

CHAPTER 44

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

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

C.17:16V-1 Short title.

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

C.17:16V-2 Definitions relative to collateral protection insurance.

2. As used in this act:

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

"Collateral protection insurance" means insurance purchased by a creditor in which the creditor is made the loss payee or beneficiary providing coverage against loss or damage to collateral as a result of fire, theft, damage or other risks that would impair the creditor's interest in the collateral, which insurance is purchased as a result of the debtor's failure to provide evidence of insurance or failure to maintain insurance covering the collateral as required in a credit agreement. "Collateral protection insurance" shall not include (1) insurance to protect the creditor following completion of foreclosure and sale or repossession and sale of the collateral, (2) credit insurance or mortgage protection insurance, (3) credit life insurance or credit health insurance as defined in N.J.S.17B:29-2, (4) insurance issued to cover personal or real property of the debtor which is not required by the creditor and is purchased by the creditor voluntarily, or (5) title insurance. The fact that the insurance may have some other designation or title, such as "creditor placed insurance," shall not mean it is not collateral protection insurance as defined in this act.

"Cost of collateral protection insurance" or "cost" means the premium paid which premium includes all commissions and fees paid by the insurer, whether the commission is paid to the creditor, to a person or entity that is an affiliate of the creditor or to a person or entity that is unrelated to the creditor, or whether such commissions are for a fixed percentage. "Cost" shall also include all fees, penalties and administrative costs charged to the creditor upon cancellation of the collateral protection insurance but shall not include any placement charges or fees for the collateral protection insurance charged by the creditor.

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

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

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

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

C.17:16V-3 Collateral protection insurance, purchase by creditor.

3. a. If the terms of the credit agreement require the debtor to obtain and continue to maintain insurance which designates the creditor as loss payee or beneficiary protecting against loss or damage to the collateral and the debtor has not obtained or does not maintain that insurance, a creditor may purchase collateral protection insurance as of the date of the debtor's failure to provide evidence of insurance or failure to maintain insurance covering the collateral, or at a later date at the option of the creditor, with the cost to be paid or reimbursed by the debtor.

- b. Collateral protection insurance purchased by the creditor shall be effective: as of the date of the initial credit transaction, if insurance designating the creditor as loss payee or beneficiary protecting against loss or damage to the collateral is not purchased by the debtor; as of the date

the required coverage lapsed, if purchased initially but not maintained by the debtor; or at a later date as determined by the creditor.

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

(1) as of (insert date), evidence that you have purchased or maintained the insurance required by the terms of your credit agreement has not been provided to the creditor, (name of creditor);

(2) collateral protection insurance has been purchased by the creditor, with respect to the following credit transaction: (insert type of credit transaction);

(3) you are responsible for the cost of the collateral protection insurance purchased by the creditor, which cost is \$;

(4) the amount stated under paragraph (3) of this notice has been added to the principal balance in your account as of (indicate date);

(5) all or part of the cost of the collateral protection insurance stated under paragraph (3) of this notice may be paid by you at any time and amounts paid will be applied to your account;

(6) the effective date of coverage of the collateral protection insurance purchased by the creditor is the date of the initial credit transaction, if you failed to obtain insurance coverage initially, or the date of the lapse of coverage, if you failed to maintain or renew your coverage, or on (specify date if on a later date as determined by the creditor pursuant to subsection b. of this section);

(7) the cost of the collateral protection insurance purchased by the creditor may be more than the cost of insurance you can obtain on your own;

(8) the amount of coverage will not be greater than the outstanding principal balance in your account as of the effective date of the collateral protection insurance purchased by the creditor, which may be less than the value of your property, and as a result, you may be underinsured;

(9) the coverage purchased by the creditor will not include any liability coverage for claims made against you and will not satisfy any mandatory liability insurance law or financial responsibility law of this or any other state;

(10) if you provide us with evidence that you have the required insurance, we shall cause the collateral protection insurance to be canceled as of the effective date of the coverage which you provide (as shown on the policy or other evidence of coverage sent to us), and any unearned premium, costs and interest applicable to the collateral protection insurance after that date will be applied to the balance of your account, and the excess, if any, will be paid to you; and

(11) if you have insurance coverage in place, or if you have replaced the coverage, and it has been in place without any lapse in the coverage but you have failed to provide the creditor with evidence of that coverage, you may, within 30 days after this notice was mailed, provide the creditor evidence of the insurance coverage showing the creditor as loss payee or beneficiary, and the collateral protection insurance coverage placed by the creditor will be canceled and the creditor will deduct from your principal balance all costs of the collateral protection insurance purchased by the creditor, including any interest charged to your account as a result of the costs of that insurance being added to your principal balance.

d. Paragraph (9) of the notice required in subsection c. of this section shall be in a larger type size than the other paragraphs in that notice, and in bold type.

e. The creditor shall inform the debtor, in the notice, that if the debtor has insurance coverage naming the creditor as loss payee or beneficiary in place, or has replaced the insurance coverage, without a lapse in coverage but has failed to notify the creditor, the debtor has 30 days from the date the notice required under subsection c. of this section was mailed to provide evidence of that coverage and include the address to which evidence of coverage is to be sent.

f. If, within 30 days after the notice required by subsection c. of this section was mailed to the debtor, the debtor provides evidence of insurance coverage to the creditor and evidence that the insurance coverage required by the credit agreement was in place or has been replaced, without any lapse in the coverage, and the only failure to comply with the credit agreement was the failure to provide evidence of that coverage to the creditor in a timely fashion, then the creditor shall cancel the coverage placed by the creditor and, if the costs of purchasing collateral protection insurance have been added to the obligation of the borrower, deduct those costs from

the debtor's obligation, including interest, and no costs for the purchase of collateral protection insurance by the lender shall be assessed against the borrower.

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

C.17:16V-4 Collateral protection insurance; effective date, face amount, term.

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

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

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

C.17:16V-5 Termination, cancellation conditions.

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

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

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

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

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

b. If the collateral protection insurance is canceled and there is any unearned premium paid by the debtor which is refunded to the creditor, the creditor shall pay or credit the debtor with the amount of the refund pursuant to paragraph (10) of subsection c. of section 3 of this act. All statements of the loan balance and activity provided by the creditor to the debtor shall include all amounts debited or credited to the obligation due to the purchase and cancellation of collateral protection insurance.

C.17:16V-6 Obtaining insurance.

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

C.17:16V-7 Cause of action not created to debtor or third party; remedy; exempt transactions.

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

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

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

(2) for not purchasing collateral protection insurance;

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

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

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

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

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

C.17:16V-8 Fiduciary relationship not imposed.

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

C.17:16V-9 Remedies, rights, options unimpaired.

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

C.17:16V-10 Notices to primary debtor.

10. If a credit transaction involves more than one debtor, notices or warnings required to be mailed under this act, shall be mailed to any primary debtor.

C.17:16V-11 Applicability when debtor resides in State.

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

C.17:16V-12 Transactions to which act applies.

12. This act shall apply to all credit transactions whether entered into prior or subsequent to the effective date of this act but shall apply only to collateral protection insurance purchased after the effective date of this act.

13. This act shall take effect on the first business day following the 60th day after enactment.

Approved March 12, 1999.