

LEGISLATIVE HISTORY CHECKLIST

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LAWS of 1999

CHAPTER: 44

NJSA: 17:16V-1 to 17:16V-12
("Collateral Protection Insurance Act" -- consumer loans)

BILL NO: A1931(Substituted for S425 - 1st Reprint)

SPONSOR(S): Weingarten

DATE INTRODUCED: April 16, 1998

COMMITTEE:

ASSEMBLY: Banking and Insurance

SENATE: State Government, Banking

AMENDED DURING PASSAGE: Yes

DATES OF PASSAGE:

ASSEMBLY: January 28, 1999

SENATE: December 10, 1998

DATE OF APPROVAL: March 12, 1999

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: *YES* 1st Reprint
(Amendments during passage denoted by superscript numbers)

A1931

SPONSORS STATEMENT: *Yes* (Begins on page 6 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *Yes*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

S425

SPONSORS STATEMENT: *Yes (Begins on page 6 of original bill)*

Bill and Sponsor's Statement identical to A1931

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

LAST VERSION: *Yes (1st Reprint)*

(Amendments during passage denoted by superscript numbers)

GOVERNOR'S ACTIONS

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES: *No*

Title 17
Chapter 16V (New)
Collateral
Protection Insurance
§§1-12
C. 17:16V-1
To
17:16V-12
§13
Note To §§1-12

P.L. 1999, CHAPTER 44, *approved March 12, 1999*
Assembly, No. 1931 (*First Reprint*)

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 ¹Insurance¹ Act."

9

10 2. As used in this act:

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

13 "Collateral protection insurance" means insurance purchased by a
14 creditor ¹in which the creditor is made the loss payee or beneficiary¹
15 providing coverage against loss ¹[, expense]¹ or damage to collateral
16 as a result of fire, theft, damage or other risks that would impair the
17 creditor's interest in the collateral, which insurance is purchased as a
18 result of the debtor's failure to provide evidence of insurance or failure
19 to maintain insurance covering the collateral ¹as required in a credit
20 agreement¹. "Collateral protection insurance" shall not include (1)
21 insurance to protect the creditor following completion of foreclosure
22 and sale or repossession and sale of the collateral, (2) credit insurance
23 ¹[,] or¹ mortgage protection insurance ¹[or other insurance issued to
24 cover the life or health of the debtor,], (3) credit life insurance or
25 credit health insurance as defined in N.J.S.17B:29-2, (4) insurance
26 issued to cover personal or real property of the debtor which is not
27 required by the creditor and is purchased by the creditor voluntarily,¹
28 or ¹[(3)] (5)¹ title insurance. The fact that the insurance may have
29 some other designation or title, such as "creditor placed insurance,"
30 shall not mean it is not collateral ¹protection¹ insurance as defined in
31 this act.

32 "Cost of collateral ¹[insurance]¹ protection insurance" or "cost"

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:

¹ Senate SGB committee amendments adopted October 15, 1998.

1 means ¹ [all amounts paid by the creditor to obtain the insurance,
2 including all premiums] the premium¹ paid ¹ [and] which premium
3 includes¹ all ¹ [broker's]¹ commissions and fees ¹ paid by the insurer¹,
4 whether the commission is paid to the creditor, to a person or entity
5 that is an affiliate of the creditor or to a person or entity ¹ [which]
6 that¹ is unrelated to the creditor, or whether such commissions are for
7 a fixed percentage ¹ [, and]. "Cost"¹ shall ¹ also¹ include all
8 ¹ [premiums,]¹ fees, penalties and administrative costs charged to the
9 creditor upon cancellation of the collateral protection insurance ¹ but
10 shall not include any placement charges or fees for the collateral
11 protection insurance charged by the creditor¹ .

12 "Credit agreement" means the open-end or closed-end loan
13 agreement, promissory note, security agreement, sales agreement, line
14 of credit agreement ¹ , contract¹ or other document or documents that
15 set forth the terms of the credit transaction.

16 "Credit transaction" means any transaction pursuant to which a
17 creditor gives consideration for an obligation by a debtor to make
18 payment or repayment at a future date or dates, which obligation is
19 secured in whole or in part by collateral. "Credit transaction"
20 includes, but is not limited to, an advance of money, ¹ [an]¹ opening
21 ¹ [of]¹ a line of credit, a letter of credit and an installment sale.

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

25 "Debtor" means a natural person obligated to a creditor pursuant to
26 a credit transaction ¹ [where] in which¹ the money, property or
27 services which are the subject of the transaction are primarily for
28 personal, family or household purposes, whether the obligation is
29 primary or secondary, and includes all persons who are successors to
30 a debtor.

31

32 3. a. ¹ [Collateral] If the terms of the credit agreement require the
33 debtor to obtain and continue to maintain insurance which designates
34 the creditor as loss payee or beneficiary protecting against loss or
35 damage to the collateral and the debtor has not obtained or does not
36 maintain that insurance, a creditor may purchase collateral¹ protection
37 insurance ¹ [may be obtained by a creditor] as of the date of the
38 debtor's failure to provide evidence of insurance or failure to maintain
39 insurance covering the collateral, or at a later date at the option of the
40 creditor¹ , with the cost to be paid or reimbursed by the debtor¹ [, if:

41 (1) the terms of the credit agreement require the debtor to obtain
42 and continue to maintain insurance protecting against loss or damage
43 to the collateral and the debtor has not obtained or does not maintain
44 such insurance;

45 (2) the creditor mails a notice at least 30 calendar days, but not

1 more than 90 calendar days before purchasing collateral protection
2 insurance;

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

7 NOTICE AND WARNING

8 We have not received evidence that you have purchased the
9 insurance required by your (insert type of credit transaction).
10 Unless you provide us with evidence that you have the required
11 insurance within 30 days from date this letter was mailed, we
12 may purchase insurance to protect our interest.

