

[First Reprint]  
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:

6

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

9

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

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AFI committee amendments adopted March 3, 1997.

1 premiums paid, all broker's commissions and fees, whether the  
2 commission is paid to the creditor, to a person or entity that is an  
3 affiliate of the creditor or to a person or entity which is unrelated to  
4 the creditor or whether such commissions are for a fixed percentage,  
5 and shall include all premiums, fees, penalties and administrative costs  
6 charged to the creditor upon cancellation of the collateral protection  
7 insurance.

8 "Credit agreement" means the open-end or closed-end loan  
9 agreement, promissory note, mortgage, security agreement, sales  
10 agreement, line of credit agreement or other document or documents  
11 that set forth the terms of the credit transaction.

12 "Credit transaction" means any transaction pursuant to which a  
13 creditor gives consideration for an obligation by a debtor to make  
14 payment or repayment at a future date or dates, which obligation is  
15 secured in whole or in part by collateral. "Credit transaction"  
16 includes, but is not limited to, an advance of money, opening a line of  
17 credit, a letter of credit and an installment sale.

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

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

24

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

27 (1) the terms of the credit agreement require the debtor to obtain  
28 and continue to maintain insurance protecting against loss or damage  
29 to the collateral and the debtor has not obtained or does not maintain  
30 such insurance;

31 (2) the creditor mails a notice at least <sup>1</sup>[10] 30<sup>1</sup> calendar days, but  
32 not more than 90 calendar days before purchasing collateral protection  
33 insurance;

34 (3) the notice is mailed to the debtor at the address on file with the  
35 creditor, by <sup>1</sup>certified mail, return receipt requested, or if not accepted  
36 by the debtor or not deliverable, by<sup>1</sup> United States mail, first class,  
37 postage prepaid, containing the following message or a message  
38 having substantially the same meaning:

39

#### NOTICE AND WARNING

40 We have not received evidence that you have purchased the  
41 insurance required by your [insert type of credit transaction].  
42 Unless you provide us with the evidence that you have the  
43 required insurance within <sup>1</sup>[10] 30<sup>1</sup> days from date this letter  
44 was mailed, we may purchase insurance to protect our interest.  
45 This insurance may, but need not, include protection for you for  
46 damage or loss or for your liability to third parties.

1           You are responsible for the cost, including earned  
2 premiums, commissions and fees, of the insurance purchased by  
3 us. You may pay us the amount of the costs, or if not, we may  
4 add the cost to your obligation to us and repayment will include  
5 interest at the rate of the original obligation. The effective date  
6 of coverage of the insurance we purchase will be the date your  
7 coverage lapsed or the date by which you failed to provide proof  
8 of the required coverage. The coverage we purchase may be  
9 more expensive than insurance you can obtain on your own.  
10 <sup>1</sup>The amount of coverage we purchase will not be greater than  
11 the outstanding balance as of the effective date of the coverage  
12 we purchase, which may be less than the value of your property.  
13 As a result, you may be underinsured.<sup>1</sup> The coverage we  
14 purchase may not include any liability coverage for claims made  
15 against you and will not satisfy any mandatory liability insurance  
16 law or financial responsibility law of this or any other state.

17           If you provide us with evidence that you have obtained the  
18 required insurance, we will then cancel the insurance that we  
19 have purchased; but you will be obligated to pay us any cost we  
20 have incurred, including premiums, commissions and  
21 administrative fees which we may have incurred for our  
22 obtaining the coverage. Please note that you are responsible for  
23 these costs even if you actually have the required insurance but  
24 do not provide us with timely evidence that it is in effect; and

25           (4) the debtor fails to provide evidence to the creditor of the  
26 insurance required by the credit transaction agreement within <sup>1</sup>[10]  
27 30<sup>1</sup> days of the date the notice was mailed pursuant to this section .

28           b. The creditor is authorized to and has the authority to take the  
29 actions and obtain collateral protection insurance on the terms and  
30 conditions set forth in the form of this statutory notice. The notice  
31 and warning may contain other information deemed pertinent by the  
32 creditor, provided that the information is not contradictory to the  
33 provisions of this act or other statutory law.

