

**Senate Bill No. 333**

(By Senators Beach, Klempa, Minard, Williams and Plymale)

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[Introduced January 28, 2011; referred to the Committee on  
Transportation and Infrastructure; and then to the Committee on  
Finance.]

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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; Safe and Efficient Parkways  
Act; 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 Parkways 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 Parkways 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;

25 (B) Holds title to the vehicle;

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

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

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

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

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

1 down in order to pay a toll or uses additional or different  
2 methods, structures, technology and equipment in order to charge or  
3 collect tolls from some vehicles passing under or by the facility  
4 at highway speeds.

5 (7) "Video collection system" means a vehicle sensor, placed  
6 in a location to work in conjunction with a toll collection  
7 facility, that automatically produces a videotape or photograph,  
8 microphotograph or other recorded image of the front and rear  
9 portion, or both front and rear portion, of each vehicle at the  
10 time the vehicle is used or operated on the toll facility in order  
11 to charge or collect tolls or detect violations of this article.  
12 This phrase includes, without limitation: (i) Any other technology  
13 which identifies a vehicle by photographic, electronic or other  
14 method; and (ii) all related toll invoices, billing notices and  
15 other toll collection and violation enforcement efforts made using  
16 any such technology and information.

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

18 Notwithstanding the provisions of article sixteen-a and  
19 section five-b, article seventeen-a of this chapter and section  
20 seven-a, article six, chapter seventeen-c of this code to the  
21 contrary, the collection of tolls and the enforcement of toll  
22 violations may be enforced by electronic toll collection as  
23 provided in this article and in rules promulgated by authority of  
24 this article. In connection with any toll road in this state  
25 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 is authorized and empowered to enter into cooperative agreements  
4 and arrangements with any agency or other entity that handles or  
5 assists in the collection or enforcement of tolls on the adjacent  
6 state's connecting toll highway, whereby that agency or entity  
7 would assist the division in the collection of tolls for the toll  
8 roads in this state, or enforcement of toll violations for the toll  
9 roads in this state, or both collection of tolls and enforcement of  
10 toll violations, utilizing electronic toll collection.

11 **§17-17B-3. Liability of owner.**

12 (a) All owners and operators of motor vehicles must 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 such 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.

23 (b) If a violation occurs, the registration plate number of  
24 the vehicle as recorded by a video collection system establishes an  
25 inference for civil enforcement purposes that the owner of the

1 vehicle was operating the vehicle at that time. The inference may  
2 be overcome if the owner:

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

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

6 (3) Supplies the name and address, if known, of the operator  
7 of the vehicle.

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

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

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

25 **§17-17B-4. Imposition of liability.**

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

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

5 (A) The notice of violation must be sent by first class mail  
6 to each person listed as owner;

7 (B) The notice must be mailed at the address shown on the  
8 vehicle registration or at the address of the operator, as  
9 applicable.

10 (C) Notice shall be mailed no later than sixty days after:

11 (i) The violation;

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

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

16 (D) Personal service is not required.

17 (E) The notice must contain the following:

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

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

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

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

24 (III) That a violation of this article may subject the owner  
25 or operator to civil penalties, administrative fees, administrative

1 hearing costs, and collection fees and costs as provided in this  
2 article; and

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

6 (F) A manual or automatic record of mailing prepared in the  
7 ordinary course of business shall be prima facie evidence of the  
8 mailing of notice.

9 (2) If an owner of a vehicle receives a notice of violation of  
10 this article for any time period during which the vehicle was  
11 reported to a police department as having been stolen, that owner  
12 may not be liable if he or she provides a certified copy of the  
13 police report on the stolen vehicle to the division or the Parkways  
14 Authority within thirty days after receiving the notice of  
15 violation.

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

23 (4) A certified report or a facsimile report of an authorized  
24 agent or employee of the division or the Parkways Authority  
25 reporting a violation of section three of this article based upon



1 the recorded information obtained from a video collection system  
2 shall be prima facie evidence of the facts contained in the report  
3 and is admissible as an official record kept in the ordinary course  
4 of business.

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

1 may not be offered in evidence in any action or proceeding that is  
2 not directly related to a violation of this article or  
3 indemnification permitted by this article. However, these  
4 restrictions:

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

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

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

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

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

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

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

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

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

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

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

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 subsection (6) of section four of this article.

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

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

1 **§17-17B-6. Privacy of electronic toll collection account holder**  
2 **information; subpoenas and court orders and related**  
3 **confidentiality protections.**

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

17 (b) Notwithstanding subsection (a) of this section,  
18 videotapes, photographs, microphotographs, other recorded images,  
19 written records, reports or facsimiles prepared and retained  
20 pursuant to this article may be discoverable pursuant to a properly  
21 issued subpoena or by an order of a court of competent jurisdiction  
22 directing that the information be produced in a civil or criminal  
23 action or proceeding: *Provided, That* any such information required  
24 to be produced in response to a properly issued subpoena or court  
25 order shall at all times be confidential and may not be disclosed

1 by the division or the Parkways Authority other than in connection  
2 with, and only for the purposes of, the underlying action and  
3 subject to compliance with the provisions of subsection (c), (d)  
4 and (e) of this section.

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

23 (d) Prior to the production of any information under this  
24 section with any court of competent jurisdiction, the division or  
25 the Parkways Authority shall file a motion with the court seeking

1 to have the documents sealed and withheld from the public record  
2 throughout the action or proceeding.

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

9 **§17-17B-7. Evading tolls; damaging, interfering with or**  
10 **obstructing video toll collection or**  
11 **infrastructure; violations and 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 division or the Parkways Authority for the use of any toll  
15 facility under the jurisdiction of those agencies is guilty of a  
16 misdemeanor and, upon conviction, shall be fined not more than \$50.

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

1 fined not more than \$500 and, if applicable, is additionally liable  
2 to the division or the Parkways Authority for all costs to repair  
3 the damaged, defaced or obstructed property.

4 **§17-17B-8. Nonrenewal of vehicle registration; effect of civil or**  
5 **criminal violation.**

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

16 **§17-17B-9. Rule-making authority.**

17 The Commissioner of the Division of Motor Vehicles, the  
18 Commissioner of Highways and the Parkways Authority shall propose  
19 rules for legislative approval in accordance with the provisions of  
20 article three, chapter twenty-nine-a of the code to implement this  
21 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, strike-throughs and underscoring have been omitted.