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

26 The coverage we purchase will not include any liability
27 coverage for claims made against you and will not satisfy any
28 mandatory liability insurance law or financial responsibility law
29 of this or any other state.

30 If you provide us with evidence that you have obtained the
31 required insurance, we will then cancel the insurance that we
32 have purchased; but you will be obligated to pay us any cost we
33 have incurred, including premiums, commissions and
34 administrative fees which we may have incurred for our
35 obtaining the coverage. Please note that you are responsible for
36 these costs even if you actually have the required insurance but
37 do not provide us with timely evidence that it is in effect; and

38 (4) the debtor fails to provide evidence to the creditor of the
39 insurance required by the credit transaction agreement within 30 days
40 of the date the notice was mailed pursuant to this section¹.

41 b. ¹ [The creditor is authorized to and has the authority to take the
42 actions and obtain collateral protection insurance on the terms and
43 conditions set forth in the form of the statutory notice provided in
44 subsection a. of this section. The notice and warning may contain
45 other information deemed pertinent by the creditor, provided that the
46 information is not contradictory to the provisions of this act or other

1 statutory law] Collateral protection insurance purchased by the
2 creditor shall be effective: as of the date of the initial credit
3 transaction, if insurance designating the creditor as loss payee or
4 beneficiary protecting against loss or damage to the collateral is not
5 purchased by the debtor; as of the date the required coverage lapsed,
6 if purchased initially but not maintained by the debtor; or at a later
7 date as determined by the creditor.

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

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

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

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

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

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

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

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

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

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

44 (10) if you provide us with evidence that you have the required
45 insurance, we shall cause the collateral protection insurance to be
46 canceled as of the effective date of the coverage which you provide (as

1 shown on the policy or other evidence of coverage sent to us), and any
2 unearned premium, costs and interest applicable to the collateral
3 protection insurance after that date will be applied to the balance of
4 your account, and the excess, if any, will be paid to you; and

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

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

19 e. The creditor shall inform the debtor, in the notice, that if the
20 debtor has insurance coverage naming the creditor as loss payee or
21 beneficiary in place, or has replaced the insurance coverage, without
22 a lapse in coverage but has failed to notify the creditor, the debtor has
23 30 days from the date the notice required under subsection c. of this
24 section was mailed to provide evidence of that coverage and include
25 the address to which evidence of coverage is to be sent.

26 f. If, within 30 days after the notice required by subsection c. of
27 this section was mailed to the debtor, the debtor provides evidence of
28 insurance coverage to the creditor and evidence that the insurance
29 coverage required by the credit agreement was in place or has been
30 replaced, without any lapse in the coverage, and the only failure to
31 comply with the credit agreement was the failure to provide evidence
32 of that coverage to the creditor in a timely fashion, then the creditor
33 shall cancel the coverage placed by the creditor and, if the costs of
34 purchasing collateral protection insurance have been added to the
35 obligation of the borrower, deduct those costs from the debtor's
36 obligation, including interest, and no costs for the purchase of
37 collateral protection insurance by the lender shall be assessed against
38 the borrower.

39 g. The costs charged to the debtor shall 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.¹

45
46 ¹[4. a. Within 14 calendar days following the placement of the

1 collateral protection insurance, the creditor shall mail or cause a notice
2 to be mailed to the debtor at the address on file with the creditor, by
3 United States mail, first class, postage prepaid, informing the debtor
4 that:

5 (1) collateral protection insurance has been purchased by the
6 creditor with respect to the following credit transaction: insert type
7 of credit transaction;

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

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

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

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

20

21 ¹[5.] 4.¹ a. The effective date of the collateral protection
22 insurance policy purchased by the creditor shall not be sooner than the
23 earlier of the date the debtor's insurance lapsed or the date that the
24 debtor failed to provide evidence of insurance on the collateral.

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

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

31

32 ¹[6.] 5.¹ a. Collateral protection insurance shall terminate or shall
33 be canceled upon the occurrence of any of the following:

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

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

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

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

42 b. If the collateral protection insurance is canceled and there is any
43 unearned premium paid by the debtor which is refunded to the
44 creditor, the creditor shall pay or credit the debtor with the amount of
45 the refund ¹pursuant to paragraph (10) of subsection c. of section 3 of
46 this act¹ . All statements of the loan balance and activity provided by

1 the creditor to the debtor shall include all amounts debited or credited
2 to the obligation due to the purchase and cancellation of collateral
3 protection insurance.

4
5 ¹[7.] 6.¹ Collateral protection insurance may be obtained from an
6 insurance carrier chosen by the creditor which is licensed or otherwise
7 authorized to provide such insurance in this State, and shall be set
8 forth in an individual policy or certificate of insurance.

9
10 ¹[8.] 7.¹ a. A creditor that places ¹₁ or a person that receives
11 commissions or fees arising out of ¹₁ collateral protection insurance
12 shall not be liable to any debtor, guarantor or other party for the
13 placement of collateral protection insurance, except if the purchase of
14 collateral protection insurance is the result of error by the creditor. If
15 the creditor does not substantially comply with the provisions of this
16 act in purchasing collateral protection insurance, the sole and exclusive
17 remedy of the debtor is that the debtor does not have to pay for the
18 insurance and any associated creditor fees or costs. A creditor is not,
19 by virtue of this act, required to purchase collateral protection
20 insurance or otherwise insure collateral.

