

# WEST VIRGINIA CODE: §17-16D-5

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

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

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

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

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

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

(i) The violation; or

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

(D) Personal service is not required.

(E) The notice shall contain the following:

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

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

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

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

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

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

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

(b) If an owner of a vehicle receives a notice of violation of this article for any time period during which the vehicle was reported to a police department as having been stolen, that

owner may not be held liable for the violation under this article if he or she provides a certified copy of the police report on the stolen vehicle to the Parkways Authority within thirty days after receiving the notice of violation.

(c) A certified report or a facsimile report of an authorized agent or employee of the Parkways Authority reporting a violation of section six of this article based upon the recorded information obtained from electronic toll collection system is prima facie evidence of the facts contained in the report and is admissible as an official record kept in the ordinary course of business.

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

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

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

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

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

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

(2) Requesting an administrative hearing in accordance with rules promulgated by the Parkways Authority pursuant to this article.

(f) In addition to the amount of any unpaid tolls, the Authority shall assess a reasonable administrative fee, in the amount determined by rule promulgated by the Authority, for each notification for each separate violation of this article. Persons who are found to be liable for payment of tolls and the administrative fees in an administrative hearing shall also be liable payment of the costs of the hearing, except where the judgment of the hearing examiner is reversed or set aside by a court of competent jurisdiction on appeal.

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

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

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

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

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

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

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