

[Second Reprint]

ASSEMBLY, No. 5323

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED MAY 13, 2019

Sponsored by:

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District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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District 11 (Monmouth)

SYNOPSIS

Requires creditors to make certain disclosures regarding collateral protection insurance to consumer debtors.

CURRENT VERSION OF TEXT

As amended by the General Assembly on November 25, 2019.



1 AN ACT concerning ¹**lender-placed motor vehicle insurance**
 2 collateral protection insurance¹ and ¹**supplementing P.L.1996,**
 3 **c.157 (C.17:11C-1 et al)** amending P.L.1999, c.44¹.

4
 5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

7
 8 ¹1. Section 3 of P.L.1999, c.44 (C.17:16V-3) is amended to read
 9 as follows:

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

19 b. Collateral protection insurance purchased by the creditor
 20 shall be effective: as of the date of the initial credit transaction, if
 21 insurance designating the creditor as loss payee or beneficiary
 22 protecting against loss or damage to the collateral is not purchased
 23 by the debtor; as of the date the required coverage lapsed, if
 24 purchased initially but not maintained by the debtor; or at a later
 25 date as determined by the creditor.

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

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

34 (2) collateral protection insurance has been purchased by the
 35 creditor from the following insurer (insert name of insurer), with
 36 respect to the following credit transaction: (insert type of credit
 37 transaction);

38 (3) you are responsible for the cost of the collateral protection
 39 insurance purchased by the creditor, which cost is \$
 40 ²**annually** for 12 months²;

41 (4) the amount stated under paragraph (3) of this notice has been
 42 added to the principal balance in your account as of (indicate date);
 43 you will be required to pay interest on this amount at the same rate
 44 that is applied pursuant to your credit agreement. We estimate that
 45 this coverage will cost you an estimated: (insert total cost of

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AFI committee amendments adopted May 13, 2019.

²Assembly floor amendments adopted November 25, 2019.

1 collateral protection insurance and interest paid on that cost, based
2 on the debtor making minimum required payments) over the
3 duration of the loan. This cost is intended as a good faith estimate,
4 and may not be accurate if you repay more quickly or slowly than
5 the estimated term;

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

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

15 (7) the cost of the collateral protection insurance purchased by
16 the creditor may be considerably more expensive than **【the cost of】**
17 insurance you can obtain on your own;

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

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

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

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

46 ²**【and】²**

1 (12) to provide us with evidence that you have the required
2 insurance, send a copy of the policy or other evidence to: (insert the
3 physical and electronic address of creditor)²; and

4 (13) the collateral protection insurance purchased on your behalf
5 may be cancelled at any time. In order to cancel the collateral
6 protection insurance without incurring any additional costs, you must
7 provide us with evidence that you have the required insurance within
8 30 days following the date that this notice was mailed. The creditor-
9 placed collateral protection insurance may be cancelled at any time
10 after the 30 days have elapsed, but you will be required to pay for any
11 period of time in which the creditor-placed collateral protection
12 insurance was in place².

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

16 e. The creditor shall inform the debtor, in the notice, that if the
17 debtor has insurance coverage naming the creditor as loss payee or
18 beneficiary in place, or has replaced the insurance coverage,
19 without a lapse in coverage **but** has failed to notify the creditor, the
20 debtor has 30 days from the date the notice required under
21 subsection c. of this section was mailed to provide evidence of that
22 coverage and include the address to which evidence of coverage is
23 to be sent **the debtor may provide the creditor with evidence of the**
24 required insurance at any time and the creditor shall cause the
25 collateral protection insurance to be canceled as of the effective
26 date of the coverage provided by debtor, and any unearned
27 premium, costs and interest applicable to the collateral protection
28 insurance after that date shall be applied to the balance of the
29 debtor's account, and the excess, if any, shall be paid to the debtor.

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

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

1 shall not be deemed to be excessive or discriminatory for the
2 purposes of this act.

3 h. Within ²~~five~~ 60² days of the receipt of evidence of
4 coverage, a creditor shall send the debtor a notice of receipt, a
5 confirmation of cancellation of any creditor-placed insurance, and a
6 revised ²scheduled² payment ²~~schedule~~² that reflects the
7 requirements of this section.