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

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

25 (2) for not purchasing collateral protection insurance;

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

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

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

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

35 d. This act shall not apply to credit transactions involving
36 extensions of credit primarily for business, commercial or agricultural
37 purposes, and shall not be deemed to regulate or limit the rights of the
38 parties to a business, commercial or agricultural transaction to
39 contract for terms and provisions regarding insurance otherwise not
40

41 ¹[9.] 8.¹ Neither this act nor the purchase of collateral protection
42 insurance nor receipt of commission or other consideration by the
43 creditor shall impose a fiduciary relationship between the creditor and
44 debtor. Placement of collateral protection insurance is for the purpose
45 of protection of the interest of the creditor when the debtor fails to
46 insure collateral as required by the credit transaction agreement.

1 ¹**[10.] 9.**¹ This act shall not impair any other remedies, rights or
2 options available to a creditor pursuant to law, regulation, ruling or
3 contract.

4

5 ¹**[11.] 10.**¹ If a credit transaction involves more than one debtor,
6 notices or warnings required to be mailed under this act, shall be
7 mailed to any primary debtor.

8

9 ¹**[12.] 11.**¹ This act shall apply to all credit transactions entered
10 into in this State or ¹**[where] if**¹ the debtor resides in this State,
11 provided, however, that if the debtor resides in another state,
12 compliance with that state's requirements regarding notice of purchase
13 by the creditor of collateral protection insurance shall be deemed
14 compliance with the notice provisions of this act.

15

16 ¹**[13.] 12.**¹ This act shall apply to all credit transactions whether
17 entered into prior or subsequent to the effective date of this act
18 ¹**[. The notice provided pursuant to paragraph (2) of subsection a. of**
19 **section 3 of this act] but**¹ shall apply only to collateral protection
20 insurance purchased after the effective date of this act.

21

22 ¹**[14.] 13.**¹ This act shall take effect on the first business day
23 following the 60th day after enactment.

24

25

26

27

28 Regulates the purchase of collateral protection insurance by lenders.

ASSEMBLY, No. 1931

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED APRIL 16, 1998

Sponsored by:

Assemblyman JOEL WEINGARTEN

District 21 (Essex and Union)

SYNOPSIS

Regulates the purchase of collateral protection insurance by lenders.

CURRENT VERSION OF TEXT

As introduced.



A1931 WEINGARTEN

2

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 personal property used to secure payment or
12 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, or (3) title insurance. The fact that the insurance
24 may have some other designation or title, such as "creditor placed
25 insurance," shall not mean it is not collateral insurance as defined in
26 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, security agreement, sales agreement, line
38 of credit agreement or other document or documents that set forth the
39 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, an opening of a
45 line of 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.

3 "Debtor" means a natural person obligated to a creditor pursuant to
4 a credit transaction where the money, property or services which are
5 the subject of the transaction are primarily for personal, family or
6 household purposes, whether the obligation is primary or secondary,
7 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 United States mail, first class, postage prepaid, containing
20 the following message or a message having substantially the same
21 meaning:

22

NOTICE AND WARNING

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

28 You are responsible for the cost, including earned
29 premiums, commissions and fees, of the insurance purchased by
30 us. You may pay us the amount of the costs, or if not, we may
31 add the cost to your obligation to us and repayment will include
32 interest at the rate of the original obligation. The effective date
33 of coverage of the insurance we purchase will be the date your
34 coverage lapsed or the date by which you failed to provide proof
35 of the required coverage. The coverage we purchase may be
36 more expensive than insurance you can obtain on your own. The
37 amount of coverage we purchase will not be greater than the
38 outstanding balance as of the effective date of the coverage we
39 purchase, which may be less than the value of your property. As
40 a result, you may be underinsured. The coverage we purchase
41 will not include any liability coverage for claims made against
42 you and will not satisfy any mandatory liability insurance law or
43 financial responsibility law of this or any other state.

44 If you provide us with evidence that you have obtained the
45 required insurance, we will then cancel the insurance that we
46 have purchased; but you will be obligated to pay us any cost we

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

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

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

16

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

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

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

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

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

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

37

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

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

46 c. A collateral protection insurance policy term may, but need not,

1 extend to the full life of the credit transaction.

2

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

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

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

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

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

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

20

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

25

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

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

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

41 (2) for not purchasing collateral protection insurance;

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

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

1 interest of the debtor; or

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

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

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

11

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

18

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

21

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

25

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

32

33 13. This act shall apply to all credit transactions whether entered
34 into prior or subsequent to the effective date of this act. The
35 notice provided pursuant to paragraph (2) of subsection a. of section
36 3 of this act shall apply only to collateral protection insurance
37 purchased after the effective date of this act.

38

39 14. This act shall take effect on the first business day following the
40 60th day after enactment.

41

42

STATEMENT

43

44 This bill clarifies the rights of the parties to a consumer loan
45 agreement in which the borrower is required to insure the collateral for
46 the loan. It permits the lender to obtain collateral protection insurance

A1931 WEINGARTEN

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

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

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1931

STATE OF NEW JERSEY

DATED: MAY 4, 1998

The Assembly Banking and Insurance Committee reports favorably Assembly Bill No. 1931.

This bill clarifies the rights of the parties to a consumer loan agreement in which the borrower is required to insure the collateral for the loan. It permits the lender to obtain collateral protection insurance if the borrower does not comply with the borrower's obligations regarding the purchase of insurance. Under the bill, the lender is required to send a notice to the borrower, by United States mail, first class, postage prepaid, indicating to the borrower that the lender has no proof that the borrower has complied with the requirement to purchase collateral protection insurance. If the borrower does not provide evidence of such purchase within 30 days from the date of the notice, the lender may purchase insurance to protect the lender's interest in the collateral and the borrower will be required to reimburse the lender for the lender's cost of purchasing collateral protection insurance. The lender must send a notice of the purchase of collateral protection insurance, including the cost of the insurance, to the borrower, by United States mail, first class, postage prepaid, and inform the borrower that the borrower is to reimburse the lender, in cash, within 30 days of the receipt of the notice, or, the lender may add the cost to the principal balance of the loan.

