

1 access to certain information pursuant to subpoenas and court
2 orders on a strictly confidential basis; providing for
3 nonrenewal of vehicle registration; and granting rule-making
4 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 §17-17B-1, §17-17B-2,
8 §17-17B-3, §17-17B-4, §17-17B-5, §17-17B-6, §17-17B-7, §17-17B-8
9 and §17-17B-9, all to read as follows:

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

11 **§17-17B-1. Short title; legislative findings and purpose;**
12 **definitions.**

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

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

22 (c) As used in this article:

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

4 (2) "Division" means the Division of Highways, except where
5 another 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, corporation, firm, partnership,
15 agency, association, organization or lessor who:

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

17 (B) Holds title to the vehicle;

18 (C) Is the registrant or coregistrant of the vehicle
19 registered with the Division of Motor Vehicles or a comparable
20 agency of another jurisdiction or uses the vehicle in its vehicle
21 renting or leasing business; or

22 (D) Is a person entitled to the use and possession of a

1 vehicle subject to a security interest held by another person.

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

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

7 (B) Any acquisition, construction, reconstruction,
8 maintenance, operation, improvement or repair that the authority
9 undertakes by agreement with the division; and

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

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

1 (7) "Video collection system" means a vehicle sensor, placed
2 in a location to work in conjunction with a toll collection
3 facility, that automatically produces a videotape or photograph,
4 microphotograph or other recorded image of the front or rear
5 portion, or both front and rear portion, of each vehicle at the
6 time the vehicle is used or operated on the toll facility in order
7 to charge or collect tolls or detect violations of this article.
8 This phrase includes, without limitation:

9 (A) Any other technology which identifies a vehicle by
10 photographic, electronic or other method; and

11 (B) All related toll invoices, billing notices and other toll
12 collection and violation enforcement efforts made using that
13 technology and information.

14 **§17-17B-2. Electronic toll collection authorized.**

15 Notwithstanding the provisions of article sixteen-a and
16 section five-b, article seventeen-a of this chapter and section
17 seven-a, article six, chapter seventeen-c of this code to the
18 contrary, the collection of tolls and the enforcement of toll
19 violations may be enforced by electronic toll collection as
20 provided in this article and in rules promulgated by authority of
21 this article. In connection with any toll road in this state
22 authorized by section five-b, article seventeen-a of this chapter,

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

11 **§17-17B-3. Liability of owner.**

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

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

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

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

9 (3) Supplies the name and address, if known, of the operator
10 of the vehicle.

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

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

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

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

21 (B) The division or the Parkways Authority from issuing
22 reminder notices or making other communications directly or

1 indirectly in connection with toll collection efforts or efforts to
2 enforce violations of this article; or

3 (2) The division and authority are authorized to use secondary
4 sources of information and services including, but not limited to,
5 the National Change of Address Service 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 rebutted 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.

1 (D) Personal service is not required.

2 (E) The notice shall contain the following:

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

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

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

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

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

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

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.

19 (2) 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 is not liable if he or she provides a certified copy of the police

1 report on the stolen vehicle to the division or the Parkways
2 Authority within thirty days after receiving the notice of
3 violation.

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

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

18 (5) Notwithstanding any provision in the code to the contrary,
19 videotapes, photographs, microphotographs or other recorded images,
20 written records, reports or facsimiles prepared pursuant to this
21 article are allowed and are for the exclusive use of the division
22 or the Parkways Authority, as applicable, its authorized agents,

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

21 (A) Do not preclude a court of competent jurisdiction from
22 issuing an order directing that the information be provided to law-

1 enforcement officials if the information is reasonably described
2 and is requested in connection with a criminal law-enforcement
3 action;

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

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

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

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

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

1 be liable in an administrative hearing are liable for the costs of
2 the hearing, except where the judgment of the hearing examiner is
3 reversed or set aside by a court of competent jurisdiction.

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

22 (7) Civil liability under this article is not a conviction and

1 may not be made part of the owner's motor vehicle operating record.
2 It may not be considered in the provision of motor vehicle
3 insurance coverage.

4 (8) A person found to have violated this article is liable
5 for:

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

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

12 (C) Administrative hearing costs assessed under this article;
13 and

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

16 **§17-17B-5. Placement of electronic toll collection device.**

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

1 fifteen, chapter seventeen-c of this code.

2 **§17-17B-6. 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 division or the Parkways
10 Authority, as applicable, its authorized agents, its employees and
11 law-enforcement officials for the purpose of discharging duties
12 under this article. This information includes names, addresses,
13 account numbers, account balances, personal financial information,
14 vehicle movement records and other information compiled from
15 transactions with the account holders. The information may not be
16 considered a public record under chapter twenty-nine-b of this
17 code.

18 (b) Notwithstanding subsection (a) of this section,
19 videotapes, photographs, microphotographs, other recorded images,
20 written records, reports or facsimiles prepared and retained
21 pursuant to this article may be discoverable pursuant to a properly
22 issued subpoena or by an order of a court of competent jurisdiction

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

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

1 an acknowledgment that the information is and will remain at all
2 times confidential and that the person agrees to abide by the duty
3 of confidentiality established under this section.

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

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

15 **§17-17B-7. Evading tolls; damaging, interfering with or**
16 **obstructing video toll collection or**
17 **infrastructure; violations and penalties.**

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

1 person pursuant to this article have been paid or satisfied.

2 **§17-17B-9. Rule-making authority.**

3 The Commissioner of the Division of Motor Vehicles, and the
4 Commissioner of Highways on behalf of the division and the Parkways
5 Authority, shall propose rules for legislative approval in
6 accordance with the provisions of article three, chapter
7 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, strike-throughs and underscoring have been omitted.