

SENATE, No. 2126

STATE OF NEW JERSEY

INTRODUCED JUNE 5, 1997

By Senators INVERSO and CARDINALE

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."

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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 in the collateral, which insurance is  
17 purchased as a result of the debtor's failure to provide evidence of  
18 insurance or failure to maintain insurance covering the collateral.

19 "Collateral protection insurance" shall not include (1) insurance to  
20 protect the creditor following completion of foreclosure and sale or  
21 repossession and sale of the collateral, (2) credit insurance, mortgage  
22 protection insurance or other insurance issued to cover the life or  
23 health of the debtor, (3) mortgage insurance, or (4) title insurance.  
24 The fact that the insurance may have some other designation or title,  
25 such as "creditor placed insurance," shall not mean it is not collateral  
26 insurance as defined in this act.

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

36 "Credit agreement" means the open-end or closed-end loan  
37 agreement, promissory note, mortgage, security agreement, sales

1 agreement, line of credit agreement or other document or documents  
2 that set forth the terms of the credit transaction.

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

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

12 "Debtor" means a natural person obligated to a creditor pursuant to  
13 a credit transaction where the money, property or services which are  
14 the subject of the transaction are primarily for personal, family or  
15 household purposes, whether the obligation is primary or secondary,  
16 and includes all persons who are successors to a debtor.

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

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

24 (2) the creditor mails a notice at least 30 calendar days, but not  
25 more than 90 calendar days before purchasing collateral protection  
26 insurance;

27 (3) the notice is mailed to the debtor at the address on file with the  
28 creditor, by certified mail, return receipt requested, or if not accepted  
29 by the debtor or not deliverable, by United States mail, first class,  
30 postage prepaid, containing the following message or a message  
31 having substantially the same 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 30 days from date this letter was  
37 mailed, we may purchase insurance to protect our interest.

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

1 amount of coverage we purchase will not be greater than the  
2 outstanding balance as of the effective date of the coverage we  
3 purchase, which may be less than the value of your property. As  
4 a result, you may be underinsured. The coverage we purchase  
5 will not include any liability coverage for claims made against  
6 you and will not satisfy any mandatory liability insurance law or  
7 financial responsibility law of this or any other state.

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

16 (4) the debtor fails to provide evidence to the creditor of the  
17 insurance required by the credit transaction agreement within 30 days  
18 of the date the notice was mailed pursuant to this section.

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

26  
27 4. a. Within 14 calendar days following the placement of the  
28 collateral protection insurance, the creditor shall mail or cause a notice  
29 to be mailed to the debtor at the address on file with the creditor, by  
30 certified mail, return receipt requested or if not accepted by the debtor  
31 or not deliverable, by United States mail, first class, postage prepaid,  
32 informing the debtor that:

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

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

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

39 (4) if a cash payment for the amount stated under paragraph (2) of  
40 this subsection is not received within 30 calendar days, the creditor  
41 may add that amount to the loan balance.

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

1 excessive or discriminatory for the purposes of this act.

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

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

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

13

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

16 (1) the date the creditor is provided with evidence of proper  
17 insurance coverage purchased by the debtor as required by the credit  
18 transaction agreement;

19 (2) completion of foreclosure, including sale, or repossession or  
20 similar event, including sale;

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

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

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

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

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37 8. a. A creditor that places or a person that receives commissions  
38 or fees arising out of collateral protection insurance shall not be liable  
39 to any debtor, guarantor or other party for the placement of collateral  
40 protection insurance, except if the purchase of collateral protection  
41 insurance is the result of error by the creditor. If the creditor does not  
42 substantially comply with the provisions of this act in purchasing  
43 collateral protection insurance, the sole and exclusive remedy of the  
44 debtor is that the debtor does not have to pay for the insurance and  
45 any associated creditor fees or costs. A creditor is not, by virtue of  
46 this act, required to purchase collateral protection insurance or

1 otherwise insure collateral.

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

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

6 (2) for not purchasing collateral protection insurance;

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

10 (4) because the creditor purchases collateral protection insurance  
11 that protects only the interest of the creditor or less than all of the  
12 interest of the debtor; or

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

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

16 d. This act shall not apply to credit transactions involving  
17 extensions of credit primarily for business, commercial or agricultural  
18 purposes, and shall not be deemed to regulate or limit the rights of the  
19 parties to a business, commercial or agricultural transaction to  
20 contract for terms and provisions regarding insurance otherwise not  
21 prohibited by law.

22

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

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

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

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

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44 13. This act shall apply to all credit transactions whether entered  
45 into prior or subsequent to the effective date of this act and shall

1 apply only to collateral protection insurance purchased after the  
2 effective date of this act.

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4 14. This act shall take effect immediately.

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7 STATEMENT

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9 This bill clarifies the rights of the parties to a consumer loan  
10 agreement in which the borrower is required to insure the collateral for  
11 the loan. It permits the lender to obtain collateral protection insurance  
12 if the borrower does not comply with the borrower's obligations  
13 regarding the purchase of insurance. Under the bill, the lender is  
14 required to send a notice to the borrower, by certified mail, return  
15 receipt requested, or if rejected by the borrower or not deliverable, by  
16 United States Mail, postage prepaid, indicating to the borrower that  
17 the lender has no proof that the borrower has complied with the  
18 requirement to purchase collateral protection insurance. If the  
19 borrower does not provide evidence of such purchase within 30 days  
20 from the date of the notice, the lender may purchase insurance to  
21 protect the lender's interest in the collateral and the borrower will be  
22 required to reimburse the lender for the lender's cost of purchasing  
23 collateral protection insurance. The lender must send a notice of the  
24 purchase of collateral protection insurance, including the cost of the  
25 insurance, to the borrower by certified mail, return receipt requested,  
26 or if rejected by the borrower or not deliverable, by United States  
27 mail, postage prepaid, and inform the borrower that the borrower is to  
28 reimburse the lender by cash within 30 days, or if that has not taken  
29 place, the lender may add the cost to the principal balance of the loan.

30 The bill requires the lender to inform the borrower that even if the  
31 lender purchases collateral protection insurance, it may not cover the  
32 value of the property, possibly resulting in the borrower being  
33 underinsured; and provides that if the purchase of collateral protection  
34 insurance is due to the error of the lender, the borrower would not be  
35 liable to the lender for the cost of the collateral protection insurance.

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40 Regulates the purchase of collateral protection insurance by consumer  
41 lenders.