

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2913**

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(BY DELEGATE(S) WHITE AND MARCUM)

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[Passed April 12, 2013; in effect ninety days from passage.]

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AN ACT to amend Code of West Virginia, 1931, as amended by adding thereto a new section, designated §11-10-26, relating to correction of certain erroneous distributions, transfers, allocations, overpayments or underpayments; specifying immunity of agencies, subdivisions and instrumentalities of this state from any fine, penalty, assessment or imposition as a result of, or attributable to the erroneous distribution, transfer, allocation, overpayment or underpayment of moneys; and specifying when discovery and distribution have occurred; specifying that provisions shall not be applied to alter, abrogate or terminate any current and ongoing agreement or arrangement in operation on the effective date.

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

That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-26, to read as follows:

**ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

**§11-10-26. Adjustments for correction or erroneous distribution of funds, limitation period, immunity of agencies, subdivisions, and instrumentalities of this state.**

1       (a) (1) An erroneous distribution, transfer, allocation,  
2 overpayment or underpayment dedicated, distributed or directed  
3 by the state or an instrumentality of the state to a state or local  
4 governmental subdivision or a fund, entity, agency or  
5 instrumentality of the state or a political subdivision of the state,  
6 under the provision of this code administered under this article,  
7 or under the provisions of article twenty-two, twenty-two-a,  
8 twenty-two-b, twenty-two-c or twenty-five, chapter twenty-nine  
9 of this code, or any other provision of this code, or any  
10 combination thereof, caused by clerical error or mistake, or a  
11 computational, information or other mistake or error, may be  
12 corrected by an adjustment to a distribution, transfer, allocation  
13 or payment to the subdivision, entity, agency, instrumentality or  
14 fund and by transfer of moneys from the subdivision, entity,  
15 agency, instrumentality or fund until the amount of the erroneous  
16 distribution, transfer, allocation, overpayment or underpayment  
17 has been corrected: *Provided*, That no correction or adjustment  
18 may be made for an erroneous distribution, transfer, allocation,  
19 overpayment or underpayment of moneys that is first discovered  
20 by the distributor or the distributee more than three years after  
21 the date on which the erroneous distribution, transfer, allocation,  
22 overpayment or underpayment of moneys was made, and no  
23 action lies for collection, correction or remediation of the late  
24 discovered erroneous distribution, transfer, allocation, over-  
25 payment or underpayment of the moneys.

26       (2) A distribution, transfer, allocation, overpayment or  
27 underpayment of moneys is deemed to have been made on the

28 date when the moneys related thereto are under the actual,  
29 substantive control of the transferee, and subject to expenditure,  
30 disbursement, consumption or disposition by the transferee.

31 (3) An erroneous distribution, transfer, allocation, over-  
32 payment or underpayment of moneys is deemed to have been  
33 discovered on the date when the distributor or the distributee or  
34 any employee, officer, agent or representative of the distributor  
35 or distributee has actual substantive knowledge of the erroneous  
36 distribution, transfer, allocation, overpayment or underpayment  
37 of moneys.

38 (b) An agency, governmental subdivision or instrumentality  
39 of this state is not subject to a fine, penalty, assessment or  
40 imposition as a result of, or attributable to, an erroneous  
41 distribution, transfer, allocation, overpayment or underpayment  
42 of moneys.

43 (c) The provision of subsection (a) of this section shall not  
44 be applied to alter, abrogate or terminate any current and  
45 ongoing agreement or arrangement which was in operation on  
46 the effective date of this section, to correct or adjust an  
47 erroneous distribution, transfer, allocation, overpayment or  
48 underpayment, between (1) this state or an instrumentality of this  
49 state and (2) a state or local governmental subdivision or a fund,  
50 entity, agency or instrumentality of the state or a political  
51 subdivision of this state.



That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2013.

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*Governor*





