

FINANCE CODE

TITLE 4. REGULATION OF INTEREST, LOANS, AND FINANCED TRANSACTIONS

SUBTITLE A. INTEREST

CHAPTER 307. COLLATERAL PROTECTION INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 307.001. DEFINITIONS. In this chapter:

(1) "Collateral" means property pledged or used to secure payment, repayment, or performance under a credit or lease agreement, including personal property, real property, fixtures, inventory, receivables, rights, or privileges.

(2) "Collateral protection insurance" means insurance coverage described by Section 307.051.

(3) "Credit agreement" means a written document that sets forth the terms of a credit transaction.

(4) "Credit transaction" means a transaction with terms that require the payment of money, goods, services, property, rights, or privileges on a future date and in which the obligation for payment is secured by collateral.

(5) "Creditor" means a person who is a lender of money or a vendor or lessor of goods, services, property, rights, or privileges for which a payment is arranged through a credit transaction and includes any successor to the rights, title, interest, or liens of the lender, vendor, or lessor.

(6) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit agreement. The term does not include a person who is not a primary obligor under a credit transaction or who is not jointly and severally liable with the debtor for the obligation.

(7) "Title insurance" means insurance that may be issued only by persons regulated under Title 11, Insurance Code, and that insures:

(A) a lender or owner against loss caused by:
(i) defective title held by the mortgagor or owner or insured;

(ii) unknown mortgages or defective recording of mortgages or liens on real property;

(iii) failure of any person to pay ad valorem taxes resulting in a lien; or

(iv) failure to research properly title, taxes, liens, or other matters relative to the validity of loans or liens secured by real property or insurance; or

(B) the validity, enforceability, or priority of any lien or title on real property.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.115, eff. September 1, 2005.

SUBCHAPTER B. REQUIREMENTS FOR COLLATERAL PROTECTION INSURANCE

Sec. 307.051. COLLATERAL PROTECTION INSURANCE. (a)

Collateral protection insurance is insurance coverage that:

(1) is purchased by a creditor after the date of a credit agreement;

(2) provides monetary protection against loss of or damage to the collateral or against liability arising out of the ownership or use of the collateral; and

(3) is purchased according to the terms of a credit agreement as a result of a debtor's failure to provide evidence of insurance or failure to obtain or maintain insurance covering the collateral, with the costs of the collateral protection insurance, including interest and any other charges incurred by the creditor in connection with the placement of collateral protection insurance, payable by a debtor.

(b) Collateral protection insurance includes insurance coverage that is purchased to protect:

(1) only the interest of the creditor; or

(2) both the interest of the creditor and some or all of the interest of a debtor.

(c) The term of a collateral protection insurance policy may be:

(1) not greater than 12 months; or

(2) the remaining term of the credit transaction if the remaining term is less than or equal to 24 months.

(d) The effective date of coverage for collateral protection insurance may be earlier than the date of issuance of the policy. The effective date may not be earlier than the date the collateral became uninsured.

(e) A premium for collateral protection insurance covering collateral other than real property may not be based on an amount that exceeds the actual amount of unpaid indebtedness of the debtor as of the effective date of the policy. This condition applies without regard to whether the coverage under the policy limits the insurer's liability to:

(1) the amount of unpaid debt;

(2) the cash value of the collateral; or

(3) the cost of repair of the collateral.

(e-1) With respect to collateral protection insurance covering real property, a creditor, at the creditor's option, may obtain insurance that will cover either the replacement cost of improvements or the amount of unpaid indebtedness, subject to policy limits. The debtor shall be obligated to reimburse the creditor for the premium, finance charges, and any other charges incurred by the creditor in connection with the placement of the insurance. The creditor may use the previous evidence of insurance coverage furnished by the debtor to determine the sufficient level of replacement cost coverage to be provided.

(f) Collateral protection insurance does not include insurance coverage that:

(1) is purchased by the creditor for which the debtor is not charged;

(2) is purchased at the inception of a credit transaction in which the debtor is a party or to which the debtor agrees, whether or not costs are included in a payment plan under the credit transaction;

(3) is maintained by the creditor for the protection of collateral that comes into the possession or control of the creditor through foreclosure, repossession, or a similar event;

(4) is credit insurance, mortgage protection insurance, insurance issued to cover the life or health of the debtor, or any other insurance maintained to cover the inability or failure of the debtor to make payment under the credit agreement;

(5) is title insurance;

(6) is flood insurance required to be placed by creditors under Section 102, National Flood Insurance Act of 1968 (42 U.S.C. Section 4012a); or

(7) is insurance on a commercial vehicle securing a retail installment contract under Chapter 353.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 1219, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 238 (S.B. 1965), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 5, eff. September 1, 2011.

Sec. 307.052. CREDITOR DUTIES. (a) A creditor who requires collateral protection insurance that is paid for directly or indirectly by a debtor may place collateral protection insurance if:

(1) the debtor has entered into a credit transaction with the creditor for which a credit agreement exists;

(2) the credit agreement requires the debtor to maintain insurance on the collateral; and

(3) a notice has been included in the credit agreement or a separate document provided to the debtor at the time the credit agreement is executed that states that:

(A) the debtor is required to:

(i) keep the collateral insured against damage in the amount the creditor specifies;

(ii) purchase the insurance from an insurer that is authorized to do business in this state or an eligible surplus lines insurer; and

(iii) name the creditor as the person to be

paid under the policy in the event of a loss;

(B) the debtor must, if required by the creditor, deliver to the creditor a copy of the policy and proof of the payment of premiums; and

(C) if the debtor fails to meet any requirement listed in Paragraph (A) or (B), the creditor may obtain collateral protection insurance on behalf of the debtor at the debtor's expense.

