

SENATE, No. 425

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JANUARY 20, 1998

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

SYNOPSIS

Regulates the purchase of collateral protection insurance by consumer lenders.

CURRENT VERSION OF TEXT

As introduced.



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

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

46 "Creditor" means any entity chartered, licensed or otherwise

- 1 authorized by law to provide credit through a credit transaction and
- 2 includes successors and assignees of the original creditor.

"Debtor" means a natural person obligated to a creditor pursuant to a credit transaction where 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.

8

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

11 (1) the terms of the credit agreement require the debtor to obtain
12 and continue to maintain insurance protecting against loss or damage
13 to the collateral and the debtor has not obtained or does not maintain
14 such insurance;

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

18 (3) the notice is mailed to the debtor at the address on file with the
19 creditor, by certified mail, return receipt requested, or if not accepted
20 by the debtor or not deliverable, by United States mail, first class,
21 postage prepaid, containing the following message or a message
22 having substantially the same meaning:

NOTICE AND WARNING

24 We have not received evidence that you have purchased the
25 insurance required by your [insert type of credit transaction].
26 Unless you provide us with the evidence that you have the
27 required insurance within 30 days from date this letter was
28 mailed, we may purchase insurance to protect our interest.

You are responsible for the cost, including earned premiums, commissions and fees, of the insurance purchased by us. You may pay us the amount of the costs, or if not, we may add the cost to your obligation to us and repayment will include interest at the rate of the original obligation. The effective date of coverage of the insurance we purchase will be the date your coverage lapsed or the date by which you failed to provide proof of the required coverage. The coverage we purchase may be more expensive than insurance you can obtain on your own. The amount of coverage we purchase will not be greater than the outstanding balance as of the effective date of the coverage we purchase, which may be less than the value of your property. As a result, you may be underinsured. The coverage we purchase 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.

45 If you provide us with evidence that you have obtained the
46 required insurance, we will then cancel the insurance that we

1 have purchased; but you will be obligated to pay us any cost we
2 have incurred, including premiums, commissions and
3 administrative fees which we may have incurred for our
4 obtaining the coverage. Please note that you are responsible for
5 these costs even if you actually have the required insurance but
6 do not provide us with timely evidence that it is in effect; and

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

10 b. The creditor is authorized to and has the authority to take the
11 actions and obtain collateral protection insurance on the terms and
12 conditions set forth in the form of the statutory notice provided in
13 subsection a. of this section. The notice and warning may contain
14 other information deemed pertinent by the creditor, provided that the
15 information is not contradictory to the provisions of this act or other
16 statutory law.

17

18 4. a. Within 14 calendar days following the placement of the
19 collateral protection insurance, the creditor shall mail or cause a notice
20 to be mailed to the debtor at the address on file with the creditor, by
21 certified mail, return receipt requested or if not accepted by the debtor
22 or not deliverable, by United States mail, first class, postage prepaid,
23 informing the debtor that:

24 (1) collateral protection insurance has been purchased by the
25 creditor with respect to the following credit transaction: 【insert type
26 of credit transaction】;

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

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

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

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

39

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

44 b. The face amount of the collateral protection insurance policy
45 shall not exceed the outstanding balance of the obligation as of the
46 effective date of the coverage purchased by the creditor even though

1 the coverage may exceed the actual cash value or cost of repair.
2 c. A collateral protection insurance policy term may, but need not,
3 extend to the full life of the credit transaction.

4

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

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

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

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

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

15 b. If the collateral protection insurance is canceled and there is any
16 unearned premium paid by the debtor which is refunded to the
17 creditor, the creditor shall pay or credit the debtor with the amount of
18 the refund. All statements of the loan balance and activity provided by
19 the creditor to the debtor shall include all amounts debited or credited
20 to the obligation due to the purchase and cancellation of collateral
21 protection insurance.

22

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

27

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

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

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

43 (2) for not purchasing collateral protection insurance;

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

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

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

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

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

13

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

20

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

23

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

27

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

34

35 13. This act shall apply to all credit transactions whether entered
36 into prior or subsequent to the effective date of this act and shall apply
37 only to collateral protection insurance purchased after the effective
38 date of this act.

39

40 14. This act shall take effect immediately.

41

STATEMENT

45 This bill clarifies the rights of the parties to a consumer loan
46 agreement in which the borrower is required to insure the collateral for

1 the loan. It permits the lender to obtain collateral protection insurance
2 if the borrower does not comply with the borrower's obligations
3 regarding the purchase of insurance. Under the bill, the lender is
4 required to send a notice to the borrower, by certified mail, return
5 receipt requested, or if rejected by the borrower or not deliverable, by
6 United States Mail, postage prepaid, indicating to the borrower that
7 the lender has no proof that the borrower has complied with the
8 requirement to purchase collateral protection insurance. If the
9 borrower does not provide evidence of such purchase within 30 days
10 from the date of the notice, the lender may purchase insurance to
11 protect the lender's interest in the collateral and the borrower will be
12 required to reimburse the lender for the lender's cost of purchasing
13 collateral protection insurance. The lender must send a notice of the
14 purchase of collateral protection insurance, including the cost of the
15 insurance, to the borrower by certified mail, return receipt requested,
16 or if rejected by the borrower or not deliverable, by United States
17 mail, postage prepaid, and inform the borrower that the borrower is to
18 reimburse the lender by cash within 30 days, or if that has not taken
19 place, the lender may add the cost to the principal balance of the loan.

20 The bill requires the lender to inform the borrower that even if the
21 lender purchases collateral protection insurance, it may not cover the
22 value of the property, possibly resulting in the borrower being
23 underinsured; and provides that if the purchase of collateral protection
24 insurance is due to the error of the lender, the borrower would not be
25 liable to the lender for the cost of the collateral protection insurance.