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**H. B. 2930**

(By Delegates Martin, Wells, Ashley and Hall)

(By request of the Department of Transportation)

[Introduced January 28,2011; 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 DOT-Parkways  
Authority Collection Enforcement; entitled the "Safe and  
Efficient Parkways Act (SEPA);" authorizing the electronic  
enforcement of collection of tolls; establishing penalties for  
nonpayment and damage to facilities; keeping certain  
information collected 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;  
granting rule-making authority; and defining terms.

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

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

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

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

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

6 **Definitions.**

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

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

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

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

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

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

1 (B) Holds title to the vehicle;

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

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

8 (4) "Electronic toll collection" means a system of collecting  
9 tolls or charges that has or includes the capability of charging an  
10 account holder, owner or operator of a vehicle for the prescribed  
11 toll: (A) By electronic transmission of information between a  
12 device on a vehicle and a device located in a toll lane or  
13 otherwise used at a toll collection facility; or (B) by means of a  
14 video collection system.

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

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

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

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

14 This phrase includes, without limitation: (i) Any other technology  
15 which identifies a vehicle by photographic, electronic or other  
16 method; and (ii) all related toll invoices, billing notices and  
17 other toll collection and violation enforcement efforts made using  
18 any such technology and information.

19 **§17-17B-2. Electronic toll collection authorized.**

20 Notwithstanding the provisions of article sixteen-a and  
21 section five-b, article seventeen-a of this chapter and section  
22 seven-a, article six, chapter seventeen-c of this code to the  
23 contrary, the collection of tolls and the enforcement of toll  
24 violations may be enforced by electronic toll collection as

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

15 **§17-17B-3. Liability of owner.**

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

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

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

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

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

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

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

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

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

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

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

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

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 must be sent by first class mail  
12 to each person listed as owner;

13 (B) The notice must be mailed at 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 sixty days after:

17 (i) The violation;

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

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

22 (D) Personal service is not required.

23 (E) The notice must contain the following:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1       (C) Do not prohibit the use of information exclusively for the  
2 purpose of billing electronic toll collection account holders,  
3 deducting toll charges from the account of an account holder,  
4 enforcing toll collection provisions of this code or enforcing the  
5 provisions of an account holder agreement.

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

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

12       (B) requesting an administrative hearing in accordance with  
13 rules promulgated by authority of this article.

14       In addition to any unpaid tolls and an administrative fee not  
15 to exceed \$35 per notification, persons who are found to be liable  
16 in an administrative hearing shall be liable for the costs of the  
17 hearing, except where the judgment of the hearing examiner is  
18 reversed or set aside by a court of competent jurisdiction.

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

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

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

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

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

23 (B) An administrative fee not to exceed \$35 per notification;

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

2 and

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

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

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

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

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

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

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

18 (c) All information disclosed or produced by the division or  
19 the Parkways Authority in accordance with subsection (b) of this  
20 section shall be clearly marked "CONFIDENTIAL." Any document or  
21 other material which is marked "CONFIDENTIAL" or the contents  
22 thereof, may only be used by a party to the underlying action or  
23 proceeding or a party's attorney, expert witness, consultant or  
24 other person who is actively engaged in working on such action, and

1 only for the purpose of the underlying action or proceeding and not  
2 for any other purpose. Prior to a party disclosing any document or  
3 other material marked as "CONFIDENTIAL," or the contents thereof,  
4 to an attorney, expert witness, consultant or other person actively  
5 engaged in working on such action or proceeding, the party making  
6 disclosure must first inform such person that he or she is bound by  
7 the duty of confidentiality established under this section and such  
8 person to whom disclosure is to be made shall sign an  
9 acknowledgment that the information is and shall remain at all  
10 times confidential and that such person agrees to abide by the duty  
11 of confidentiality established under this section.

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

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

1 §17-17B-7. Evading tolls; damaging, interfering with or  
2 obstructing video toll collection or  
3 infrastructure; violations and penalties.

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

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

21 §17-17B-8. Nonrenewal of vehicle registration; effect of civil or  
22 criminal violation.

23 Upon receipt of a notice from the commissioner or the  
24 authority that a vehicle owner or operator failed to pay tolls and



1 costs in accordance with a notice of default judgment, the  
2 Commissioner of Motor Vehicles shall refuse to register, or renew  
3 the registration of any vehicle of which the person committing the  
4 violation is a registered owner or coowner until such time as the  
5 Commissioner of Motor vehicles receives notice from the  
6 commissioner or authority that all fees, penalties and costs  
7 imposed on that person pursuant to this article have been paid or  
8 satisfied.

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

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

NOTE: The purpose of this article is to authorize electronic collection and enforcement of tolls. The bill establishes penalties for nonpayment and damage to facilities. The bill keeps certain information collected confidential and not subject to the Freedom of Information Act. The bill allows certain limited restricted and confidential access to certain information pursuant to subpoenas and court orders on a strictly confidential basis. The bill also grants rule-making authority and defines terms.

This article is new; therefore, it has been completely underscored.