

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

House Bill 4149

BY DELEGATES WESTFALL, QUEEN, BARRETT, WAXMAN,
HOTT, WILLIAMS, D. JEFFRIES, KESSINGER, PORTERFIELD
AND ESPINOSA

[Passed February 27, 2020; in effect ninety days from passage.]

1 AN ACT to amend and reenact §33-4-2 of the Code of West Virginia, 1931, as amended, relating
2 to insurance; clarifying when insurance code chapter provisions are not applicable; adding
3 definitions; and clarifying “service contract” and “warranty” definitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-2. Application of chapter to particular types of insurers.

1 (a) No provision of this chapter shall apply to:

2 (1) Hospital service corporations and medical service corporations except as stated in
3 §33-24-1 *et seq.* of this code;

4 (2) Fraternal benefit societies except as stated in §33-23-1 *et seq.* of this code;

5 (3) Farmers’ mutual fire insurance companies except as stated in §33-22-1 *et seq.* of this
6 code;

7 (4) Warranties;

8 (5) Service contracts;

9 (6) Maintenance agreements.

10 (b) For the purposes of this article:

11 (1) “Holder” means a resident of this state who either purchases a service agreement or
12 is legally in possession of a service contract and is entitled to enforce the rights of the original
13 purchaser of the service contract.

14 (2) “Incidental costs” means expenses specified in a vehicle protection product warranty
15 that are incurred by the warranty holder due to the failure of a vehicle protection product to perform
16 as provided in the contract. Incidental costs may be reimbursed in either a fixed amount specified
17 in the vehicle protection product warranty or by use of a formula itemizing specific incidental costs
18 incurred by the warranty holder.

19 (3) “Maintenance agreement” means a contract for a limited period that provides only for
20 scheduled maintenance.

21 (4) "Provider" means a person who is obligated to a holder pursuant to the terms of a
22 service contract to repair, replace, or perform maintenance on or to indemnify the holder for the
23 costs of repairing, replacing, or performing maintenance on goods.

24 (5) "Road hazard" means a hazard that is encountered while driving a motor vehicle, which
25 may include potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

26 (6) "Service contract" means an agreement entered into for a separately stated
27 consideration and for a specified term under which a provider agrees to repair, replace, or
28 maintain a product or provide indemnification for the repair, replacement, or maintenance of a
29 product for operational or structural failure caused by a defect in materials or workmanship or by
30 normal wear. A service contract may additionally provide for incidental payment or indemnity
31 under limited circumstances, including towing, rental, and emergency road service or for the repair
32 or replacement of a product for damage resulting from power surges or accidental damage
33 incurred in handling the product. "Service contract" includes a contract or agreement that provides
34 for one or more of the following:

35 (A) The repair or replacement of tires or wheels on a motor vehicle damaged as a result
36 of coming into contact with road hazards;

37 (B) The removal of dents, dings, or creases on a motor vehicle that can be repaired using
38 the process of paintless dent removal without affecting the existing paint finish and without
39 replacing vehicle body panels, sanding, bonding, or painting;

40 (C) The repair of chips or cracks in, or the replacement of, motor vehicle windshields as a
41 result of damage caused by road hazards;

42 (D) The replacement of a motor vehicle key or key-fob in the event that the key or key-fob
43 becomes inoperable or is lost or stolen;

44 (E) The repair of damage to the interior components of a motor vehicle caused by wear
45 and tear;

46 (F) The cosmetic repair of minor damage such as scuffs, scratches, scrapes, or rash on
47 exterior surfaces of a motor vehicle; or

48 (G) In conjunction with a motor vehicle leased for use, the repair, replacement, or
49 maintenance of property, or indemnification for repair, replacement, or maintenance, due to
50 excess wear and use, damage for items such as tires, paint cracks or chips, interior stains, rips
51 or scratches, exterior dents or scratches, windshield cracks or chips, missing interior or exterior
52 parts, or excess mileage that result in a lease-end charge, or any other charge for damage that
53 is deemed as excess wear and use by a lessor under a motor vehicle lease, provided any such
54 payment does not exceed the purchase price of the vehicle.

55 (7) "Vehicle protection product" means a protective chemical, substance, device, or
56 system that: (A) is installed on or applied to a motor vehicle; (B) is designed to prevent loss or
57 damage to a motor vehicle from a specific cause; and (C) includes a vehicle protection product
58 warranty. "Vehicle protection product" does not include fuel additives, oil additives, or other
59 chemical products applied to the engine, transmission, or fuel system.

60 (8) "Vehicle protection product warranty" means a warranty that provides that if the vehicle
61 protection product fails to prevent loss or damage to a motor vehicle from a specific cause, the
62 warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of
63 the failure of the vehicle protection product to perform pursuant to the terms of the vehicle
64 protection product warranty.

65 (9) "Warranty" means in relation to a product or service an undertaking that guarantees
66 indemnity for defective parts, mechanical or electrical breakdown, labor costs, or other remedial
67 measures, such as repair or replacement of the product or repetition of services, and that is made
68 solely by the manufacturer, importer, or seller of the product or services made without payment
69 of additional consideration, not negotiated or separated from the sale of the product or service
70 and incidental to the sale of the product or service. "Warranty" includes a vehicle protection
71 product warranty.

The 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

The within this the.....
day of, 2020.

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Governor