

CHAPTER 312

AN ACT concerning collateral protection insurance and amending P.L.1999, c.44.

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

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

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

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

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

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

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

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

(3) you are responsible for the cost of the collateral protection insurance purchased by the creditor, which cost is \$ for 12 months;

(4) the amount stated under paragraph (3) of this notice has been added to the principal balance in your account as of (indicate date); you will be required to pay interest on this amount at the same rate that is applied pursuant to your credit agreement. We estimate that this coverage will cost you an estimated: (insert total cost of collateral protection insurance and interest paid on that cost, based on the debtor making minimum required payments) over the duration of the loan. This cost is intended as a good faith estimate, and may not be accurate if you repay more quickly or slowly than the estimated term;

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

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

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

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

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

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

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

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

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

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

e. The creditor shall inform the debtor, in the notice, that if the debtor has insurance coverage naming the creditor as loss payee or beneficiary in place, or has replaced the insurance coverage, without a lapse in coverage the debtor may provide the creditor with evidence of the required insurance at any time and the creditor shall cause the collateral protection insurance to be canceled as of the effective date of the coverage provided by debtor, and any unearned premium, costs and interest applicable to the collateral protection insurance after that date shall be applied to the balance of the debtor's account, and the excess, if any, shall be paid to the debtor.

f. If, within 30 days after the notice required by subsection c. of this section was mailed to the debtor, the debtor provides evidence of insurance coverage to the creditor and evidence that the insurance coverage required by the credit agreement is in place or has been replaced, without any lapse in the coverage, and the only failure to comply with the credit agreement was the failure to provide evidence of that coverage to the creditor in a timely fashion, then the creditor shall cancel the coverage placed by the creditor and, if the costs of purchasing collateral protection insurance have been added to the obligation of the borrower, deduct those costs from the debtor's obligation, including interest, and no costs for the

purchase of collateral protection insurance by the lender shall be assessed against the borrower.

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

h. Within 60 days of the receipt of evidence of coverage, a creditor shall send the debtor a notice of receipt, a confirmation of cancellation of any creditor-placed insurance, and a revised scheduled payment that reflects the requirements of this section.

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

WARNING

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

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

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

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

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

5. a. Collateral protection insurance shall terminate on the earliest of the following dates:

(1) the date other acceptable insurance coverage 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;

(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 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.

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

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

7. a. (1) 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:

(a) if the purchase of collateral protection insurance is the result of error by the creditor; or

(b) as provided in subsection f. of this section.

(2) If the creditor does not substantially comply with the provisions of this act in purchasing collateral protection insurance:

(a) 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

(b) the commissioner may assess an administrative fee as provided in subsection e. of this section.

(3) A creditor is not, by virtue of this act, required to purchase collateral protection insurance or otherwise insure collateral.

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

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

(2) for not purchasing collateral protection insurance;

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

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

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

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

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

e. (1) A creditor that fails to provide any notice to a debtor required pursuant to section 3 of P.L.1999, c.44 (C.17:16V-3) shall be liable to an administrative penalty not exceeding \$25,000.

(2) A creditor that willfully violates any requirement of P.L.1999, c.44 (C.17:16V-1 et al.) shall be liable to an administrative penalty not exceeding \$50,000.

(3) The administrative penalty authorized pursuant to this section may be recovered in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

f. If a creditor places collateral protection insurance on a debtor or fails to remove collateral protection insurance on a debtor, and the creditor has received evidence of coverage of the debtor as provided in section 3 of P.L.1999, c.44 (C.17:16V-3), the debtor

shall have a civil cause of action in a court of competent jurisdiction for the premium, interest, and all related fees paid by the debtor, including attorney's fees. If the duplicative charges result in delinquency of the credit agreement or repossession of the collateral, the debtor shall be entitled to treble damages.

4. This act shall take effect 90 days after the date of enactment and shall apply to any contract entered into on or after the effective date.

Approved January 13, 2020.