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2 81st General Assembly
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As Engrossed: S3/11/97 S3/14/97

A Bill

SENATE BILL 501

4
5 By: Senator Roebuck
6
7

For An Act To Be Entitled

9 "AN ACT TO REGULATE CREDITOR-PLACED INSURANCE OR INSURANCE
10 PURCHASED BY THE CREDITOR PROVIDING COVERAGE AGAINST LOSS
11 OR DAMAGE TO COLLATERALIZED PERSONAL PROPERTY ACCORDING TO
12 THE TERMS OF THE CREDIT AGREEMENT WHEN THE DEBTOR FAILS TO
13 PROVIDE THE COVERAGE AND THE COST IS THEN CHARGED TO THE
14 DEBTOR; AND FOR OTHER PURPOSES."

Subtitle

16
17 "TO REGULATE CREDITOR-PLACED INSURANCE
18 OR INSURANCE PURCHASED BY THE CREDITOR
19 PROVIDING COVERAGE AGAINST LOSS OR
20 DAMAGE UNDER THE CREDIT AGREEMENT AND
21 THEN CHARGED TO THE DEBTOR."
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Purpose.

26 The purposes of this act are to promote the public welfare by regulating
27 creditor-placed insurance, create a legal framework within which creditor-
28 placed insurance may be written in this state, maintain the separation between
29 creditors and insurers; and minimize unfair competitive practices in the sale
30 of creditor-placed insurance.
31

32 SECTION 2. Scope.

33 (a) This act applies to an insurer or producer transacting creditor-
34 placed insurance as defined in this act.

35 (b) All creditor-placed insurance written in connection with credit
36 transactions for personal, family or household purposes is subject to the

1 provisions of this act, except:

2 (1) transactions involving extensions of credit primarily for
3 business or commercial purposes;

4 (2) Insurance on collateralized real property;

5 (3) Insurance offered by the creditor and elected by the debtor at
6 the debtor's option;

7 (4) Insurance for which no specific charge is made to the debtor
8 or the debtor's account; or

9 (5) Blanket insurance, whether paid for by the debtor or the
10 creditor.

11 (c) The commissioner shall have authority to bring an administrative or
12 judicial proceeding to enforce this act. No provisions of this act are
13 intended to establish or extinguish a private right of action for a violation
14 of any provision of this act.

15

16 SECTION 3. Definitions.

17 As used in this act, unless the context otherwise requires:

18 (1) "Actual cash value (ACV)" means the cost of replacing damaged or
19 destroyed property with comparable new property, minus depreciation and
20 obsolescence.

21 (2) "Blanket insurance" means insurance that provides coverage on
22 collateral as defined in a policy issued to a creditor, without specifically
23 listing the collateral covered.

24 (3) "Collateral" means personal property that is pledged as security
25 for the satisfaction of a debt.

26 (4) "Credit agreement" means the written document that sets forth the
27 terms of the credit transaction and includes the security agreement.

28 (5) "Credit transaction" means a transaction by the terms of which the
29 repayment of money loaned or credit commitment made, or payment of goods,
30 services or properties sold or leased, is to be made at a future date or
31 dates.

32 (6) "Creditor" means the lender of money or vendor or lessor of goods,
33 services, property, rights or privileges for which payment is arranged through
34 a credit transaction, or any successor to the right, title or interest of a
35 lender, vendor or lessor.

36 (7) "Creditor-placed insurance" means insurance that is purchased

1 unilaterally by the creditor, who is the named insured, subsequent to the date
2 of the credit transaction, providing coverage against loss, expense or damage
3 to collateralized personal property as a result of fire, theft, collision or
4 other risks of loss that would either impair a creditor's interest or
5 adversely affect the value of collateral covered by limited dual interest
6 insurance. It is purchased according to the terms of the credit agreement as
7 a result of the debtor's failure to provide required physical damage
8 insurance, with the cost of the coverage being charged to the debtor. It
9 shall be either single interest insurance or limited dual interest insurance.

