WEST VIRGINIA CODE CHAPTER 17 ARTICLE 16D

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§17-16D-1. Legislative findings and purpose.

The Legislature finds and declares that the use of electronic and video technology for collection of tolls on roads, highways and bridges will benefit the citizens of this state by making toll roads, highways and bridges in this state safer and collection of tolls more efficient, by easing traffic congestion, by improving traffic flow, by furthering economic development and by promoting and enhancing more efficient commercial traffic and the shipment of goods in the state. This article shall be known as and may be cited as the "Electronic Toll Collection Act."

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§17-16D-2. Definitions.

The following words and phrases have the following meanings when used in this article:

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

(2) "Division" means the Division of Highways of the West Virginia Department of Transportation, except where another division is clearly identified.

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

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

(B) By means of a video collection system.

(4) "Owner" means any person in whose name a motor vehicle is registered under:

(A) Article three, chapter seventeen-a of this code;

(B) The laws of another state;

(C) The laws of a foreign county; or

(D) The International Registration Plan.

(5) "Toll collection facility" or "toll facility" means any facility, including all related structures, equipment, systems and software, used in connection with collecting or charging tolls for a toll road, highway or bridge in this state, regardless of whether the facility is located on, over or adjacent to the toll road, highway or bridge and regardless of whether the facility has toll lanes with toll booths and toll collection equipment that require passing vehicles to stop or slow down in order to pay a toll or uses additional or different methods, structures, technology and equipment in order to charge or collect tolls from some vehicles passing under or by the facility at highway speeds: Provided, That any such facility shall have the ability to accept cash for the payment of tolls.

(6) "Toll road" means any road, highway or bridge in this state upon which there is a toll administered, collected and enforced by the Parkways Authority or on behalf of the Authority.

(7) "Video collection system" means a vehicle sensor, placed in a location to work in conjunction with a toll collection facility, that automatically produces a videotape or photograph, microphotograph or other recorded image of the front or rear portion, or both

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front and rear portion, of each vehicle at the time the vehicle is used or operated on the toll facility in order to charge or collect tolls or detect violations of this article. This phrase includes, without limitation: (A) Any other technology which identifies a vehicle by photographic, electronic or other method; and (B) all related toll invoices, billing notices and other toll collection and violation enforcement efforts made using any such technology and information.

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§17-16D-3. Electronic toll collection authorized.

Notwithstanding the provisions of article sixteen-a and section five-b, article seventeen-a of this chapter and section seven-a, article six, chapter seventeen-c of this code to the contrary, the collection and enforcement of tolls for the use of roads, highways and bridges may be accomplished by electronic toll collection as provided in this article and in rules promulgated by authority of this article.

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§17-16D-4. Advanced warning signs.

Before enforcing a toll, the Parkways Authority, or the operator of the toll facility, must install advance warning signs along the toll road, highway or bridge preceding the location at which the toll collection facility is located.

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§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.

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(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.

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(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.

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§17-16D-6. Liability of owner.

(a) All owners and operators of motor vehicles shall pay the posted toll when on any toll road, highway, or bridge authorized by the Legislature, including any toll collected by a private toll transportation facility pursuant to §17-17-38 of this code, either by paying the toll at a toll collection facility on the toll road, highway, or bridge at the time of travel thereon or by paying the toll within the time prescribed for toll payment in a toll billing notice or invoice generated by an electronic toll collection system. These tolls may be collected by electronic toll collection. If an owner or operator of a vehicle fails to pay the prescribed toll when due, the owner of the vehicle is in violation of this article.

(b) If a violation occurs, the registration plate number of the vehicle as recorded by a video collection system establishes a rebuttable presumption for civil enforcement purposes that the owner of the vehicle was operating the vehicle, or had consented to another person operating the vehicle, at that time. This presumption may be overcome only if the owner: (1) proves by a preponderance of the evidence that he or she was not in fact operating the vehicle at the time; and (2) identifies by name and mailing address the person who was operating the vehicle.

