

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 146**

5 (SENATORS UNGER AND BEACH, *original sponsors*)

6 \_\_\_\_\_  
7 [Passed April 13, 2013; in effect ninety days from passage.]  
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11 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new section, designated §50-3-2c, relating to  
13 requiring the Tax Commissioner to withhold unpaid costs,  
14 fines, fees, forfeitures, restitution, penalties and other  
15 fees imposed on a defendant in a criminal action in magistrate  
16 court, or imposed in circuit court in a criminal action on  
17 appeal from magistrate court, from the income tax refund of  
18 the defendant upon notification from the clerk of the  
19 appropriate court; requiring clerk to give notification to Tax  
20 Commissioner if amounts are unpaid within one year of  
21 judgment; providing a process for deducting, distributing and  
22 allocating those unpaid amounts; creating the Magistrate Fines  
23 and Fees Collection Fund; permitting the Tax Commissioner to  
24 charge an administrative fee; and providing rule-making

1 authority.

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

3 That the Code of West Virginia, 1931, as amended, be amended  
4 by adding thereto a new section, designated §50-3-2c, to read as  
5 follows:

6 **ARTICLE 3. COSTS, FINES AND RECORDS.**

7 **§50-3-2c. Withholding from personal income tax refunds for unpaid**  
8  **fines and costs in magistrate criminal actions, in**  
9  **magistrate criminal appeals to circuit court and for**  
10  **failure to appear in court.**

11 (a) If costs, fines, fees, forfeitures, restitution or  
12 penalties imposed by the magistrate court upon conviction of a  
13 person for a criminal offense as defined by this code, imposed by  
14 the circuit court upon judgment on an appeal to circuit court of  
15 that conviction, or imposed by either court for failure to appear  
16 are not paid in full within one year of the judgment, the  
17 magistrate court clerk or, upon a judgment rendered on appeal, the  
18 circuit clerk shall notify the Tax Commissioner that the defendant  
19 has failed to pay the costs, fines, forfeitures or penalties  
20 assessed by the court. The notice provided by the magistrate clerk  
21 or the circuit clerk to the Tax Commissioner must include the  
22 defendant's Social Security number. The Tax Commissioner, or his  
23 or her designee, shall withhold from any personal income tax refund  
24 due and owing to a defendant the costs, fines, fees, forfeitures,

1 restitution or penalties due, the Tax Commissioner's administration  
2 fee for the withholding and any and all fees or other amounts that  
3 the magistrate court and the circuit court would have collected had  
4 the defendant appeared: *Provided*, That no withholding shall be  
5 made under this section if there is an unsatisfied withholding  
6 request made pursuant to section two-b, article ten, chapter eight  
7 of this code. The Tax Commissioner's administration fee shall not  
8 exceed \$25, unless this maximum amount is increased by legislative  
9 rule promulgated in accordance with article three, chapter twenty-  
10 nine-a of this code. The administrative fees deducted shall be  
11 deposited in the special revolving fund hereby created in the State  
12 Treasury, which shall be designated as the Magistrate Fines and  
13 Fees Collection Fund, and the Tax Commissioner shall make such  
14 expenditures from the fund as he or she deems appropriate for the  
15 administration of this subsection.

16 (b) (1) After deduction of the Tax Commissioner's  
17 administration fee, the Tax Commissioner shall remit all remaining  
18 amounts withheld pursuant to this section to the clerk of the court  
19 that notified the Tax Commissioner of the failure to pay under  
20 subsection (a) of this section.

21 (2) From the amounts received from the Tax Commissioner, the  
22 circuit clerk shall distribute the portion thereof that is  
23 attributable to costs, fines, fees, forfeitures, restitution or  
24 penalties owed to magistrate court to the magistrate clerk and

1 distribute the remainder that is attributable to costs, fines,  
2 fees, forfeitures, restitution or penalties owed to circuit court  
3 to the appropriate fund or payee, as applicable and listed in  
4 section twenty-eight-a, article one, chapter fifty-nine of this  
5 code and as otherwise required by law.

6 (3) From the amounts received from the Tax Commissioner, or  
7 from the circuit clerk under subdivision (2) of this subsection,  
8 the magistrate clerk shall distribute applicable costs, fines,  
9 fees, forfeitures, restitution or penalties owed to the appropriate  
10 fund or payee, as applicable and listed in subsection (g), section  
11 two-a of this article and as otherwise required by law.

12 (4) After the costs, fines, fees, forfeitures, restitution or  
13 penalties are withheld, the Tax Commissioner shall refund any  
14 remaining balance due the defendant.

15 (5) If the refund is not sufficient to cover all the costs,  
16 fines, fees, forfeitures, restitution or penalties to be withheld  
17 pursuant to this section, the Tax Commissioner's administration fee  
18 shall be retained by the Tax Commissioner and the remaining money  
19 withheld shall be remitted by the Tax Commissioner to the  
20 appropriate clerk. The clerk shall then allocate the money so  
21 remitted on a pro rata basis as provided in the applicable  
22 provisions of subdivisions (2) or (3) of this subsection.

23 (c) In the event the costs, fines, fees, forfeitures,  
24 restitution or penalties exceed the defendant's income tax refund,

1 the Tax Commissioner shall withhold the remaining balance in  
2 subsequent years until such time as the costs, fines, fees,  
3 forfeitures, restitution or penalties owed are paid in full. The  
4 Tax Commissioner shall remit the moneys that he or she collects to  
5 the appropriate clerk no later than July 1 of each year. If the  
6 circuit court or the magistrate court subsequently determines that  
7 any costs, fines, fees, forfeitures, restitution or penalties were  
8 erroneously imposed, the clerk of the court shall promptly notify  
9 the Tax Commissioner. If the amounts due are paid in full to the  
10 court from a source other than the Tax Commissioner after the clerk  
11 of the court has provided notice of the failure to pay to the tax  
12 commissioner, the clerk of the court shall promptly notify the Tax  
13 Commissioner of the payment. If the refunds have not been withheld  
14 and remitted, the Tax Commissioner may not withhold and remit  
15 payment to the appropriate court and shall so inform the clerk of  
16 the court. If the refunds have already been withheld and remitted  
17 to the court, the Tax Commissioner shall so inform the clerk of the  
18 court. In either event, all refunds for erroneously imposed costs,  
19 fines, forfeitures or penalties shall be made by the appropriate  
20 court and not by the Tax Commissioner.

21       (d) *Rules.* -- The Tax Commissioner may propose for legislative  
22 approval such rules as may be useful or necessary to carry out the  
23 purpose of this section and to implement the intent of the  
24 Legislature. Rules shall be promulgated in accordance with article

1 three, chapter twenty-nine-a of this code.