10 (8) "Debtor" means the borrower of money or a purchaser or lessee of
11 goods, services, property, rights or privileges, for which payment is arranged
12 through a credit transaction.

13 (9) "Insurance tracking" means monitoring evidence of insurance on
14 collateralized credit transactions to determine whether insurance required by
15 the credit agreement has lapsed, and communicating with debtors concerning the
16 status of insurance coverage.

17 (10) "Insurer" means an insurance company, association or exchange
18 authorized or approved to issue insurance policies regulated by this act in
19 the State of Arkansas.

20 (11) "Lapse" means that the insurance coverage required by the credit
21 agreement is not in force.

22 (12) "Limited dual interest insurance" means insurance purchased by the
23 creditor to insure its interest in the collateral securing the debtor's credit
24 transaction. This insurance waives the three (3) conditions for loss payment
25 under single interest insurance and extends coverage on the collateral, to the
26 extent provided in Section 10(a), in the possession of the debtor.

27 (13) "Loss ratio" means the ratio of incurred losses to earned premium.

28 (14) "Net debt" means the amount necessary to liquidate the remaining
29 debt in a single lump-sum payment, excluding all unearned interest and other
30 unearned charges.

31 (15) "Producer" means a person who receives a commission for insurance
32 placed or written or who, on behalf of an insurer or creditor, solicits,
33 negotiates, effects, procures, delivers, renews, continues or binds policies
34 of insurance to which this act applies, except a regular salaried officer,
35 employee or other representative of an insurer who devotes substantially all
36 working time to activities other than those specified here and who receives no

1 compensation that is directly dependent on the amount of insurance business
2 written, and except a regular salaried officer or employee of a creditor who
3 receives no compensation that is directly dependent on the amount of insurance
4 effected or procured.

5 (16) "Single interest insurance" means insurance purchased by the
6 creditor to insure its interest in the collateral securing a debtor's credit
7 transaction. Three (3) conditions must be met for payment of loss under the
8 policy:

9 (A) the debtor has defaulted in payment;

10 (B) the creditor has legally repossessed the collateral, unless
11 collateral has been stolen from the debtor; and

12 (C) the creditor has suffered an impairment of interest.

13 (17) "Commissioner" means the Insurance Commissioner for the State of
14 Arkansas, his deputies, and employees.

15

16 SECTION 4. Term of Insurance Policy.

17 (a) Creditor-placed insurance shall become effective on the latest of
18 the following dates:

19 (1) The date of the credit transaction;

20 (2) The date prior coverage, including prior creditor-placed
21 insurance coverage, lapsed;

22 (3) One (1) year before the date on which the related insurance
23 charge is made to the debtor's account; or

24 (4) A later date provided for in the agreement between the
25 creditor and insurer.

26 (b) Creditor-placed insurance shall terminate on the earliest of the
27 following dates:

28 (1) The date other acceptable insurance becomes effective, subject
29 to the debtor providing acceptable evidence of the other insurance to the
30 creditor;

31 (2) The date the collateralized personal property is repossessed,
32 unless the property is returned to the debtor within ten (10) days of the
33 repossession;

34 (3) The date the collateralized personal property is determined by
35 the insurer to be a total loss;

36 (4) The date the debt is completely extinguished; or

1 (5) An earlier date specified in the individual policy or
2 certificate of insurance.

3 (c) An insurance charge shall not be made to a debtor for a term longer
4 than the scheduled term of the creditor-placed insurance when it becomes
5 effective, nor may an insurance charge be made to the debtor for creditor-
6 placed insurance before the effective date of the insurance.

7 (d) If a charge is made to a debtor for creditor-placed insurance
8 coverage that exceeds a term of one (1) year, the debtor shall be notified at
9 least annually that the insurance will be canceled and a refund or credit of
10 unearned charges made if evidence of acceptable insurance secured by the
11 debtor is provided.