The bill requires the lender to inform the borrower that even if the lender purchases collateral protection insurance, it may not cover the value of the property, which would result in the borrower being underinsured. Additionally it provides that if the purchase of collateral protection insurance is due to the error of the lender, the borrower would not be liable to the lender for the cost of the collateral protection insurance.

SENATE STATE GOVERNMENT, BANKING AND FINANCIAL
INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1931

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1998

The Senate State Government, Banking and Financial Institutions Committee reports favorably and with committee amendments Assembly Bill No. 1931.

Assembly, No.1931, as amended, clarifies the rights of the parties to a consumer loan agreement in which the loan agreement requires the borrower to insure the collateral for the loan. 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 such 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. Upon the purchase of collateral protection insurance by the creditor, the creditor is required to send a notice to the borrower providing information as follows, that: evidence of the insurance coverage required under the credit agreement has not been received by the creditor; the creditor has purchased collateral protection insurance, the effective date of the coverage of the collateral protection insurance and the cost of that insurance, which cost has been added to the principal balance in the debtor's account; all or part of the cost of the collateral protection insurance may be paid by the debtor at any time and the amounts paid will be applied to the debtor's account; the cost of the collateral protection insurance may be more than the cost of insurance the debtor can obtain on the debtor's own; the amount of coverage will not be greater than the outstanding principal balance in the debtor's account as of the effective date of the collateral protection insurance which may be less than the value of the debtor's property and as a result the debtor may be underinsured; that the coverage purchased by the creditor will not include any liability coverage for claims made against the debtor and will not satisfy any mandatory liability insurance law or financial responsibility law of this or any

other state; that if the debtor provides the creditor with evidence of the required insurance, the creditor will cancel the collateral protection insurance as of the effective date of the coverage purchased by the debtor, and any unearned premium, costs and interest applicable to the collateral protection insurance after that date will be applied to the balance of the debtor's account, and the excess, if any, will be paid to the debtor; and if the debtor has insurance coverage in place, or has replaced the coverage, and it has been in place without any lapse in the coverage but the debtor has failed to provide the creditor with evidence of that coverage, the debtor 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 the debtor's principal balance all costs of the collateral protection insurance purchased by the creditor, including any interest charged the debtor's account as a result of the costs of that insurance being added to that account.

The committee amended the bill to: clarify the definition of collateral protection insurance; limit the cost of collateral protection insurance to the premium paid for the insurance, which includes all commissions and fees paid by the insurer; permit the lender to obtain collateral protection insurance as soon as the lender learns that such coverage has not been obtained by the consumer or that existing coverage has lapsed, rather than notify the consumer first and then purchase such insurance if the consumer has not complied with the credit agreement to obtain collateral protection insurance within 30 days of the notice from the creditor; permit the lender to add the cost of the collateral protection insurance to the principal balance in debtor's account at the time of purchase rather than purchase the collateral protection insurance, notify the borrower of the cost, that the cost will be added to the principal balance in the borrower's account if the borrower does not pay the amount due within 30 days from the date the notice was mailed and then add the cost to the principal balance only after 30 days have lapsed.

The amendments also provide that if a borrower provides evidence to the lender, within 30 days of the date the notice informing the borrower of the purchase of collateral protection insurance by the lender, that the borrower has the insurance required under the credit agreement in place and there has been no lapse in coverage, the lender will cancel the collateral protection insurance purchased by the lender and deduct from the principal balance in the borrower's account all costs added to that obligation as a result of the lender's purchase of collateral protection insurance, including interest.

The amendments require that a single notice be sent by the creditor upon the purchase of collateral protection insurance instead of a more complicated two notice provision in the original bill.

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.

3 "Debtor" means a natural person obligated to a creditor pursuant to
4 a credit transaction where the money, property or services which are
5 the subject of the transaction are primarily for personal, family or
6 household purposes, whether the obligation is primary or secondary,
7 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:

23 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.

29 You are responsible for the cost, including earned
30 premiums, commissions and fees, of the insurance purchased by
31 us. You may pay us the amount of the costs, or if not, we may
32 add the cost to your obligation to us and repayment will include
33 interest at the rate of the original obligation. The effective date
34 of coverage of the insurance we purchase will be the date your
35 coverage lapsed or the date by which you failed to provide proof
36 of the required coverage. The coverage we purchase may be
37 more expensive than insurance you can obtain on your own. The
38 amount of coverage we purchase will not be greater than the
39 outstanding balance as of the effective date of the coverage we
40 purchase, which may be less than the value of your property. As
41 a result, you may be underinsured. The coverage we purchase
42 will not include any liability coverage for claims made against
43 you and will not satisfy any mandatory liability insurance law or
44 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
42
43 STATEMENT

44
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

S425 INVERSO

7

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.

SENATE STATE GOVERNMENT, BANKING AND FINANCIAL
INSTITUTIONS COMMITTEE

STATEMENT TO

SENATE, No. 425

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1998

The Senate State Government, Banking and Financial Institutions Committee reports favorably and with committee amendments Senate Bill No. 425.

