

BILL ANALYSIS

Senate Research Center

H.B. 3714
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Economic Development
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Engrossed

DIGEST

Lenders who secure their loans by a lien on personal property (collateral) depend on the value of the property to ensure that the principal of the loan will be paid if the borrower defaults on the loan. However, if the property is stolen or destroyed, the lender no longer has any means of ensuring repayment of the principal. Some lenders require borrowers to obtain insurance on the collateral and list the lender as the beneficiary of the insurance. There are currently no rules regulating collateral protection insurance. H.B. 3714 would establish rules for lenders to ensure collateral is insured against loss at the rate most reasonable to the consumer.

PURPOSE

As proposed, H.B. 3714 amends regulations regarding collateral protection insurance.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 341, Finance Code, by adding Subchapter F, as follows:

SUBCHAPTER F. COLLATERAL PROTECTION INSURANCE

Sec. 341.501. DEFINITIONS. Defines “collateral,” “collateral protection insurance,” “credit agreement,” “credit transaction,” “creditor,” “debtor,” and “title insurance.”

Sec. 341.502. COLLATERAL PROTECTION INSURANCE. Provides that collateral protection insurance is insurance coverage that is purchased by a creditor after the date of a credit agreement, provides monetary protection against the collateral or liability arising out of ownership or use, and is purchased according to the terms of certain credit agreements. Provides that collateral insurance includes insurance coverage that is purchased to protect only the interest of the creditor or insurance coverage to protect both the creditor and the debtor. Authorizes the term of a collateral protection insurance policy to extend to the full term of the credit transaction. Provides that collateral protection insurance does not include certain insurance coverage.

Sec. 341.503. CREDITOR DUTIES. Authorizes a creditor to place collateral protection insurance provided that the debtor has entered into a credit transaction with the creditor, the credit transaction has been reduced to a credit agreement which requires the debtor to maintain insurance, and a notice containing specified language has been provided to the debtor. Specifies that the required notice must be printed in type that is at least 10 point in size, and in all bold, capital letters. Requires the creditor to mail to the debtor a notice and specifies that the notice must contain specified information. Requires the creditor, if the notice is returned to the creditor undelivered, to locate the debtor by using the procedures the creditor regularly uses for locating debtors, and mail a second notice at the time the debtor is located. Provides that the terms for repayment of the costs of the collateral protection insurance must include one or more of the enumerated payment methods.

Sec. 341.504. AMORTIZATION OF DEBT. Requires the creditor, if any form of amortization is used by the creditor, to send to the debtor notice of the terms of the amortization and change in the debtor's periodic payment.

Sec. 341.505. CANCELLATION OF COLLATERAL PROTECTION INSURANCE. Authorizes a debtor at any time to 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. Provides that 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 is required to cancel the insurance that it purchased and may not charge the debtor any costs, interest, or other charges in connection with the insurance.

Sec. 341.506. REFUND OF UNEARNED PREMIUMS. Provides that upon cancellation or expiration of collateral protection insurance, the amount of unearned premiums, if any, as calculated in accordance with the Texas Automobile Rules and Rating Manual or the policy filed by the insurer with the Texas Department of Insurance (department), is required to be refunded to the creditor. Requires the creditor to distribute a refund of unearned premiums directly to the debtor by check or other means, but not later than the 14th day.

Sec. 341.507. CHOICE OF CARRIER. Authorizes collateral protection insurance to be placed with an insurer that is authorized to write insurance in this state or an eligible surplus lines insurer selected by the creditor. Requires the insurance to be evidenced by an individual policy or a certificate of insurance.

Sec. 341.508. CREDITOR LIABILITY. Provides that a creditor, its insurer or the insurer's agent that places collateral protection insurance in compliance with the terms of this subchapter is not directly or indirectly liable in any manner to a debtor, co-signor, guarantor, or any other person, in connection with the placement of the collateral protection insurance. Provides that this subchapter does not impose a fiduciary relationship between the creditor and the debtor. Provides that placement of collateral protection insurance is for the sole purpose of protecting the interest of the creditor when the debtor fails to insure collateral as required by the credit agreement. Provides that a creditor is not required to purchase collateral protection insurance or to otherwise insure collateral. Provides that a creditor is not liable to a debtor or to any other person for not purchasing collateral protection insurance, as a result of the amount or level of coverage of collateral protection insurance purchased by the creditor, or because the creditor purchased collateral protection insurance that protects only the interests of the creditor or less than all of the interest of the debtor. Provides that this subchapter does not create a cause of action for damages on behalf of the debtor or any other person in connection with the placement of collateral protection insurance.

Sec. 341.509. RIGHTS OF CREDITOR AND DEBTOR. Provides that the obligations and rights of the creditor and the debtor with respect to the collateral under Chapters 1-9, Business & Commerce Code, are not affected by this subchapter. Provides that this subchapter does not impair any other remedies, rights, or options available to a creditor pursuant to any law, regulation, ruling, court order, contract, or agreement. Provides that this subchapter does not impair or alter other requirements of this code or other law that may apply to a credit transaction.

SECTION 2. Amends the heading to Chapter 341D, Finance Code, as follows:

SUBCHAPTER D. New title: ADVERTISING REQUIREMENTS. Deletes "and insurance."

SECTION 3. Repealer: Section 341.302, Finance Code (Collateral Protection Insurance Paid by Debtor).

SECTION 4. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 5. Emergency clause.