12

13 SECTION 5. Calculation and Payment of Premiums.

14 (a) Premiums for creditor-placed insurance coverage may be calculated
15 based on:

16 (1) An amount not exceeding the net debt even though the coverage
17 may limit the insurer's liability to the net debt, actual cash value or cost
18 of repair; or

19 (2) Other premium calculation methods that more closely reflect
20 the exposure of each item insured and approximate the premium calculation
21 method of the coverage required by the credit agreement.

22 (b) An insurer shall not write creditor-placed insurance for which the
23 premium rate differs from that determined by the schedules of the insurer on
24 file with the commissioner. The premium or amount charged to the debtor for
25 creditor-placed insurance shall not exceed the premiums charged by the
26 insurer, computed at the time the charge to the debtor is determined.

27 (c) A method of billing insurance charges to the debtor on closed-end
28 credit transactions that creates a balloon payment at the end of the credit
29 transaction or extends the credit transaction's maturity date is prohibited,
30 unless specifically disclosed at the time of the origination of the credit
31 agreement and specifically agreed to by the debtor.

32

33 SECTION 6. Prohibited Coverages.

34 (a) Creditor-placed insurance coverage shall not include:

35 (1) Coverage for the cost of repossession;

36 (2) Skip, confiscation and conversion coverage;

1 (3) Coverage for payment of mechanics' or other liens that do not
2 arise from a covered loss occurrence;

3 (4) Coverage that requires a debtor's insurance deductible to be
4 less than two hundred fifty dollars (\$250); or

5 (5) Coverage that is broader than the insurance coverages that
6 meet the minimum insurance requirements of the credit agreement.

7 (b) Nothing in this section shall be deemed to prohibit the issuance of
8 a separate policy or endorsement providing the coverages listed in subsection
9 (a) of this section. However, no charge shall be passed along to the debtor
10 for the coverages.

11

12 SECTION 7. Evidence of Coverage.

13 Creditor-placed insurance shall be set forth in an individual policy or
14 certificate of insurance. A copy of the individual policy, certificate of
15 insurance coverage, or other evidence of insurance coverage shall be mailed,
16 first class mail, or delivered in person to the last known address of the
17 debtor.

18

19 SECTION 8. Filing, Approval and Withdrawal of Forms and Rates.

20 (a) All policy forms and certificates of insurance to be delivered or
21 issued for delivery in this state and the schedules of premium rates
22 pertaining thereto shall be filed with the commissioner.

23 (b) The commissioner shall within thirty (30) days after the filing of
24 the policy forms and certificates of insurance disapprove a form that does not
25 conform to this act or to other applicable provisions of the insurance
26 statutes and regulations and shall, within thirty (30) days of filing,
27 disapprove a schedule of premium rates pertaining to the form if it does not
28 conform to the standard set forth in subsection (e) of this section.

29 (c) If the commissioner disapproves a form or schedule of premium rates
30 in accordance with subsection (b) of this section, the commissioner shall
31 promptly notify the insurer in writing of the disapproval, and it shall be
32 unlawful for the insurer to issue or use the form or schedule. An insurer
33 aggrieved by any order or decision of the commissioner made without a hearing,
34 within thirty (30) days after notice to the insurer or organization, may make
35 written request to the commissioner for a hearing thereon. The commissioner
36 shall hear the party or parties within twenty (20) days after receipt of the

1 request and shall give not less than ten (10) days' written notice of the time
2 and place of the hearing. The hearing shall be concluded within fifteen (15)
3 days from its commencement, except that the commissioner, for good cause shown
4 and with notice to the interested parties, may grant additional time, not to
5 exceed thirty (30) days. Within fifteen (15) days after the hearing, the
6 commissioner shall affirm, reverse, or modify his previous action, specifying
7 his reasons therefor. Pending the hearing and decision thereon, the
8 commissioner may suspend or postpone the effective date of his previous
9 action.

10 (d) Unless the commissioner disapproves the form or schedule of premium
11 rates in accordance with subsections (b) and (c) of this section or gives
12 written approval of the form or schedule within thirty (30) days after the
13 filing, the form or schedule shall be deemed approved on the thirty-first day
14 after the filing.