Senate, No.425, as amended, clarifies the rights of the parties to a consumer loan agreement in which the loan agreement requires the borrower to insure the collateral for the loan. 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 such 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. Upon the purchase of collateral protection insurance by the creditor, the creditor is required to send a notice to the borrower providing information as follows, that: evidence of the insurance coverage required under the credit agreement has not been received by the creditor; the creditor has purchased collateral protection insurance, the effective date of the coverage of the collateral protection insurance and the cost of that insurance, which cost has been added to the principal balance in the debtor's account; all or part of the cost of the collateral protection insurance may be paid by the debtor at any time and the amounts paid will be applied to the debtor's account; the cost of the collateral protection insurance may be more than the cost of insurance the debtor can obtain on the debtor's own; the amount of coverage will not be greater than the outstanding principal balance in the debtor's account as of the effective date of the collateral protection insurance which may be less than the value of the debtor's property and as a result the debtor may be underinsured; that the coverage purchased by the creditor will not include any liability coverage for claims made against the debtor and will not satisfy any mandatory liability insurance law or financial responsibility law of this or any

other state; that if the debtor provides the creditor with evidence of the required insurance, the creditor will cancel the collateral protection insurance as of the effective date of the coverage purchased by the debtor, and any unearned premium, costs and interest applicable to the collateral protection insurance after that date will be applied to the balance of the debtor's account, and the excess, if any, will be paid to the debtor; and if the debtor has insurance coverage in place, or has replaced the coverage, and it has been in place without any lapse in the coverage but the debtor has failed to provide the creditor with evidence of that coverage, the debtor 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 the debtor's principal balance all costs of the collateral protection insurance purchased by the creditor, including any interest charged the debtor's account as a result of the costs of that insurance being added to that account.

The committee amended the bill to: delete real property from the definition of collateral; clarify the definition of collateral protection insurance; limit the cost of collateral protection insurance to the premium paid for the insurance, which includes all commissions and fees paid by the insurer; permit the lender to obtain collateral protection insurance as soon as the lender learns that such coverage has not been obtained by the consumer or that existing coverage has lapsed, rather than notify the consumer first and then purchase such insurance if the consumer has not complied with the credit agreement to obtain collateral protection insurance within 30 days of the notice from the creditor; permit the lender to add the cost of the collateral protection insurance to the principal balance in debtor's account at the time of purchase rather than purchase the collateral protection insurance, notify the borrower of the cost, that the cost will be added to the principal balance in the borrower's account if the borrower does not pay the amount due within 30 days from the date the notice was mailed and then add the cost to the principal balance only after 30 days have lapsed.

The amendments also provide that if a borrower provides evidence to the lender, within 30 days of the date the notice informing the borrower of the purchase of collateral protection insurance by the lender, that the borrower has the insurance required under the credit agreement in place and there has been no lapse in coverage, the lender will cancel the collateral protection insurance purchased by the lender and deduct from the principal balance in the borrower's account all costs added to that obligation as a result of the lender's purchase of collateral protection insurance, including interest.

The amendments require that a single notice be sent by the creditor upon the purchase of collateral protection insurance instead of a more complicated two notice provision in the original bill.

[First Reprint]

SENATE, No. 425

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JANUARY 20, 1998

Sponsored by:

Senator PETER A. INVERSO

District 14 (Mercer and Middlesex)

Senator GERALD CARDINALE

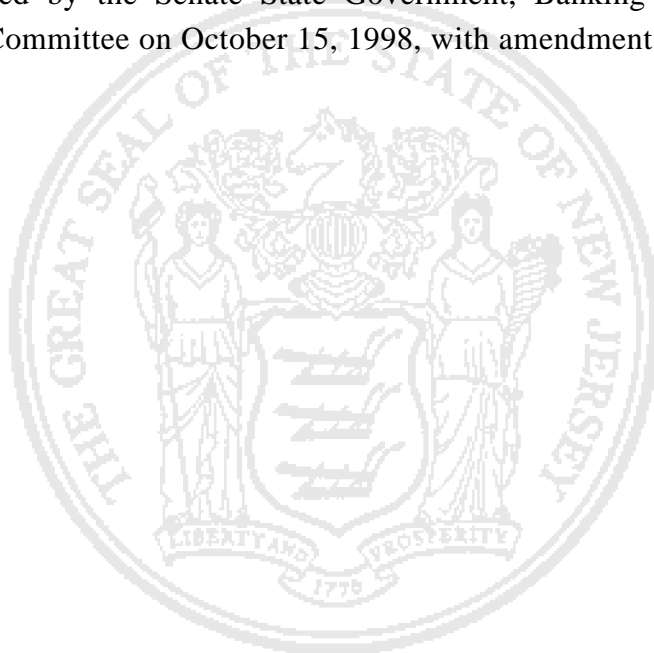
District 39 (Bergen)

SYNOPSIS

Regulates the purchase of collateral protection insurance by consumer lenders.

CURRENT VERSION OF TEXT

As reported by the Senate State Government, Banking and Financial Institutions Committee on October 15, 1998, with amendments.



(Sponsorship Updated As Of: 12/11/1998)

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 ¹Insurance¹ Act."

9
10 2. As used in this act:

11 "Collateral" means all ¹personal¹ property ¹[, real or personal,]¹
12 used to secure payment or performance pursuant to a credit
13 transaction.

14 "Collateral protection insurance" means insurance purchased by a
15 creditor ¹in which the creditor is made the loss payee or beneficiary¹
16 providing coverage against loss ¹[, expense]¹ or damage to collateral
17 as a result of fire, theft, damage or other risks that would impair the
18 creditor's interest in the collateral, which insurance is purchased as a
19 result of the debtor's failure to provide evidence of insurance or failure
20 to maintain insurance covering the collateral ¹as required in a credit
21 agreement¹. "Collateral protection insurance" shall not include (1)
22 insurance to protect the creditor following completion of foreclosure
23 and sale or repossession and sale of the collateral, (2) credit insurance
24 ¹[,] or¹ mortgage protection insurance ¹[or other insurance issued to
25 cover the life or health of the debtor, (3) mortgage insurance]¹, ¹(3)
26 credit life insurance or credit health insurance as defined in
27 N.J.S.17B:29-2, (4) insurance issued to cover personal or real
28 property of the debtor which is not required by the creditor and is
29 purchased by the creditor voluntarily,¹ or ¹[(4)] (5)¹ title insurance.
30 The fact that the insurance may have some other designation or title,
31 such as "creditor placed insurance," shall not mean it is not collateral
32 ¹protection¹ insurance as defined in this act.

