

HB 2757

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**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 1999



**ENROLLED**

**House Bill No. 2757**

(By Delegates Johnson, Capito and Beane)



Passed March 12, 1999

In Effect Ninety Days from Passage

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FILED  
STATE OF WEST VIRGINIA

**ENROLLED**  
**H. B. 2757**

(BY DELEGATES JOHNSON, CAPITO AND BEANE)

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[Passed March 12, 1999; in effect ninety days from passage.]

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AN ACT to repeal section sixteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section sixteen-a of said article, relating to insurance excess line brokers, the fees they may charge and the taxation of insurance placed through an excess line broker.

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

That section sixteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section sixteen-a of said article be amended and reenacted to read as follows:

**ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.**

**§33-12-16a. Excess line brokers; additional premium tax.**

- 1 (a) Every excess line broker shall make an annual return,
- 2 under oath, on or before the first day of March to the commis-
- 3 sioner of the gross amount of premiums charged by the insurers
- 4 and of the gross amount of the fees charged by the excess line
- 5 broker for the insurance procured by the excess line broker
- 6 during the previous calendar year. Every excess line policy-
- 7 holder obtaining insurance from an excess line broker shall pay
- 8 and every excess line broker shall collect from the policyholder

9 and remit to the commissioner a sum equal to four percent of  
10 the gross premiums and fees received on the excess line policies  
11 procured by the excess line broker on subjects of insurance,  
12 resident, located or to be performed in this state, including any  
13 so-called dividends on participating policies applied in reduc-  
14 tion of premiums, but less premiums returned to policyholders  
15 because of cancellation of policy. This tax is imposed for the  
16 purpose of providing additional revenue for municipal police-  
17 men's and firemen's pension and relief funds and additional  
18 revenue for volunteer and part volunteer fire companies and  
19 departments. This tax is required to be paid and remitted, on a  
20 calendar year basis and in quarterly estimated installments due  
21 and payable on or before the twenty-fifth day of the month  
22 succeeding the close of the quarter in which they accrued,  
23 except for the fourth quarter, in respect of which taxes shall be  
24 due and payable and final computation of actual total liability  
25 for the prior calendar year shall be made, less credit for the  
26 three quarterly estimated payments prior made, and filed with  
27 the annual return to be made on or before the first day of March  
28 of the succeeding year. Provisions of this chapter relating to the  
29 levy, imposition and collection of the regular premium tax are  
30 applicable to the levy, imposition and collection of this tax to  
31 the extent that the provisions are not in conflict with this  
32 section.

33 All such taxes remitted to the commissioner pursuant to this  
34 section shall be paid by him into a special account in the state  
35 treasury, designated "municipal pensions and protection fund,"  
36 and after appropriation by the Legislature, shall be distributed  
37 in accordance with the provisions of subsection (c), section  
38 fourteen-d, article three of this chapter. The excess line broker  
39 shall return to the policyholder the tax on any unearned portion  
40 of the premium returned to the policyholder because of cancel-  
41 lation of policy.

42 (b) The excess line broker may not:

43 (1) Pay directly or indirectly the tax or any portion thereof,  
44 either as an inducement to the policyholder to purchase the  
45 insurance or for any other reason; or

46 (2) Rebate all or part of the tax or the excess line broker's  
47 commission, either as an inducement to the policyholder to  
48 purchase the insurance or for any reason.

49 (c) The licensed excess line broker may charge the prospec-  
50 tive policyholder a fee for the cost of underwriting, issuing,  
51 processing, inspecting, service or auditing the policy for  
52 placement with the excess line insurer if:

53 (1) The service is required by the excess line insurer;

54 (2) The service is actually provided by the excess line  
55 broker or the cost of the service is actually incurred by the  
56 excess line broker;

57 (3) The provision or cost of the service is reasonable,  
58 documented and verifiable.

59 (d) The excess line broker shall make a clear and conspicu-  
60 ous written disclosure to the policyholder of:

61 (1) The total amount of premium for the policy;

62 (2) Any fee charged;

63 (3) The total amount of any fee charged; and

64 (4) The total amount of tax on the premium and fee.

65 (e) The clear and conspicuous written disclosure required  
66 by subsection (d) of this section is subject to the record mainte-  
67 nance requirements of section fifteen of this article.

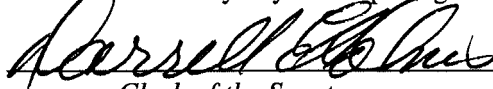
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

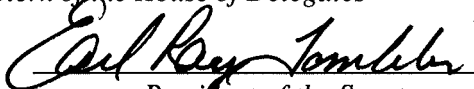
  
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Chairman House Committee

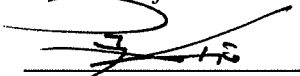
Originating in the House.

Takes effect ninety days from passage.

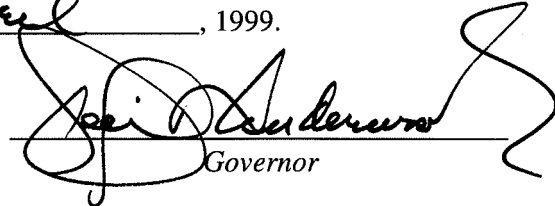
  
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Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within approved this the 7th  
day of April, 1999.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/5/99

Time 4:20 pm