18 goods in the state.

19 (c) As used in this article:

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

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

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

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

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

9       (4) "Owner" means any person, corporation, firm, partnership,  
10 agency, association, organization or lessor who:

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

12       (B) Holds title to the vehicle;

13       (C) Is the registrant or coregistrant of the vehicle  
14 registered with the Division of Motor Vehicles or a comparable  
15 agency of another jurisdiction or uses the vehicle in its vehicle  
16 renting or leasing business; or

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

19       (5) "Parkway project" has the meaning set forth in section  
20 five, article sixteen-a, chapter seventeen of this code, and  
21 specifically includes, for the purposes of this article:

22       (A) A highway project designated under sections five-a and  
23 five-b of article seventeen-a, chapter seventeen of this code;

24       (B) Any acquisition, construction, reconstruction,

1 maintenance, operation, improvement or repair that the authority  
2 undertakes by agreement with the division; and

3 (C) Any project procured by the division on which the division  
4 requires the authority to introduce electronic tolling.

5 (6) "Toll collection facility" means any facility, including  
6 all related structures, equipment, systems and software, used in  
7 connection with collecting or charging tolls for a parkway project,  
8 regardless of whether the facility is located on, over or adjacent  
9 to the highway included in the parkway project and regardless of  
10 whether the facility has toll lanes with toll booths and toll  
11 collection equipment that require passing vehicles to stop or slow  
12 down in order to pay a toll or uses additional or different  
13 methods, structures, technology and equipment in order to charge or  
14 collect tolls from some vehicles passing under or by the facility  
15 at highway speeds.

16 (7) "Video collection system" means a vehicle sensor, placed  
17 in a location to work in conjunction with a toll collection  
18 facility, that automatically produces a videotape or photograph,  
19 microphotograph or other recorded image of the front or rear  
20 portion, or both front and rear portion, of each vehicle at the  
21 time the vehicle is used or operated on the toll facility in order  
22 to charge or collect tolls or detect violations of this article.

23 This phrase includes, without limitation:

24 (A) Any other technology which identifies a vehicle by

1 photographic, electronic or other method; and

2 (B) All related toll invoices, billing notices and other toll  
3 collection and violation enforcement efforts made using that  
4 technology and information.

5 **§17-17B-2. Electronic toll collection authorized.**

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

24 **§17-17B-3. Liability of owner.**

1       (a) All owners and operators of motor vehicles shall pay the  
2 posted toll when on any toll road, highway or bridge authorized by  
3 article sixteen-a and section five-b, article seventeen-a of this  
4 chapter, either by paying the toll at a toll collection facility on  
5 the toll road, highway or bridge at the time of travel thereon or  
6 by paying the toll within the time prescribed for toll payment in  
7 a toll billing notice or invoice generated by an electronic toll  
8 collection system. These tolls may be collected by electronic toll  
9 collection. If an owner or operator of a vehicle fails to pay the  
10 prescribed toll when due, the owner of the vehicle is in violation  
11 of this article.

12       (b) If a violation occurs, the registration plate number of  
13 the vehicle as recorded by a video collection system establishes an  
14 inference for civil enforcement purposes that the owner of the  
15 vehicle was operating the vehicle at that time. The inference may  
16 be rebutted if the owner:

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

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

20       (3) Supplies the name and address, if known, of the operator  
21 of the vehicle.

22       (c) If an action or proceeding is commenced in a county other  
23 than that of the residence of the owner, a sworn statement that  
24 contains the information set forth in subsection (b) of this

1 section is sufficient to rebut the inference.

2 (d) If the inference is rebutted, the identified operator of  
3 the vehicle may be found to have violated this article.

4 (e) (1) Nothing in this section prohibits:

5 (A) A law-enforcement officer from issuing a citation to a  
6 person in control of a vehicle for a violation of this article or  
7 other provisions of law at the time of the violation; or

8 (B) The division or the Parkways Authority from issuing  
9 reminder notices or making other communications directly or  
10 indirectly in connection with toll collection efforts or efforts to  
11 enforce violations of this article; or

12 (2) The division and authority are authorized to use secondary  
13 sources of information and services including, but not limited to,  
14 the National Change of Address Service or skip tracing services.

15 **§17-17B-4. Imposition of liability.**

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

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

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

22 (B) The notice shall be mailed to the address shown on the  
23 vehicle registration or at the address of the operator, as  
24 applicable.

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

3        (i) The violation;

4        (ii) The date the inference is rebutted by the owner pursuant  
5 to subsection (b), section three of this article; or

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

8        (D) Personal service is not required.