(c) If the presumption is not overcome by a preponderance of the evidence, the owner of the vehicle shall be found to have violated this article and be held responsible for payment of the tolls and the administrative fees and money penalties imposed by this article for failure to timely pay the tolls.

(d) Nothing in this section prohibits: (1) A law-enforcement officer from issuing a citation to a person in control of a vehicle for a violation of this article or other provisions of law at the time of the violation; (2) the Parkways Authority from issuing reminder notices or making other communications directly or indirectly in connection with toll collection efforts or efforts to enforce violations of this article. The Parkways Authority is authorized to use secondary sources of information and services including, but not limited to, services such as the National Change of Address Service or skip tracing services; or (3) a private toll transportation facility from issuing any notices, reminders, or other communications in connection with its toll collection efforts pursuant to §17-17-38(c) and §17-17-38(d) of this code.

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§17-16D-7. Owner who is lessor.

(a) An owner of a vehicle who is a lessor of the vehicle used in violation of the toll collection monitoring system regulations of the authority shall not be responsible for the violation of this article if the lessor submits to the Parkways Authority, in a timely manner, the name and address of the lessee who leased the vehicle on the day of the violation: Provided, That a lessor shall provide a copy of the rental agreement, lease or other contract document covering that vehicle on the date of the violation to the Parkways Authority upon written request for a violation that is in litigation.

(b) If the lessor fails to provide the information in a timely manner, the lessor shall be held responsible for the violation of this article. If the lessor provides the required information to the Parkways Authority, the lessee of the vehicle on the date of the violation shall be deemed to be the owner of the vehicle for the purposes of enforcement of the violation of this article.

(c) Except as otherwise provided in this subsection, a certified report of an employee or agent of the authority reporting a violation of the toll collection monitoring system rules and regulations and any information obtained from a toll collection monitoring system shall be available for the exclusive use of the Parkways Authority and any law enforcement official for the purposes of discharging their duties under this article and the toll collection monitoring system rules and regulations. Any such report or information shall not be deemed a public record under article one, chapter twenty-nine-b of this code or the common law concerning access to public records. The certified reports and information, including but not limited to, any recorded image of any motor vehicle, the license plate of any motor vehicle or the operator or any passenger in any motor vehicle, shall not be discoverable as a public record by any person, entity or governmental agency, except pursuant to a properly issued subpoena or by an order of a court of competent jurisdiction, nor shall they be offered in evidence in any civil or administrative proceeding, not directly related to a violation of the toll collection monitoring system rules and regulations, or in any municipal court prosecution for a violation of the motor vehicle laws of this state. However, in the event that, notwithstanding the provisions of subsection (c), section nine of this article, a recorded image of the face of the operator or any passenger in a motor vehicle is produced by the toll collection monitoring system, that image shall not be used by the Parkways Authority for any purpose nor shall the image or any record or copy thereof be transmitted or communicated to any person, governmental, non-governmental, or judicial or administrative entity.

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§17-16D-8. Placement of electronic toll collection devices.

An electronic toll collection device that is properly affixed to the front windshield of a vehicle in accordance with rules promulgated by the Parkways Authority, or is mounted elsewhere on a vehicle in accordance with mounting instructions of the manufacturer of the device included with the device, or is otherwise used in a manner that makes it operate as intended, is not a violation of section thirty-six, article fifteen, chapter seventeen-c of this code.

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§17-16D-9. Privacy of electronic toll collection account holder information; subpoenas and court orders and related confidentiality protections.

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

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

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

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

(e) At the conclusion of the action or proceeding, all documents and other material marked as "CONFIDENTIAL" and any copies thereof, and all related notes and memoranda, shall

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promptly be returned to the Parkways Authority and in any event, within thirty days following the conclusion of the action or proceeding.

(f) All videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles prepared pursuant to this article shall be destroyed within sixty days following the conclusion of the action or proceeding.

(g) Nothing in this article authorizes any law-enforcement agency to enter any information in a national database that is contained in videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles prepared pursuant to this article.

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§17-16D-10. Evading tolls; damaging, interfering with, or obstructing video toll collection or infrastructure; violations and criminal penalties.