33 "Cost of collateral ¹[insurance]¹ protection insurance" or "cost"
34 means ¹[all amounts paid by the creditor to obtain the insurance,
35 including all premiums] the premium¹ paid ¹[and] which premium
36 includes¹ all ¹[broker's]¹ commissions and fees ¹paid by the insurer¹,
37 whether the commission is paid to the creditor, to a person or entity
38 that is an affiliate of the creditor or to a person or entity ¹[which]
39 that¹ is unrelated to the creditor, or whether such commissions are for
40 a fixed percentage ¹[, and] "Cost"¹ shall ¹also¹ include all
41 ¹[premiums,]¹ fees, penalties and administrative costs charged to the

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:

¹ Senate SGB committee amendments adopted October 15, 1998.

1 creditor upon cancellation of the collateral protection insurance ¹but
2 shall not include any placement charges or fees for the collateral
3 protection insurance charged by the creditor¹ .

4 "Credit agreement" means the open-end or closed-end loan
5 agreement, promissory note, ¹[mortgage,]¹ security agreement, sales
6 agreement, line of credit agreement ¹, contract¹ or other document or
7 documents that set forth the terms of the credit transaction.

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

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

17 "Debtor" means a natural person obligated to a creditor pursuant to
18 a credit transaction ¹[where] in which¹ the money, property or
19 services which are the subject of the transaction are primarily for
20 personal, family or household purposes, whether the obligation is
21 primary or secondary, and includes all persons who are successors to
22 a debtor.

23

24 3. a. ¹[Collateral] If the terms of the credit agreement require the
25 debtor to obtain and continue to maintain insurance which designates
26 the creditor as loss payee or beneficiary protecting against loss or
27 damage to the collateral and the debtor has not obtained or does not
28 maintain that insurance, a creditor may purchase collateral¹ protection
29 insurance ¹[may be obtained by a creditor] as of the date of the
30 debtor's failure to provide evidence of insurance or failure to maintain
31 insurance covering the collateral, or at a later date at the option of the
32 creditor¹ , with the cost to be paid or reimbursed by the debtor¹ [, if:

33 (1) the terms of the credit agreement require the debtor to obtain
34 and continue to maintain insurance protecting against loss or damage
35 to the collateral and the debtor has not obtained or does not maintain
36 such insurance;

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

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

44

NOTICE AND WARNING

45 We have not received evidence that you have purchased the
46 insurance required by your (insert type of credit transaction).

1 Unless you provide us with evidence that you have the required
2 insurance within 30 days from date this letter was mailed, we
3 may purchase insurance to protect our interest.

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

17 The coverage we purchase will not include any liability
18 coverage for claims made against you and will not satisfy any
19 mandatory liability insurance law or financial responsibility law
20 of this or any other state.

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

29 (4) the debtor fails to provide evidence to the creditor of the
30 insurance required by the credit transaction agreement within 30 days
31 of the date the notice was mailed pursuant to this section]¹.

32 b. ¹[The creditor is authorized to and has the authority to take the
33 actions and obtain collateral protection insurance on the terms and
34 conditions set forth in the form of the statutory notice provided in
35 subsection a. of this section. The notice and warning may contain
36 other information deemed pertinent by the creditor, provided that the
37 information is not contradictory to the provisions of this act or other
38 statutory law] Collateral protection insurance purchased by the
39 creditor shall be effective: as of the date of the initial credit
40 transaction, if insurance designating the creditor as loss payee or
41 beneficiary protecting against loss or damage to the collateral is not
42 purchased by the debtor; as of the date the required coverage lapsed,
43 if purchased initially but not maintained by the debtor; or at a later
44 date as determined by the creditor.

45 c. Within 14 calendar days following the placement of the
46 collateral protection insurance, the creditor shall mail or cause a notice

1 to be mailed to the debtor at the address on file with the creditor, by
2 United States mail, first class, postage prepaid, informing the debtor
3 that:

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

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

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

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

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

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

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

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

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

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

42 (11) if you have insurance coverage in place, or if you have
43 replaced the coverage, and it has been in place without any lapse in the
44 coverage, but you have failed to provide the creditor with evidence of
45 that coverage, you may, within 30 days after this notice was mailed,
46 provide the creditor evidence of the insurance coverage showing the

1 creditor as loss payee or beneficiary, and the collateral protection
2 insurance coverage placed by the creditor will be canceled and the
3 creditor will deduct from your principal balance all costs of the
4 collateral protection insurance purchased by the creditor, including any
5 interest charged to your account as a result of the costs of that
6 insurance being added to your principal balance.

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

10 e. The creditor shall inform the debtor, in the notice, that if the
11 debtor has insurance coverage naming the creditor as loss payee or
12 beneficiary in place, or has replaced the insurance coverage, without
13 a lapse in coverage but has failed to notify the creditor, the debtor has
14 30 days from the date the notice required under subsection c. of this
15 section was mailed to provide evidence of that coverage and include
16 the address to which evidence of coverage is to be sent.

17 f. If, within 30 days after the notice required by subsection c. of
18 this section was mailed to the debtor, the debtor provides evidence of
19 insurance coverage to the creditor and evidence that the insurance
20 coverage required by the credit agreement was in place or has been
21 replaced, without any lapse in the coverage, and the only failure to
22 comply with the credit agreement was the failure to provide evidence
23 of that coverage to the creditor in a timely fashion, then the creditor
24 shall cancel the coverage placed by the creditor and, if the costs of
25 purchasing collateral protection insurance have been added to the
26 obligation of the borrower, deduct those costs from the debtor's
27 obligation, including interest, and no costs for the purchase of
28 collateral protection insurance by the lender shall be assessed against
29 the borrower.

