



SPONSOR: Rep. Bush & Sen. Paradee
Reps. Bennett, Matthews, Ramone, Michael Smith; Sens.
Lopez, Walsh

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 106

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATED TO SERVICE CONTRACTS AND
PRODUCT WARRANTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 9, Title 18 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Subchapter IV: Exemptions

4 § 917. For purposes of this section, the following terms shall have the following meaning:

5 (a) "Consumer product" means any tangible personal property that is distributed in commerce and is normally used
6 for personal, family, or household purposes, including a motor vehicle and any tangible personal property intended to be
7 attached to or installed in any real property without regard to whether it is so attached or installed.

8 (b) "Incidental costs" means expenses specified in a vehicle theft protection program warranty that are incurred by
9 the warranty holder due to the failure of a vehicle theft protection program to perform as provided in the contract.
10 Incidental costs may be reimbursed in either a fixed amount specified in the vehicle theft protection program warranty or by
11 use of a formula itemizing specific incidental costs incurred by the warranty holder.

12 (c) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

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

15 (e) "Service contract" means a contract or agreement for a separately stated consideration for any duration to
16 perform the repair, replacement, or maintenance of a consumer product or indemnification for the same, for the operational
17 or structural failure of a consumer product due to a defect in materials, workmanship, accidental damage from handling, or
18 normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited
19 circumstances, including towing, rental, and emergency road service and road hazard protection. Service contracts may
20 provide for the repair, replacement, or maintenance of a consumer product for damage resulting from power surges or
21 interruption. Service contract also includes a contract or agreement sold for a separately stated consideration for a specific
22 duration that provides for any of the following:

(1) The repair or replacement or indemnification for the repair or replacement of a motor vehicle for the operational or structural failure of one or more parts or systems of the motor vehicle brought about by the failure of an additive product to perform as represented.

(2) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards.

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

(4) The repair of chips or cracks in or the replacement of motor vehicle windshields as a result of damage caused by road hazards.

(5) The replacement of a motor vehicle key or key-fob in the event that the key or key-fob becomes inoperable or is lost or stolen.

(6) Other services or products which may be approved by the Commissioner.

(f) “Vehicle theft protection product” means a device or system that (i) is installed on or applied to a motor vehicle, (ii) is designed to prevent loss or damage to a motor vehicle from theft, and (iii) includes a vehicle theft protection program warranty. Vehicle theft protection product does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system, or interior or exterior surfaces of a motor vehicle.

(g) “Vehicle theft protection product warranty” means a written agreement by a warrantor that provides if the vehicle theft protection product fails to prevent loss or damage to a motor vehicle from theft, that the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle theft protection product to perform pursuant to the terms of the vehicle theft protection product warranty.

§ 918. Exemption from insurance regulation.

The offering, sale, or issuance of a service contract, vehicle theft protection product warranty, or maintenance agreement shall not be considered insurance or subject to the insurance laws of this state unless made expressly applicable thereto.

SYNOPSIS

Delaware is one of only a few states that does not provide statutory or regulatory authority regarding the regulation of service contracts and warranties. In some states, these products are regulated as insurance products. In other states, the Attorney General’s office retains oversight of these products. In Delaware, the regulation of these products is governed by a letter issued by the Department of Insurance in 1993 and Domestic/Foreign Insurers Bulletin No. 5 issued in 1997. This legislation essentially codifies the existing legal practice, and makes clear these products are not regulated as insurance products thus providing the Department of Justice with the authority to address legal issues pertaining to service contracts and product warranties.