(a) Any person who knowingly or intentionally evades or seeks to evade the payment of tolls, rents, fees, or charges established by the Parkways Authority for the use of any toll facility under the jurisdiction of the Authority, or of any private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $50 for each violation of this article.

(b) Any person who deliberately damages, defaces, or obstructs a video collection system infrastructure or power supply with the intent to interfere with, alter, or prevent the functioning of the system or electronic toll collection, or who obstructs a license plate or causes it to be unreadable by the video collection system, or who causes a transponder or other device used in an electronic toll system to be inoperable or unreadable thereby causing no toll to be charged, including a private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a misdemeanor and, in addition to any other penalties provided by the code, and upon conviction, shall be fined not more than $500 for each such action and, if applicable, is additionally liable to the Parkways Authority or the private toll transportation facility for all costs incurred to repair the damaged, defaced, or obstructed property.

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§17-16D-11. Nonrenewal of vehicle registration; effect of civil or criminal violation.

(a) Upon receipt of a notice from the Parkways Authority that a vehicle owner failed to pay tolls and costs in accordance with a notice of default judgment, or court order, the Commissioner of Motor Vehicles shall refuse to register, or renew the registration of any vehicle of which the person committing the violation is a registered owner or co-owner until such time as the Commissioner of Motor Vehicles receives notice from the Parkways Authority that all fees, penalties and costs imposed on that person pursuant to this article have been paid or satisfied.

(b) The Commissioner of Motor Vehicles shall refuse or suspend the registration of any motor vehicle incurring a toll violation under this article if:

(1) The commissioner is notified by the Parkways Authority that a registered owner has been served with a citation in accordance with this article and:

(A) Has failed to pay the electronic toll, administrative fee, and the civil penalty for the toll violation by the date specified in the citation; or

(B) Has failed to contest liability for the toll violation by the date identified and in the manner specified in the citation; or

(2) The commissioner is notified by the Parkways Authority or the circuit court that a person who elected to contest liability for a toll violation under this article has failed to appear for trial or hearing or has been determined to be responsible for the toll violation and has failed to pay the electronic toll and related civil penalty.

(c) In conjunction with any rule promulgated by the Parkways Authority, the Commissioner of Motor Vehicles may adopt regulations and develop procedures to carry out the refusal or suspension of a registration as authorized by this section.

(d) The procedures specified in this section are in addition to any other penalty provided by law for toll violations.

(e) The provisions of this section may be applied to enforce a reciprocal agreement entered into by this state and another jurisdiction in accordance with section thirteen of this article, and any reciprocal enforcement of toll violations entered into by the commissioner may include any such violations involving a private toll transportation facility operating pursuant to §17-17-38 of this code.

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§17-16D-12. Cooperative agreements.

In connection with any toll road, highway or bridge in this state authorized by the Legislature and in addition to any powers granted to the Parkways Authority, or to the Commissioner of Highways, in this code, the Authority and the Commissioner may individually or jointly enter into cooperative agreements and arrangements with any agency or other entity that handles or assists in the collection or enforcement of tolls on the adjacent state's connecting toll highway, whereby that agency or entity would assist the Authority in the collection of tolls for the toll roads and bridges in this state or enforcement of toll violations for the toll roads and bridges in this state or both collection of tolls and enforcement of toll violations utilizing electronic toll collection.

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§17-16D-13. Reciprocal enforcement agreements.

(a) The Parkways Authority and the Commissioner of Highways may individually or jointly enter into agreements with any other jurisdiction that provides for reciprocal enforcement of toll violations between this state and the other jurisdiction.

(b) An agreement made under this section shall provide that drivers and vehicles licensed in this state, while operating on the highways of another jurisdiction, shall receive benefits, privileges, and exemptions of a similar kind with regard to toll enforcement as are extended to drivers and vehicles licensed or registered in the other jurisdiction while operated in the state.

(c) A reciprocal agreement under this section may provide for enforcement of toll violations by refusal to renew or suspension of the registration of a motor vehicle in accordance with section eleven of this article.

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§17-16D-14. Rule-making authority.

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

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