

WARRANTY/SERVICE CONTRACTS WVOIC

In determining whether a warranty or service contract is insurance, the question can be asked if the product assumes risk, in the event of a for-seeable event or if it indemnifies? Does it fall within one of the exceptions to insurance provided in the West Virginia Code?

West Virginia Code Section 33-1-1 provides insurance is a contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies. West Virginia Code Section 33-1-2 provides an insurer is every person engaged in the business of making contracts of insurance.

There are two specific exemptions for warranties and service contracts from regulation as insurance in the West Virginia Code. These are West Virginia Code Sections 33-4-2(b)(4) and West Virginia Code Section 33-4-2(b)(5).

West Virginia Code Section 33-4-2(b)(4), service contracts, provides:

“Service contract” means an agreement entered into for a separately stated consideration and for a specified term under which a provider agrees to repair, replace or maintain a product or provide indemnification for the repair, replacement or maintenance of a product for operational or structural failure caused by a defect in materials or workmanship or by normal wear. A service contract may additionally provide for incidental payment or indemnity under limited circumstances including towing, rental and emergency road service or for the repair or replacement of a product for damage resulting from power surges or accidental damage incurred in handling of the product.

West Virginia Code Section Code Section 33-4-2(b)(5), warranties, provides:

"Warranty" means in relation to a product or service an undertaking that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor costs or other remedial measures, such as repair or replacement of the product or repetition of services and that is made solely by the manufacturer, importer or seller of the product for services made without payment of additional consideration, not negotiated or separated from the sale of the product or service and incidental to the sale of the product or service.

Warranties must meet the following requirements:

- a. Guarantees indemnity for defective parts, mechanical or electrical breakdown, labor costs or other remedial measures;
- b. such as repair or replacement of the product or repetition of services;
- c. is made solely by the manufacturer, importer or seller of the product for services made without payment of additional consideration; and not negotiated or separated from the sale of the product or service and incidental to the sale of the product or service.

Vehicle protection product - a vehicle protection device, system, or service that is installed on or applied to a vehicle; is designed to prevent loss or damage to a vehicle from a specific cause; and includes a written warranty. (example: alarm systems, body part marking products, steering locks, window etch products, pedal and ignition locks, fuel and ignition kill switches, and electronic, radio, and satellite tracking devices.)

Vehicle protection product warranty - a written agreement by a warrantor that provides that if the vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, then the warranty holder shall be paid specified incidental costs by the warrantor as a result of the failure of the vehicle protection product to perform pursuant to the terms of the warranty.

Incidental costs - expenses specified in the warranty incurred by the warranty holder related to the failure of the vehicle protection product to perform as provided in the warranty. (example: insurance policy deductibles, rental vehicle charges, the difference between the actual value of the stolen vehicle at the time of theft and the cost of a replacement vehicle, sales taxes, registration fees, transaction fees, and mechanical inspection fees.)

If a product offers greater indemnification than the above Code sections provide, the product may be considered to be insurance. If the product is determined to be insurance, all applications and contracts would be subject to prior approval by our Department. In the event this service is determined to be insurance, any person soliciting or selling the product must also be licensed.

The West Virginia Offices of the Insurance Commissioner does not regulate exempted service contracts. If the service contract does not comply with the above, it is insurance and would have to meet the requirements of West Virginia Code Section §33-1-1 et seq. as an insurance product.

If the warranty or service contract meets the requirements it is exempted from regulation by the West Virginia Offices of the Insurance Commissioner.

Disclaimer: The material above is for informational purposes only and not for the purpose of providing legal advice.

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