

ASSEMBLY, No. 2730

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1997

By Assemblyman WEINGARTEN

1 AN ACT concerning collateral protection insurance and supplementing
2 Title 17 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "Collateral
8 Protection Act."

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10 2. As used in this act:

11 "Collateral" means all property, real or personal, used to secure
12 payment or performance pursuant to a credit transaction.

13 "Collateral protection insurance" means insurance purchased by a
14 creditor providing coverage against loss, expense or damage to
15 collateral as a result of fire, theft, damage or other risks that would
16 impair the creditor's interest, which insurance is purchased as a result
17 of the debtor's failure to provide evidence of insurance or failure to
18 maintain insurance covering the collateral. The term includes
19 insurance which protects the interest of the creditor in the collateral
20 and may, but shall not be required to, include insurance which also
21 protects the interests of the debtor in the collateral or with respect to
22 liability to third parties. "Collateral protection insurance" shall not
23 include (1) insurance to protect the creditor following completion of
24 foreclosure and sale or repossession and sale of the collateral, (2)
25 credit insurance, mortgage protection insurance or other insurance
26 issued to cover the life or health of the debtor, (3) mortgage insurance,
27 or (4) title insurance. The fact that the insurance may have some other
28 designation or title such as creditor placed insurance, shall not mean
29 it is not collateral insurance as defined in this act.

30 "Cost of collateral insurance protection insurance" or "cost" means
31 all amounts paid by the creditor to obtain the insurance, including all
32 premiums paid, all broker's commissions and fees, whether the
33 commission is paid to the creditor, to a person or entity that is an
34 affiliate of the creditor or to a person or entity which is unrelated to
35 the creditor or whether such commissions are for a fixed percentage,
36 and shall include all premiums, fees, penalties and administrative costs
37 charged to the creditor upon cancellation of the collateral protection

1 insurance.

2 "Credit agreement" means the open-end or closed-end loan
3 agreement, promissory note, mortgage, security agreement, sales
4 agreement, line of credit agreement or other document or documents
5 that set forth the terms of the credit transaction.

6 "Credit transaction" means any transaction pursuant to which a
7 creditor gives consideration for an obligation by a debtor to make
8 payment or repayment at a future date or dates, which obligation is
9 secured in whole or in part by collateral. "Credit transaction"
10 includes, but is not limited to, an advance of money, opening a line of
11 credit, a letter of credit and an installment sale.

12 "Creditor" means any entity chartered, licensed or otherwise
13 authorized by law to provide credit through a credit transaction and
14 includes successors and assignees of the original creditor.

15 "Debtor" means any person obligated to a creditor pursuant to a
16 credit transaction, whether the obligation is primary or secondary, and
17 includes all persons who are successors to a debtor.

18

19 3. a. Collateral protection insurance may be obtained by a creditor,
20 with the cost to be paid or reimbursed by the debtor, if:

21 (1) the terms of the credit agreement require the debtor to obtain
22 and continue to maintain insurance protecting against loss or damage
23 to the collateral and the debtor has not obtained or does not maintain
24 such insurance;

25 (2) the creditor mails a notice at least 10 calendar days, but not
26 more than 90 calendar days before purchasing collateral protection
27 insurance;

28 (3) the notice is mailed to the debtor at the address on file with the
29 creditor, by United States mail, first class, postage prepaid, containing
30 the following message or a message having substantially the same
31 meaning:

32

NOTICE AND WARNING

33 We have not received evidence that you have purchased the
34 insurance required by your [insert type of credit transaction].
35 Unless you provide us with the evidence that you have the
36 required insurance within 10 days from date this letter was
37 mailed, we may purchase insurance to protect our interest. This
38 insurance may, but need not, include protection for you for
39 damage or loss or for your liability to third parties.