15 (e) The schedules of premium rates shall not be excessive, inadequate
16 or unfairly discriminatory. In determining whether a schedule of premium
17 rates are excessive, inadequate or unfairly discriminatory, the commissioner
18 shall take into account past and prospective loss experience, general and
19 administrative expenses, loss settlement and adjustment expenses, and other
20 acquisition costs including insurance tracking costs, reserves, taxes,
21 licenses, fees and assessments, reasonable insurer profit and other relevant
22 data. Rates are not unfairly discriminatory because different premiums result
23 for different policyholders, including group policyholders, with similar loss
24 exposures but different expense factors or similar expense factors but
25 different loss exposures, nor are rates unfairly discriminatory if they are
26 averaged broadly among all persons insured in this state or all persons
27 insured under a group insurance policy.

28 (f) The commissioner may withdraw approval of an approved form or
29 schedule of premium rates when the commissioner would be required to
30 disapprove the form or schedule of premium rates if it were filed at the time
31 of the withdrawal. The withdrawal shall be in writing and shall specify the
32 reasons for withdrawal and the effective date of the withdrawal. An insurer
33 adversely affected by a withdrawal may, within thirty (30) days after
34 receiving the written notification of the withdrawal, request a hearing in the
35 manner provided in subsection (c) of this section to determine whether the
36 withdrawal should be annulled, modified or confirmed. Unless the commissioner

1 grants an extension in writing in the withdrawal or subsequently grants an
2 extension, the withdrawal shall, in the absence of a request for hearing,
3 become effective, prospectively and not retroactively, on the ninety-first day
4 following delivery of the notice of withdrawal and, if the request for hearing
5 is filed, on the ninety-first day following delivery of written notice of the
6 commissioner's determination.

7 (g) Forms and rates filed and approved in accordance with this section
8 shall be deemed to be in compliance in all respects with the laws of this
9 state.

10

11 SECTION 9. Refund of Unearned Premiums.

12 (a) Within sixty (60) calendar days after the termination of creditor-
13 placed insurance coverage, and in accordance with the formulas approved by the
14 commissioner, an insurer shall refund any unearned premium or other
15 identifiable charges.

16 (b) Within sixty (60) calendar days after the termination date of
17 creditor-placed insurance coverage, the insurer shall provide to the debtor a
18 statement of refund disclosing the effective date, the termination date, the
19 amount of premium being refunded and the amount of premium charged for the
20 coverage provided. No statement shall be required in the event that the
21 policy terminates pursuant to subdivision (b)(4) of Section 4 of this act.

22 (c) The entire amount of premiums, minimum premiums, fees or charges of
23 any kind shall be refunded if no coverage was provided.

24

25 SECTION 10. Claims.

26 (a) In the event of a loss under the creditor-placed insurance policy,
27 the insurer shall pay, at a minimum, the least of the following, the value of
28 which shall be determined as of the date of loss:

29 (1) The cost to repair the collateral less any applicable
30 deductible;

31 (2) The actual cash value of the collateral, less any applicable
32 deductible;

33 (3) The net debt, less any applicable deductible. The method of
34 calculation of net debt payable pursuant to this subdivision shall be
35 identical to the method of calculation of net debt for payment of premiums
36 pursuant to subsection (a) of Section 5 of this act; or

1 (4) If single interest insurance is provided, the amount by which
2 the creditor's interest is impaired.

3 (b) The net debt or actual cash value amounts in subsection (a) may be
4 reduced by the value of salvage if the insurer does not take possession of the
5 insured property.

6 (c) In the event of a loss, no subrogation shall run against the debtor
7 from the insurer.

8 (d) Whenever a claim is made on a creditor-placed insurance policy, the
9 insurer shall furnish to the claimant a written statement of the loss
10 explaining the settlement amount and the method of settlement.