9        (E) The notice shall contain the following:

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

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

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

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

16       (III) That a violation of this article may subject the owner  
17 or operator to civil penalties, administrative fees, administrative  
18 hearing costs, and collection fees and costs as provided in this  
19 article; and

20       (IV) That failure to pay civil penalties imposed pursuant to  
21 this article will result in denial of an application for a new or  
22 renewal of vehicle registration in this state.

23       (F) A manual or automatic record of mailing prepared in the  
24 ordinary course of business is prima facie evidence of the mailing

1 of notice.

2 (2) If an owner of a vehicle receives a notice of violation of  
3 this article for any time period during which the vehicle was  
4 reported to a police department as having been stolen, that owner  
5 is not liable if he or she provides a certified copy of the police  
6 report on the stolen vehicle to the division or the Parkways  
7 Authority within thirty days after receiving the notice of  
8 violation.

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

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

23 (5) Notwithstanding any provision in the code to the contrary,  
24 videotapes, photographs, microphotographs or other recorded images,

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

24 (A) Do not preclude a court of competent jurisdiction from

1 issuing an order directing that the information be provided to law-  
2 enforcement officials if the information is reasonably described  
3 and is requested in connection with a criminal law-enforcement  
4 action;

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

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

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

18 (i) Remitting the amount of the unpaid toll and any  
19 administrative fee assessed; or

20 (ii) Requesting an administrative hearing in accordance with  
21 rules promulgated by authority of this article. In addition to any  
22 unpaid tolls and an administrative fee not to exceed \$35 per  
23 notification for each separate violation, persons who are found to  
24 be liable in an administrative hearing are liable for the costs of

1 the hearing, except where the judgment of the hearing examiner is  
2 reversed or set aside by a court of competent jurisdiction.

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

21 (7) Civil liability under this article is not a conviction and  
22 may not be made part of the owner's motor vehicle operating record.  
23 It may not be considered in the provision of motor vehicle  
24 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 for each separate violation;

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

11 (D) Reasonable fees and costs of attempting to collect on a  
12 judgment under subdivision (6) of this section.

13 **§17-17B-5. Placement of electronic toll collection device.**

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

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

24 (a) Except as provided in subsection (b) of this section, and

1 notwithstanding any provision in the code to the contrary,  
2 videotapes, photographs, microphotographs, other recorded images,  
3 written records, reports or facsimiles prepared pursuant to this  
4 article are for the exclusive use of the division or the Parkways  
5 Authority, as applicable, its authorized agents, its employees and  
6 law-enforcement officials for the purpose of discharging duties  
7 under this article. This information includes names, addresses,  
8 account numbers, account balances, personal financial information,  
9 vehicle movement records and other information compiled from  
10 transactions with the account holders. The information may not be  
11 considered a public record under chapter twenty-nine-b of this  
12 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 the information required  
20 to be produced in response to a properly issued subpoena or court  
21 order is at all times confidential and may not be disclosed by the  
22 division or the Parkways Authority other than in connection with,  
23 and only for the purposes of, the underlying action and subject to  
24 compliance with the provisions of subsections (c), (d) and (e) of

1 this section.

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

19 (d) Prior to the production of any information under this  
20 section with any court of competent jurisdiction, the division or  
21 the Parkways Authority shall file a motion with the court seeking  
22 to have the documents sealed and withheld from the public record  
23 throughout the action or proceeding.

24 (e) At the conclusion of the action or proceeding, all

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

6 **§17-17B-7. Evading tolls; damaging, interfering with or**  
7 **obstructing video toll collection or**  
8 **infrastructure; violations and penalties.**

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

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

1 the damaged, defaced or obstructed property.

2 **§17-17B-8. Nonrenewal of vehicle registration; effect of civil or**  
3 **criminal violation.**

4 Upon receipt of a notice from the division or the authority  
5 that a vehicle owner or operator failed to pay tolls and costs in  
6 accordance with a notice of default judgment, the Commissioner of  
7 the Division of Motor Vehicles shall refuse to register, or renew  
8 the registration of any vehicle of which the person committing the  
9 violation is a registered owner or coowner until the Commissioner  
10 of the Division of Motor Vehicles receives notice from the division  
11 or authority that all fees, penalties and costs imposed on that  
12 person pursuant to this article have been paid or satisfied.

13 **§17-17B-9. Rule-making authority.**

14 The Commissioner of the Division of Motor Vehicles, and the  
15 Commissioner of Highways on behalf of the division and the Parkways  
16 Authority, shall propose rules for legislative approval in  
17 accordance with the provisions of article three, chapter  
18 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 provides that certain information collected is confidential and not subject to the Freedom of Information Act. The bill allows 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.