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

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

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

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

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

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

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

12

13 ¹[5.] 4.¹ a. The effective date of the collateral protection
14 insurance policy purchased by the creditor shall not be sooner than the
15 earlier of the date the debtor's insurance lapsed or the date that the
16 debtor failed to provide evidence of insurance on the collateral.

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

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

23

24 ¹[6.] 5.¹ a. Collateral protection insurance shall terminate or shall
25 be canceled upon the occurrence of any of the following:

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

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

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

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

34 b. If the collateral protection insurance is canceled and there is any
35 unearned premium paid by the debtor which is refunded to the
36 creditor, the creditor shall pay or credit the debtor with the amount of
37 the refund ¹pursuant to paragraph (10) of subsection c. of section 3
38 of this act¹. All statements of the loan balance and activity provided
39 by the creditor to the debtor shall include all amounts debited or
40 credited to the obligation due to the purchase and cancellation of
41 collateral protection insurance.

42

43 ¹[7.] 6.¹ Collateral protection insurance may be obtained from an
44 insurance carrier chosen by the creditor which is licensed or otherwise
45 authorized to provide such insurance in this State, and shall be set
46 forth in an individual policy or certificate of insurance.

1 ¹[8.] 7.¹ a. A creditor that places ¹1¹ or a person that receives
2 commissions or fees arising out of ¹1¹ collateral protection insurance
3 shall not be liable to any debtor, guarantor or other party for the
4 placement of collateral protection insurance, except if the purchase of
5 collateral protection insurance is the result of error by the creditor. If
6 the creditor does not substantially comply with the provisions of this
7 act in purchasing collateral protection insurance, the sole and exclusive
8 remedy of the debtor is that the debtor does not have to pay for the
9 insurance and any associated creditor fees or costs. A creditor is not,
10 by virtue of this act, required to purchase collateral protection
11 insurance or otherwise insure collateral.

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

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

16 (2) for not purchasing collateral protection insurance;

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

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

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

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

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

32

33 ¹[9.] 8.¹ Neither this act nor the purchase of collateral protection
34 insurance nor receipt of commission or other consideration by the
35 creditor shall impose a fiduciary relationship between the creditor and
36 debtor. Placement of collateral protection insurance is for the purpose
37 of protection of the interest of the creditor when the debtor fails to
38 insure collateral as required by the credit transaction agreement.

39

40 ¹[10.] 9.¹ This act shall not impair any other remedies, rights or
41 options available to a creditor pursuant to law, regulation, ruling or
42 contract.

43

44 ¹[11.] 10.¹ If a credit transaction involves more than one debtor,
45 notices or warnings required to be mailed under this act, shall be
46 mailed to ¹[the] any¹ primary debtor.

1 ¹[12.] 11.¹ This act shall apply to all credit transactions entered
2 into in this State or ¹[where] if¹ the debtor resides in this State,
3 provided, however, that if the debtor resides in another state,
4 compliance with that state's requirements regarding notice of purchase
5 by the creditor of collateral protection insurance shall be deemed
6 compliance with the notice provisions of this act.

7

8 ¹[13.] 12.¹ This act shall apply to all credit transactions whether
9 entered into prior or subsequent to the effective date of this act
10 ¹[and] but¹ shall apply only to collateral protection insurance
11 purchased after the effective date of this act.

12

13 ¹[14.] 13.¹ This act shall take effect ¹[immediately] on the first
14 business day following the 60th day after enactment¹ .

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: March 12, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

A-161, sponsored by Assembly Members Christopher "Kip" Bateman (R-Morris/Somerset) and Neil M. Cohen (D-Union) and Senators Peter A. Inverso (R-Mercer/Middlesex) and Wayne R. Bryant (D-Camden/Gloucester), provides an alternative method of canceling residential mortgages of record after they have been paid off. If a mortgage has been paid in full and the lender has not submitted the mortgage to the county clerk to be canceled of record, an attorney licensed in New Jersey or a licensed title insurance producer may record a discharge of mortgage or a "satisfaction piece." The discharge or satisfaction piece must be accompanied by an affidavit setting forth circumstances of payment. The bill sets forth a sample affidavit. If the attorney or title producer has not received a notice of mortgage cancellation within 30 days after the payment was made, the attorney may send a notice to the lender. If another 15 days elapse without a response from the lender, the affidavit may be filed with the county clerk. This bill does not apply to real property with more than four dwelling units if the debtor or the debtor's family member occupies one of these units. The bill applies to all residential mortgages, whether executed or not, that use real property in New Jersey as security.

A-928, sponsored by Assembly Members Richard H. Bagger (R-Middlesex/Morris/ Somerset/ Union) and Alan M. Augustine (R-Middlesex/Morris/Somerset/Union) and Senators John O. Bennett (R-Monmouth) and Anthony R. Bucco (R-Morris), amends the criminal code to prohibit the operation of sexually-oriented businesses within 1,000 feet of a hospital or child care center. The Criminal Code defines a sexually-oriented business as a commercial establishment that, as one of its principal business purposes: (1) offers for sale, rental or display printed materials, photographs, movies or other visual representations that depict or describe a "specified sexual activity" or "specified anatomical area;" or (2) offers for sale, rental or display instruments, devices or paraphernalia that are designed for use in connection with specific sexual activity; or (3) is a commercial establishment that regularly features live performances characterized by the exposure of a "specified anatomical area" or by a "specified sexual activity," or that regularly shows movies or other similar photographic representations. Violation of the prohibitions is punishable as a crime of the fourth degree.