11 (e) A creditor or insurer may not abandon salvage to a towing or
12 storage facility in lieu of payment of storage fees without the consent of the
13 facility and the claimant. After the filing of a claim as provided in the
14 policy or certificate of insurance, the insurer shall be responsible for the
15 payment of towing and storage charges for a covered loss occurrence from the
16 time storage is reported to the insurer or lender to the time the claim is
17 paid. The insurer shall give written notice to the claimant when the claim is
18 paid that the claimant may incur storage charges after the date the claim is
19 paid.

20

21 SECTION 11. Rights and Obligations of the Parties.

22 (a) In order for the creditor to place insurance on the collateral
23 pledged by the debtor and pass the cost of the insurance on to the debtor:

24 (1) The creditor must have a security interest in the personal
25 property;

26 (2) The credit agreement must require the debtor to maintain
27 insurance on the collateral to protect the creditor's interest;

28 (3) The credit agreement must authorize the creditor to place the
29 insurance if the debtor fails to provide evidence of the insurance; and

30 (4) These requirements must be clearly disclosed to the debtor at
31 the inception of the credit transaction.

32 (b) The debtor shall always have the right to provide required insurance
33 through existing policies of insurance owned or controlled by the debtor or of
34 procuring and furnishing the required coverage through an insurer authorized
35 to transact insurance within this state. However, a creditor may establish
36 maximum acceptable deductibles, insurer solidity standards and other

1 reasonable conditions with respect to the required insurance.

2

3 SECTION 12. Remittance of Premiums and Payment of Compensation.

4 (a) The entire amount of the premium due from a creditor shall be
5 remitted to the insurer or its producer in accordance with the insurer's
6 requirements. No commissions may be paid to, or retained by, a person or
7 entity not licensed and appointed in accordance with Arkansas Code §§ 23-64-
8 201, et seq., nor to a lender or any subsidiary or affiliate of a lender.

9 (b) The retention by the creditor of unearned premiums upon
10 cancellation of the insurance without crediting to the debtor's account the
11 amount of unearned insurance charges is prohibited.

12 (c) Rebates to the creditor of a portion of the premium charged to the
13 debtor are prohibited as are other inducements provided to the creditor by an
14 insurer or producer. The listing of the following activities as prohibited
15 rebates or inducements is not intended to be restrictive, and the commissioner
16 may identify an activity as prohibited by rule, regulation or order:

17 (1) Allowing insurers or producers to purchase certificates of
18 deposit from the creditor or to maintain accounts with the creditor at less
19 than the market interest rates and charges that the creditor applies to other
20 customers for deposit accounts of similar amounts and duration;

21 (2) Paying a commission to a person, including a creditor, who is
22 not appropriately licensed as a producer in this state;

23 (3) Purchasing or offering to purchase certificates of deposit
24 from, or maintaining or offering to maintain deposit accounts or investment
25 accounts with a creditor as part of a creditor-placed insurance solicitation.

26 (d) Prohibited rebates or inducements do not include the providing of
27 insurance tracking and other services incidental to the creditor-placed
28 insurance program.

29 (e) Nothing contained in this section shall prohibit or restrict an
30 insurer or producer from maintaining a demand, premium deposit or other
31 account or accounts with a creditor for which the insurer or producer provides
32 insurance if the accounts pay the market interest rate and charges that the
33 creditor applies to other customers for deposit accounts of similar amounts
34 and duration.

35

36 SECTION 13. Disclosures to the Debtor.

1 (a) A creditor shall not impose charges, including premium costs and
2 related interest and finance charges, on a debtor for creditor-placed
3 insurance coverage unless adequate disclosure of the requirement to maintain
4 insurance has been made to the debtor. Adequate disclosure is accomplished if
5 the following occurs:

6 (1) The credit agreement sets forth the requirement that the
7 debtor must maintain insurance on the collateral as provided for in Section
8 11;

9 (2) The creditor makes reasonable efforts to notify the debtor of
10 the requirement to maintain insurance and allows a reasonable time for
11 compliance with this requirement;

12 (3) A final notice as required by this act is sent to the debtor;
13 and

14 (4) If creditor-placed insurance coverage is issued, a copy of the
15 policy or certificate is sent to the debtor as provided for in Section 7.