(b) Not later than the 31st day after the date the collateral protection insurance is charged to the debtor, the creditor, by prepaid, first class mail, shall mail to each debtor at the last known address on file with the creditor a notice that states:

(1) that the creditor has purchased or will purchase collateral protection insurance on behalf of the debtor and at the debtor's expense as provided by the credit agreement;

(2) the type of insurance that the creditor has obtained or will obtain, the extent of the coverage, and whose interest the policy protects;

(3) the beginning and ending dates of the policy period;

(4) the total cost of the policy to the debtor;

(5) the annual interest rate charged on the cost of insurance if that rate is different from the rate charged in the related credit transaction;

(6) the manner in which the debtor may pay the cost of insurance, interest, or finance charge relating to the purchase of the collateral protection insurance;

(7) at the option of the creditor, other repayment options to which the debtor has agreed in the original credit transaction; and

(8) if collateral protection insurance covering real property is obtained under Section [307.051\(e-1\)](#):

(A) that coverage may be available to the debtor through the Texas FAIR plan at a lower cost; and

(B) contact information about the Texas FAIR plan.

(c) The creditor shall mail the notice required under Subsection (b) to each person who is a cosigner or guarantor to the debt, if the last known address of that person differs from the last known address of the debtor.

(d) The creditor may delegate the notice requirements under Subsections (b) and (c) to the insurer or the insurer's agent.

(e) The notice required by Subsection (b) must be printed in type that is:

- (1) underlined;
- (2) in all capital letters;
- (3) in all bold letters; or
- (4) otherwise conspicuous.

(f) If the required notice to any debtor, cosigner, or guarantor is returned to the creditor undelivered, the creditor shall:

- (1) locate the person by using the procedures the creditor regularly uses for locating debtors; and
- (2) mail a second notice at the time the person is located.

(g) The terms for payment of the costs of the collateral protection insurance, including interest and any other charges actually incurred that the creditor may impose in connection with the placement of the collateral protection insurance, must include one or more of the following:

- (1) a final balloon payment on or before the 30th day after the date of the last scheduled payment required by the credit agreement;
- (2) full amortization over the term of the credit transaction, the term of the collateral protection insurance coverage, or the term for which the amortization is used by the creditor; or
- (3) any other repayment terms agreed to by a debtor in the original credit transaction.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1219, Sec. 2, eff. June 20, 2003.

Sec. 307.053. AMORTIZATION OF DEBT. If any form of amortization is used by the creditor, the creditor shall send to each debtor notice of the terms of the amortization and any change in the debtor's periodic payment.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.054. CANCELLATION OF COLLATERAL PROTECTION INSURANCE. A debtor may at any time cause the cancellation of collateral protection insurance by providing proper evidence to the creditor that the debtor has obtained insurance as required by the credit agreement. If a debtor provides the creditor with proper evidence that the debtor had insurance on the collateral as required by the credit agreement on or before the date the collateral protection insurance is effective and that the debtor continues to have insurance on the collateral as required by the credit agreement, the creditor shall cancel the insurance that it purchased and may not charge the debtor any costs, interest, or other charges in connection with the insurance.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.055. REFUND OF UNEARNED PREMIUMS. (a) On the date the collateral protection insurance is canceled or expires, the amount of unearned premiums, as computed by the Texas Automobile Rules and Rating Manual for collateral to which that manual applies and pro rata for all other types of collateral, shall be refunded to the creditor. Except as otherwise provided in Subsection (b), not later than the 14th day after the date the creditor receives the refund, the creditor shall distribute a refund of unearned premiums by any method selected by the creditor, including:

(1) payment to the debtor by check; or

(2) an adjustment to a credit transaction of the debtor.

(b) If not later than the 28th day after the date the creditor receives the refund the creditor distributes the refund of the unearned premiums by an adjustment to a credit transaction of the debtor that is made effective not later than the 14th day after the date the creditor receives the refund, the creditor shall be in

compliance with this section.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.056. CHOICE OF CARRIER. Collateral protection insurance may be placed with an insurer that is authorized to write insurance in this state or an eligible surplus lines insurer selected by the creditor. The insurance shall be evidenced by an individual policy or a certificate of insurance.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.057. CREDITOR LIABILITY. (a) A creditor, its insurer, or the insurer's agent that places collateral protection insurance in substantial compliance with the terms of this chapter is not directly or indirectly liable to a debtor, cosigner, or guarantor or any other person in connection with the placement of the collateral protection insurance.

(b) This chapter does not impose a fiduciary relationship between the creditor and debtor. Placement of collateral protection insurance is for the principal purpose of protecting the interest of the creditor if the debtor fails to insure collateral as required by the credit agreement.

(c) A creditor is not required under this chapter to purchase collateral protection insurance or to otherwise insure collateral. A creditor is not liable to a debtor or any other person for failing to purchase collateral protection insurance, failing to purchase a certain amount or level of coverage of collateral protection insurance, or purchasing collateral protection insurance that protects only the interests of the creditor or less than all the interest of a debtor. This chapter does not create a cause of action for damages on behalf of a debtor or any other person in connection with the placement of collateral protection insurance.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.

Sec. 307.058. RIGHTS OF CREDITOR AND DEBTOR. (a) The obligations and rights of the creditor and debtor with respect to the collateral under Chapters 1 through 9, Business & Commerce

Code, are not affected by this chapter.

(b) This chapter does not impair other remedies, rights, or options available to a creditor under any law, rule, regulation, ruling, court order, or agreement.

(c) This chapter does not impair or alter other requirements of this code or other law that may apply to a credit transaction.

Added by Acts 2001, 77th Leg., ch. 726, Sec. 1, eff. Sept. 1, 2001.