

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4149

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

[Introduced January 13, 2020; Referred to the
Committee on Banking and Insurance.]

1 A BILL to amend and reenact §33-4-2 of the Code of West Virginia, 1931, as amended, relating
2 to insurance; adding 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 theft protection program
15 warranty that are incurred by the warranty holder due to the failure of a vehicle theft protection
16 program to perform as provided in the contract. Incidental costs may be reimbursed in either a
17 fixed amount specified in the vehicle theft protection program warranty or by use of a formula
18 itemizing specific incidental costs incurred by the warranty holder.

19 ~~(2)~~ (3) "Maintenance agreement" means a contract for a limited period that provides only
20 for scheduled maintenance.

21 ~~(3)~~ (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 ~~(4)~~ (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 maintain
28 a product or provide indemnification for the repair, replacement or maintenance of a product for
29 operational or structural failure caused by a defect in materials or workmanship or by normal wear.
30 A service contract may additionally provide for incidental payment or indemnity under limited
31 circumstances including towing, rental and emergency road service or for the repair or
32 replacement of a product for damage resulting from power surges or accidental damage incurred
33 in handling the product. "Service contract" also means a contract or agreement that provides one
34 (1) or more of the following:

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

37 (ii) 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 (iii) 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 (iv) 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; or

44 (v) In conjunction with a motor vehicle leased for use, the repair, replacement or
45 maintenance of property, or indemnification for repair, replacement or maintenance, due to
46 excess wear and use, damage for items such as tires, paint cracks or chips, interior stains, rips

47 or scratches, exterior dents or scratches, windshield cracks or chips, missing interior or exterior
48 parts or excess mileage that result in a lease-end charge, or any other charge for damage that is
49 deemed as excess wear and use by a lessor under a motor vehicle lease, provided any such
50 payment shall not exceed the purchase price of the vehicle;

51 (7) "Vehicle theft protection product" means a device or system that: (i) Is installed on or
52 applied to a motor vehicle; (ii) is designed to prevent loss or damage to a motor vehicle from theft;
53 and (iii) includes a vehicle theft protection program warranty. Vehicle theft protection product does
54 not include fuel additives, oil additives, or other chemical products applied to the engine,
55 transmission, or fuel system, or interior or exterior surfaces of a motor vehicle.

56 (8) "Vehicle theft protection product warranty" means a warranty that provides if the vehicle
57 theft protection product fails to prevent loss or damage to a motor vehicle from theft, that the
58 warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of
59 the failure of the vehicle theft protection product to perform pursuant to the terms of the vehicle
60 theft protection product warranty.

61 (5) (9) "Warranty" means in relation to a product or service an undertaking that guarantees
62 indemnity for defective parts, mechanical or electrical breakdown, labor costs or other remedial
63 measures, such as repair or replacement of the product or repetition of services and that is made
64 solely by the manufacturer, importer or seller of the product or services made without payment of
65 additional consideration, not negotiated or separated from the sale of the product or service and
66 incidental to the sale of the product or service. The term shall include a vehicle theft protection
67 program warranty.

NOTE: The purpose of this bill is to add definitions relating to insurance.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.