16 (b) After adequate disclosure of the request to maintain insurance has
17 been made to the debtor as required by this section, a creditor may proceed to
18 impose charges for creditor-placed insurance if the debtor fails to provide
19 evidence of insurance. A creditor may impose charges no earlier than ten (10)
20 calendar days after sending the final notice.

21 (c) Reasonable efforts to notify the debtor are accomplished if:

22 (1) The creditor mails a notice by first class mail to the
23 debtor's last known address as contained in the creditor's records, stating
24 that the creditor intends to charge the debtor for creditor-placed insurance
25 coverage on the collateral if the debtor fails to provide evidence of the
26 property insurance to the creditor;

27 (2) The creditor allows the debtor at least twenty (20) calendar
28 days to respond to the notice and provide evidence of acceptable insurance
29 coverage before sending a final notice; and

30 (3) The creditor sends a final notice in compliance with this
31 section by first class mail to the debtor's last known address as contained in
32 the creditor's records at least ten (10) calendar days before the cost of
33 insurance is charged to the debtor by the creditor. Proof of the mailing of
34 the final notice shall be retained for at least three (3) years following the
35 expiration or termination of the coverage or as otherwise required by law.

36 (d) The initial notice shall be in a form determined by the creditor to

1 remind the debtor of the requirement to maintain insurance on the collateral.
2 The final notice shall be as complete as the following notice, printed in not
3 less than twelve (12) point type, and modified where necessary to fit the
4 nature of the credit transaction:

5
6 "FINAL NOTICE

7
8 Your credit agreement with us requires you to have property
9 insurance on the collateral until you pay off your loan. You have
10 not given us proof you have insurance on the property. You can
11 ask your insurance company or agent to give us proof of insurance
12 or you can send us proof you have property insurance within ten
13 (10) calendar days after the date this letter was postmarked. If
14 you do not, we may buy the insurance and charge the cost to you.

15
16 You must pay for the property insurance we buy. It will probably
17 cost more than insurance you can buy on your own. The cost of the
18 insurance we buy may be added to your loan balance and we may
19 charge you interest on it. If we do, you will pay interest at the
20 same rate you pay on your loan or the highest rate permitted by
21 law, whichever is lower.

22
23 The insurance we buy will pay claims to us (the creditor) for
24 physical damage to your property, at a minimum, the least of the
25 following, determined as of the date of loss: (a) the cost to
26 repair the collateral less any applicable deductible; (b) the
27 actual cash value of the collateral, less any applicable
28 deductible; (c) the net debt, less any applicable deductible. It
29 will not pay any claims made against you [and it may not pay you
30 for any claims you make (delete if limited dual interest
31 coverage)]. The insurance we buy will not give you any liability
32 insurance coverage and will not meet the requirements of a state's
33 financial responsibility law.

34
35 The property coverage we buy will start on the date shown in the
36 policy or certificate, which may go back to the date of the loan

or the date your prior coverage stopped. We will cancel the insurance we bought for you and give you a refund or credit of unearned charges if you give us proof you have bought property insurance somewhere else or if you have paid off the loan."

(e) All creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. Not earlier than the sending of the final notice nor fifteen (15) days after a charge is made to the debtor for creditor-placed insurance coverage, the creditor shall cause a copy of the individual policy, certificate or other evidence of insurance coverage evidencing the creditor-placed insurance coverage to be sent, first-class mail, to the debtor's last known address.

(f) A creditor's compliance with or failure to comply with this act shall not be construed to require the creditor to purchase insurance coverage on the collateral, and the creditor shall not be liable to the debtor or a third party as a result of its failure to purchase the insurance.

SECTION 14. Regulations.

The commissioner may, after notice and hearing, promulgate reasonable
rules and regulations to carry out and effectuate the provisions of this act.

SECTION 15. All provisions of this act of general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 16. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

SECTION 17. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Roebuck