8 i. No creditor shall enter into a credit agreement that includes
9 charges on the debtor for collateral protection insurance coverage,
10 unless the following or substantially similar warning is provided on
11 a separate document accompanying the credit agreement and signed
12 by the debtor:

13
14 WARNING

15 UNLESS YOU PROVIDE US WITH EVIDENCE OF THE
16 INSURANCE COVERAGE AS REQUIRED BY OUR CREDIT
17 AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR
18 EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE
19 MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF
20 THE COLLATERAL BECOMES DAMAGED, THE COVERAGE
21 WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR
22 ANY CLAIM MADE AGAINST YOU. YOU MAY LATER
23 CANCEL THIS COVERAGE BY PROVIDING EVIDENCE
24 THAT YOU HAVE OBTAINED PROPER COVERAGE
25 ELSEWHERE.

26 YOU ARE RESPONSIBLE FOR THE COST OF ANY
27 INSURANCE PURCHASED BY US. THE COST OF THIS
28 INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE.
29 IF THE COST IS ADDED TO THE LOAN BALANCE, THE
30 INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY
31 TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF
32 COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE
33 LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF
34 OF COVERAGE.

35 THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY
36 MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN
37 ON YOUR OWN AND WILL NOT SATISFY NEW JERSEY'S
38 MANDATORY LIABILITY INSURANCE LAWS.¹

39 (cf: P.L.1999, c.44, s.3)
40

41 ²2. Section 5 of P.L.1999, c.44 (C.17:16V-5) is amended to read
42 as follows:

43 5. a. Collateral protection insurance shall terminate **【**or shall be
44 canceled upon the occurrence of any**】** on the earliest of the following
45 dates:

46 (1) the date **【**the creditor is provided with evidence of proper**】**
47 other acceptable insurance coverage **【**purchased by the debtor as

required by the credit transaction agreement] becomes effective, subject to the debtor providing evidence of the other insurance to the creditor, without regard to when such evidence is received by the creditor;

(2) the date the collateral is subject to the completion of foreclosure, including sale, or repossession or similar event, including sale, unless the property is returned to the debtor within 10 days;

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

(4) the date specified in the collateral protection insurance policy; or

(5) the date the collateral is determined by the insurer to be a total loss.

b. If the collateral protection insurance is canceled and there is any unearned premium paid by the debtor which is refunded to the creditor, the creditor shall pay or credit the debtor with the amount of the refund pursuant to paragraph (10) of subsection c. of section 3 of **[this act]** P.L.1999, c.44 (C.17:16V-3). All statements of the loan balance and activity provided by the creditor to the debtor shall include all amounts debited or credited to the obligation due to the purchase and cancellation of collateral protection insurance.²

(cf: P.L.1999. c.44, s.5)

²**[12.] 3.**² Section 7 of P.L.1999,c.44 (C.17:16V-7) is amended to read as follows:

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

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

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

(2) for not purchasing collateral protection insurance;

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

1 (4) because the creditor purchases collateral protection
2 insurance that protects only the interest of the creditor or less than
3 all of the 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
6 that 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
9 agricultural purposes, and shall not be deemed to regulate or limit
10 the rights of the parties to a business, commercial or agricultural
11 transaction to contract for terms and provisions regarding insurance
12 otherwise not prohibited by law.

13 e. A creditor that fails to provide any notice to a debtor
14 required pursuant to section 3 of P.L.1999, c.44 (C.17:16V-3) shall
15 be liable to an administrative penalty not exceeding \$25,000. The
16 administrative penalty authorized pursuant to this section may be
17 recovered in a summary proceeding in accordance with the "Penalty
18 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
19 A ²[willful]² violation of this section shall be considered a crime of
20 the third degree.

21 f. If a creditor places collateral protection insurance on a
22 debtor or fails to remove collateral protection insurance on a debtor,
23 and the creditor has received evidence of coverage of the debtor as
24 provided in section 3 of P.L.1999, c.44 (C.17:16V-3), the debtor
25 shall have a civil cause of action in a court of competent
26 jurisdiction for the premium, interest, and all related fees paid by
27 the debtor, including attorney's fees. If the duplicative charges
28 result in delinquency of the credit agreement or repossession of the
29 collateral, the debtor shall be entitled to treble damages.¹

30 (cf: P.L.1999, c.44, s.7)

31
32 ¹[2.]²[3.¹] ^{4.}² This act shall take effect 90 days after the date
33 of enactment and shall apply to any contract entered into on or after
34 the effective date.