34  
35           4. a. Within 14 calendar days following the placement of the  
36 collateral protection insurance, the creditor shall mail or cause a notice  
37 to be mailed to the debtor at the address on file with the creditor, by  
38 <sup>1</sup>certified mail, return receipt requested or if not accepted by the  
39 debtor or not deliverable, by<sup>1</sup> United States mail, first class, postage  
40 prepaid, informing the debtor that:

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

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

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

1 (4) if a cash payment for the amount stated under paragraph (2) of  
2 this subsection is not received within <sup>1</sup>[10] 30<sup>1</sup> calendar days, the  
3 creditor may add that amount to the loan balance.

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

10  
11 5. a. The effective date of the collateral protection insurance  
12 policy purchased by the creditor shall not be sooner than the earlier of  
13 the date the debtor's insurance lapsed or the date that the debtor failed  
14 to provide evidence of insurance on the collateral.

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

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

21  
22 6. a. Collateral protection insurance shall terminate or shall be  
23 canceled upon the occurrence of any of the following:

24 (1) the date the creditor is provided with evidence of proper  
25 insurance coverage purchased by the debtor as required by the credit  
26 transaction agreement;

27 (2) completion of foreclosure, including sale, or repossession or  
28 similar event, including sale;

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

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

32 b. If the collateral protection insurance is canceled and there is any  
33 unearned premium paid by the debtor which is refunded to the  
34 creditor, the creditor shall pay or credit the debtor with the amount of  
35 the refund. All statements of the loan balance and activity provided by  
36 the creditor to the debtor shall include all amounts debited or credited  
37 to the obligation due to the purchase and cancellation of collateral  
38 protection insurance.

39  
40 7. Collateral protection insurance may be obtained from an  
41 insurance carrier chosen by the creditor which is licensed or otherwise  
42 authorized to provide such insurance in this State, and shall be set  
43 forth in an individual policy or certificate of insurance.

44  
45 8. a. A creditor which places or a person that receives  
46 commissions or fees arising out of collateral protection insurance shall

1 not be liable to any debtor, guarantor or other party for the placement  
2 of collateral protection insurance <sup>1</sup>, except if the purchase of collateral  
3 protection insurance is the result of error by the creditor<sup>1</sup> . If the  
4 creditor does not substantially comply with the provisions of this act  
5 in purchasing collateral protection insurance, the sole and exclusive  
6 remedy of the debtor is that the debtor does not have to pay for the  
7 insurance <sup>1</sup>[which is not purchased in compliance with this act] and  
8 any associated creditor fees or costs<sup>1</sup> . A creditor is not, by virtue of  
9 this act, required to purchase collateral protection insurance or  
10 otherwise insure collateral.

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

13 (1) for the purchase or placement of collateral protection insurance  
14 in substantial compliance with the terms of this act;

15 (2) for not purchasing collateral protection insurance;

16 (3) as a result of the amount or level of coverage, geographical  
17 scope of coverage or deductible associated with collateral protection  
18 insurance purchased by the creditor;

19 (4) because the creditor purchases collateral protection insurance  
20 that protects only the interest of the creditor or less than all of the  
21 interest of the debtor; or

22 (5) nondisclosure of commissions or fees included in costs.

23 c. The list under subsection b. of this section does not imply that  
24 a cause of action is otherwise created by this act.

25

26 9. Neither this act nor the purchase of collateral protection  
27 insurance nor receipt of commission or other consideration by the  
28 creditor shall impose a fiduciary relationship between the creditor and  
29 debtor. Placement of collateral protection insurance is for the purpose  
30 of protection of the interest of the creditor when the debtor fails to  
31 insure collateral as required by the credit transaction agreement.

32

33 10. This act shall not impair any other remedies, rights or options  
34 available for a creditor pursuant to law, regulation, ruling or contract.

35

36 11. If a credit transaction involves more than one debtor, notices  
37 or warnings required to be mailed under this act, shall be mailed to the  
38 primary debtor.

39

40 12. This act shall apply to all credit transactions entered into in this  
41 State or where the debtor resides in this State, provided, however, that  
42 if the debtor resides in another state, compliance with that state's  
43 requirements regarding notice of purchase by the creditor of collateral  
44 protection insurance shall be deemed compliance with the notice  
45 provisions of this act.

1       13. This act shall apply to all credit transactions whether entered  
2 into prior or subsequent to the effective date of this act shall apply  
3 only to collateral protection insurance purchased after the effective  
4 date of this act.

5

6       14. This act shall take effect immediately.

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11       Regulates the purchase of collateral protection insurance by lenders.