

[Third Reprint]

SENATE, No. 2998

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 27, 2018

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman JOANN DOWNEY

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 Senate on December 16, 2019.



(Sponsorship Updated As Of: 12/17/2019)

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 ¹**1. a.** No consumer lender shall enter into a contract or loan
 9 agreement that includes charges on the borrower for lender-placed
 10 motor vehicle insurance coverage, unless the following or
 11 substantially similar warning is provided on a separate document
 12 accompanying the contract or loan agreement and signed by the
 13 borrower:

14 **WARNING**

15 UNLESS YOU PROVIDE US WITH EVIDENCE OF THE
 16 INSURANCE COVERAGE AS REQUIRED BY OUR LOAN
 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. IF
 29 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 MAY NOT SATISFY NEW JERSEY'S
 38 MANDATORY LIABILITY INSURANCE LAWS.

39 b. A consumer lender that enters into a contract or loan
 40 agreement that includes charges on the borrower for lender-placed
 41 motor vehicle insurance shall send the borrower a notice by mail
 42 within 30 days of the beginning of the loan agreement that discloses
 43 the insurance product that is being added, the insurer, the premium,
 44 an estimate of the total amount to be paid for the coverage over the

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.

³Senate floor amendments adopted December 16, 2019.

1 duration of the loan, and the fact that the policy can be terminated if
2 the borrower purchases insurance independently.

3 c. A consumer lender that fails to meet the requirements of
4 subsections a. and b. of this section shall be in violation of the
5 “New Jersey Consumer Finance Licensing Act,” sections 1 through
6 49 of P.L.1996, c.157 (C.17:11C-1 through C.17:11C-49). In
7 addition, if a consumer lender is found to have charged a borrower
8 for insurance coverage on a motor vehicle that was already insured
9 by the borrower, the borrower shall have a civil cause of action in
10 any court of competent jurisdiction for the premium, interest, and
11 all related fees paid by the borrower, including attorney’s fees. If
12 the duplicative charges resulted in the loan being placed in
13 delinquency or the motor vehicle being repossessed, the borrower
14 shall be entitled to treble damages.】¹

15
16 ¹1. Section 3 of P.L.1999, c.44 (C.17:16V-3) is amended to read
17 as follows:

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

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

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

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

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

46 (3) you are responsible for the cost of the collateral protection
47 insurance purchased by the creditor, which cost is
48 \$ ²【annually】 for 12 months²;

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

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

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

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

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

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

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

40 (11) if you have insurance coverage in place, or if you have
41 replaced the coverage, and it has been in place without any lapse in
42 the coverage but you have failed to provide the creditor with
43 evidence of that coverage, you may, within 30 days after this notice
44 was mailed, provide the creditor evidence of the insurance coverage
45 showing the creditor as loss payee or beneficiary, and the collateral
46 protection insurance coverage placed by the creditor will be
47 canceled and the creditor will deduct from your principal balance
48 all costs of the collateral protection insurance purchased by the

1 creditor, including any interest charged to your account as a result
2 of the costs of that insurance being added to your principal balance;
3 ²**[and]**²

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

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

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

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

46 g. The costs charged to the debtor shall not be excessive or
47 discriminatory. Any cost or element of cost which is approved by
48 the Department of Banking and Insurance or filed with the

1 department and not disapproved, pursuant to P.L.1944, c.27
 2 (C.17:29A-1 et seq.) or P.L.1982, c.114 (C.17:29AA-1 et seq.),
 3 shall not be deemed to be excessive or discriminatory for the
 4 purposes of this act.

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

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

15
 16 WARNING
 17 UNLESS YOU PROVIDE US WITH EVIDENCE OF THE
 18 INSURANCE COVERAGE AS REQUIRED BY OUR CREDIT
 19 AGREEMENT, WE MAY PURCHASE INSURANCE AT YOUR
 20 EXPENSE TO PROTECT OUR INTEREST. THIS INSURANCE
 21 MAY, BUT NEED NOT, ALSO PROTECT YOUR INTEREST. IF
 22 THE COLLATERAL BECOMES DAMAGED, THE COVERAGE
 23 WE PURCHASE MAY NOT PAY ANY CLAIM YOU MAKE OR
 24 ANY CLAIM MADE AGAINST YOU. YOU MAY LATER
 25 CANCEL THIS COVERAGE BY PROVIDING EVIDENCE
 26 THAT YOU HAVE OBTAINED PROPER COVERAGE
 27 ELSEWHERE.
 28 YOU ARE RESPONSIBLE FOR THE COST OF ANY
 29 INSURANCE PURCHASED BY US. THE COST OF THIS
 30 INSURANCE MAY BE ADDED TO YOUR LOAN BALANCE.
 31 IF THE COST IS ADDED TO THE LOAN BALANCE, THE
 32 INTEREST RATE ON THE UNDERLYING LOAN WILL APPLY
 33 TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF
 34 COVERAGE MAY BE THE DATE YOUR PRIOR COVERAGE
 35 LAPSED OR THE DATE YOU FAILED TO PROVIDE PROOF
 36 OF COVERAGE.
 37 THE COVERAGE WE PURCHASE MAY BE CONSIDERABLY
 38 MORE EXPENSIVE THAN INSURANCE YOU CAN OBTAIN
 39 ON YOUR OWN AND WILL NOT SATISFY NEW JERSEY'S
 40 MANDATORY LIABILITY INSURANCE LAWS.¹

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

42

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

45 5. a. Collateral protection insurance shall terminate **or shall**
 46 **be canceled upon the occurrence of any** on the earliest of the
 47 following dates:

1 (1) the date **the creditor is provided with evidence of proper**
 2 other acceptable insurance coverage **purchased by the debtor as**
 3 **required by the credit transaction agreement** becomes effective,
 4 subject to the debtor providing evidence of the other insurance to
 5 the creditor, without regard to when such evidence is received by
 6 the creditor;

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

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

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

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

17 b. If the collateral protection insurance is canceled and there is
 18 any unearned premium paid by the debtor which is refunded to the
 19 creditor, the creditor shall pay or credit the debtor with the amount
 20 of the refund pursuant to paragraph (10) of subsection c. of section
 21 3 of **this act** P.L.1999, c.44 (C.17:16V-3). All statements of the
 22 loan balance and activity provided by the creditor to the debtor shall
 23 include all amounts debited or credited to the obligation due to the
 24 purchase and cancellation of collateral protection insurance.²

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

26

27 ²**[12.] 3.**² Section 7 of P.L.1999,c.44 (C.17:16V-7) is amended
 28 to read as follows:

29 7. a. ³(1)³ A creditor that places, or a person that receives
 30 commissions or fees arising out of, collateral protection insurance
 31 shall not be liable to any debtor, guarantor or other party for the
 32 placement of collateral protection insurance, except³:

33 (a)³ if the purchase of collateral protection insurance is the result
 34 of error by the creditor³; or

35 (b) as provided in subsection f. of this section³.

36 ³(2)³ If the creditor does not substantially comply with the
 37 provisions of this act in purchasing collateral protection
 38 insurance³**[.]** :

39 (a)³ the sole and exclusive remedy of the debtor is that the
 40 debtor does not have to pay for the insurance and any associated
 41 creditor fees or costs³**[.]** ;³ and

42 ³(b)³ the commissioner may assess an administrative fee as
 43 provided in subsection e. of this section.

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

46 b. This act shall not create a cause of action to the debtor or
 47 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. ³(1)³ 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.

³(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)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.). ³[A ²[willful]² violation of this section shall be considered a crime of the third degree.]³

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.¹

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

¹[2.]²[3.¹] 4.² 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.