40 You are responsible for the cost, including earned
41 premiums, commissions and fees, of the insurance purchased by
42 us. You may pay us the amount of the costs, or if not, we may
43 add the cost to your obligation to us and repayment will include
44 interest at the rate of the original obligation. The effective date
45 of coverage of the insurance we purchase will be the date your
46 coverage lapsed or the date by which you failed to provide proof

1 of the required coverage. The coverage we purchase may be
2 more expensive than insurance you can obtain on your own. The
3 coverage we purchase may not include any liability coverage for
4 claims made against you and will not satisfy any mandatory
5 liability insurance law or financial responsibility law of this or
6 any other state.

7 If you provide us with evidence that you have obtained the
8 required insurance, we will then cancel the insurance that we
9 have purchased; but you will be obligated to pay us any cost we
10 have incurred, including premiums, commissions and
11 administrative fees which we may have incurred for our
12 obtaining the coverage. Please note that you are responsible for
13 these costs even if you actually have the required insurance but
14 do not provide us with timely evidence that it is in effect; and

15 (4) the debtor fails to provide evidence to the creditor of the
16 insurance required by the credit transaction agreement within 10 days
17 of the date the notice was mailed pursuant to this section .

18 b. The creditor is authorized to and has the authority to take the
19 actions and obtain collateral protection insurance on the terms and
20 conditions set forth in the form of this statutory notice. The notice
21 and warning may contain other information deemed pertinent by the
22 creditor, provided that the information is not contradictory to the
23 provisions of this act or other statutory law.

24

25 4. a. Within 14 calendar days following the placement of the
26 collateral protection insurance, the creditor shall mail or cause a notice
27 to be mailed to the debtor at the address on file with the creditor, by
28 United States mail, first class, postage prepaid, informing the debtor
29 that:

30 (1) collateral protection insurance has been purchased by the
31 creditor with respect to the following credit transaction: [insert type
32 of credit transaction];

33 (2) the cost of the collateral protection insurance is \$;

34 (3) the amount stated under paragraph (2) of this subsection is due
35 immediately; and

36 (4) if a cash payment for the amount stated under paragraph (2) of
37 this subsection is not received within 10 calendar days, the creditor
38 may add that amount to the loan balance.

39 b. The costs charged to the debtor may not be excessive or
40 discriminatory. Any cost or element of cost which is approved by the
41 Department of Banking and Insurance or filed with the department and
42 not disapproved, pursuant to P.L.1944, c.27 (C.17:29A-1 et seq.) or
43 P.L.1982, c.114 (C.17:29AA-1 et seq.), shall not be deemed to be
44 excessive or discriminatory for the purposes of this act.

45

46 5. a. The effective date of the collateral protection insurance

1 policy purchased by the creditor shall not be sooner than the earlier of
2 the date the debtor's insurance lapsed or the date that the debtor failed
3 to provide evidence of insurance on the collateral.

4 b. The face amount of the collateral protection insurance policy
5 shall not exceed the outstanding balance of the obligation as of the
6 effective date of the coverage purchased by the creditor even though
7 the coverage may exceed the actual cash value or cost of repair.

8 c. A collateral protection insurance policy term may, but need not,
9 extend to the full life of the credit transaction.

10

11 6. a. Collateral protection insurance shall terminate or shall be
12 canceled upon the occurrence of any of the following:

13 (1) the date the creditor is provided with evidence of proper
14 insurance coverage purchased by the debtor as required by the credit
15 transaction agreement;

16 (2) completion of foreclosure, including sale, or repossession or
17 similar event, including sale;

18 (3) the date that there is no further balance due from the debtor to
19 the creditor; or

20 (4) the date specified in the collateral protection insurance policy.

21 b. If the collateral protection insurance is canceled and there is any
22 unearned premium paid by the debtor which is refunded to the
23 creditor, the creditor shall pay or credit the debtor with the amount of
24 the refund. All statements of the loan balance and activity provided by
25 the creditor to the debtor shall include all amounts debited or credited
26 to the obligation due to the purchase and cancellation of collateral
27 protection insurance.