A-1631, sponsored by Assembly Members Neil M. Cohen (D-Union) and Christopher "Kip" Bateman (R-Morris/Somerset), makes it a disorderly persons offense for Division of Taxation employees to examine tax returns and records outside of the performance of their official duties or to permit another to do so. State law provides that the records of and files of the Division of Taxation are confidential and privileged. A disorderly person offense is punishable by a term of imprisonment of not more than six months.

A-1692, sponsored by Assembly Member Wilfredo Caraballo (D-Essex) and John S. Wisniewski (D-Middlesex), requires a cable television company to notify all subscribers in service areas when either the Board of Public Utilities or the Federal Communications Commission orders the company to provide a

rate reduction or refund. Such notice must occur within the next billing cycle following the approval of the order. The purpose of the bill is to allow customers of the same cable company in different towns to petition for the same rate decrease.

A-1931, sponsored by Assembly Members Joel M. Weingarten (R- Essex/Union) and Senator Peter A. Inverso (R-Mercer/Middlesex), regulates the purchase of collateral protection insurance by lenders. Collateral protection insurance is insurance purchased by a creditor to protect its interest in secured property when a debtor fails to maintain insurance on the secured property. The creditor is named as the loss payee or beneficiary on the policy. The legislation seeks to regulate the amount the creditor may bill the debtor for such insurance as well as other aspects of the transaction. If the term of the credit agreement requires the debtor to purchase collateral protection insurance and the debtor does not obtain the insurance, the creditor may purchase it on behalf of the debtor. Once the creditor purchases such insurance, it is allowed to bill the debtor for the insurance premiums and add these costs to the loan balance. If the debtor demonstrates that it already had collateral protection insurance coverage in place, the creditor must cancel its policy and refund the billed premiums to the debtor. The bill also permits the lender to obtain collateral protection insurance if the borrower does not comply with the borrower's obligations regarding the purchase of insurance. The bill requires the lender to inform the borrower that even if the lender purchases collateral protection insurance, it may not cover the value of the property, possibly resulting in the borrower being underinsured. The bill further provides that if the purchase of collateral protection insurance is due to the error of the lender, the borrower will not be liable to the lender for the cost of collateral protection insurance.

S-946, sponsored by Senators John O. Bennett (R-Monmouth) and Robert W. Singer (R-Burlington/Monmouth/Ocean), requires local contracting units to provide two additional documents with all plans, specifications and bid proposal documents for construction contracts which exceed the bid threshold amount which is currently \$12,300. The documents are: (1) a document for the bidder to acknowledge receipt of any notice or revisions to the advertisement or bid documents; and (2) a form listing those documents that the contracting agent requires each bidder to submit with the bid. Bidders are also subject to additional statutory requirements under the bill. The legislation requires bidders of construction contracts for more than \$100,000 to submit to the local contracting unit a bid guarantee and a certificate of surety. With regard to any other contracts, including construction contracts for \$100,000 or less and all non- construction contracts, it will remain within the discretion of the local contracting unit to determine whether to require a bid guarantee or a certificate of surety. The bill also clarifies which defects will render a bid unresponsive and incapable of being cured. The bill makes this clarification by listing five documents which are considered mandatory. These documents include a bid guarantee, a certificate of surety, a statement of corporate ownership, a listing of subcontractors and a document acknowledging the bidders receipt of any notice or revisions to the advertisement or bid documents. These documents will be considered mandatory only if the bid plans and specifications require their submission.

A-2217, sponsored by Assembly Members David W. Wolfe (R-Monmouth/Ocean) and Joseph V. Doria, Jr. (D-Hudson) and Senators Peter A. Inverso (R-Mercer/Middlesex) and John O. Bennett (R-Monmouth), consolidates higher education student assistance entities into one new authority. The bill consolidates the various student assistance functions of the Office of Student Assistance, the Student Assistance Board and the Higher Education Assistance Authority into one, new authority to be known

as the Higher Education Student Assistance Authority. The authority will be located in but not of the Department of State, consistent with the location of the Commission on Higher Education. The chief executive and administrative officer of the authority, which will administer, coordinate and implement student aid assistance in the state, will be the executive director who will be appointed by the Governor. The authority will have a board consisting of 18 members: the State Treasurer; chair of the Commission on Higher Education; the chair of the Board of Directors of the Educational Opportunity Fund; five representatives from state higher education institutions; two students from different collegiate institutional sectors; seven public members and the executive director of the authority. The seven public members will be appointed by the Governor with the advice and consent of the Senate. The institutional representatives shall be nominated by the institutions or sector associations and appointed by the Governor with the advice and consent of the Senate. The bill enlarges the membership on the Commission on Higher Education from nine to eleven members, adding a faculty member from an institution of higher education to be appointed by the Governor with the advice and consent of the Senate, and the chairperson of the Board of the Higher Education Student Assistance Authority, ex officio, or a designee from the public members on the authority. Regarding state colleges and universities, the bill changes the name of the New Jersey State College Governing Boards Association to the New Jersey Association of State Colleges and Universities to reflect the change in status of some of the state colleges.

In connection with county colleges, the bill clarifies that the board of trustees of a county college may not employ officers, agents and employees unless the president of the respective county college nominates such individuals. Under the bill, the University of Medicine and Dentistry of New Jersey may use income from the operation of faculty practice plans and income from overhead grant fund recovery as permitted by federal law. With respect to the New Jersey Educational Facilities Authority, the bill provides that the authority need not obtain same-day approval of bond authorizations or sales from the Governor. The authority will still be subject to other requirement of obtaining approval upon the Governor's receipt of the board minutes.