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29 7. Collateral protection insurance may be obtained from an
30 insurance carrier chosen by the creditor which is licensed or otherwise
31 authorized to provide such insurance in this State, and shall be set
32 forth in an individual policy or certificate of insurance.

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34 8. a. A creditor which places or a person that receives
35 commissions or fees arising out of collateral protection insurance shall
36 not be liable to any debtor, guarantor or other party for the placement
37 of collateral protection insurance. If the creditor does not
38 substantially comply with the provisions of this act in purchasing
39 collateral protection insurance, the sole and exclusive remedy of the
40 debtor is that the debtor does not have to pay for the insurance which
41 is not purchased in compliance with this act. A creditor is not, by
42 virtue of this act, required to purchase collateral protection insurance
43 or otherwise insure collateral.

44 b. This act shall not create a cause of action to the debtor or any
45 third party:

46 (1) for the purchase or placement of collateral protection insurance

- 1 in substantial compliance with the terms of this act;
- 2 (2) for not purchasing collateral protection insurance;
- 3 (3) as a result of the amount or level of coverage, geographical
- 4 scope of coverage or deductible associated with collateral protection
- 5 insurance purchased by the creditor;
- 6 (4) because the creditor purchases collateral protection insurance
- 7 that protects only the interest of the creditor or less than all of the
- 8 interest of the debtor; or
- 9 (5) nondisclosure of commissions or fees included in costs.
- 10 c. The list under subsection b. of this section does not imply that
- 11 a cause of action is otherwise created by this act.
- 12
- 13 9. Neither this act nor the purchase of collateral protection
- 14 insurance nor receipt of commission or other consideration by the
- 15 creditor shall impose a fiduciary relationship between the creditor and
- 16 debtor. Placement of collateral protection insurance is for the purpose
- 17 of protection of the interest of the creditor when the debtor fails to
- 18 insure collateral as required by the credit transaction agreement.
- 19
- 20 10. This act shall not impair any other remedies, rights or options
- 21 available for a creditor pursuant to law, regulation, ruling or contract.
- 22
- 23 11. If a credit transaction involves more than one debtor, notices
- 24 or warnings required to be mailed under this act, shall be mailed to the
- 25 primary debtor.
- 26
- 27 12. This act shall apply to all credit transactions entered into in this
- 28 State or where the debtor resides in this State, provided, however, that
- 29 if the debtor resides in another state, compliance with that state's
- 30 requirements regarding notice of purchase by the creditor of collateral
- 31 protection insurance shall be deemed compliance with the notice
- 32 provisions of this act.
- 33
- 34 13. This act shall apply to all credit transactions whether entered
- 35 into prior or subsequent to the effective date of this act shall apply
- 36 only to collateral protection insurance purchased after the effective
- 37 date of this act.
- 38
- 39 14. This act shall take effect immediately.
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- 41

42 STATEMENT

43

44 This bill clarifies the rights of the parties to a loan agreement in

45 which the borrower is required to insure the collateral for the loan. It

46 permits the lender to obtain collateral protection insurance if the

1 borrower does not comply with the borrower's obligations regarding
2 the purchase of insurance. Under the bill, the lender is required to
3 send a notice to the borrower indicating that the borrower had not
4 complied with the requirement to purchase collateral protection
5 insurance. If the borrower does not provide evidence of such purchase
6 within 10 days from the date of the postmark of the notice, the lender
7 may purchase insurance to protect the lender's interest in the collateral
8 and the borrower will be required to reimburse the lender for the
9 lender's cost of purchasing collateral protection insurance. The lender
10 must send a notice of the purchase of collateral protection insurance
11 to the borrower, including the cost of the insurance, and inform the
12 borrower that the borrower is to reimburse the lender by cash within
13 10 days, or if that has not taken place, the lender may add the cost to
14 the principal balance of the loan.

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Regulates the purchase of collateral protection insurance by lenders.