

By: Madden

H.B. No. 3100

A BILL TO BE ENTITLED

AN ACT

relating to a loan secured by personal property with limited recourse against the borrower.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Finance Code, is amended by adding Chapter 344 to read as follows:

CHAPTER 344. LIMITED RECOURSE SECURED LOAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 344.001. DEFINITIONS. In this chapter:

(1) "Limited recourse secured loan" means a loan of money from a lender to a borrower in which the borrower:

(A) pledges a security interest in personal property owned by the borrower to the lender; and

(B) has limited personal liability to repay the lender as provided by this chapter.

(2) "Month" means any period of 30 consecutive days.

(3) "Monthly finance rate" means the rate of interest a lender may charge on the outstanding principal balance of a limited recourse secured loan during a month.

Sec. 344.002. APPLICABILITY OF OTHER LAW. (a) A provision of this code other than this chapter applies to a limited recourse secured loan only if this chapter specifically makes the provision applicable.

(b) Chapter 14 applies to this chapter.

1 [Sections 344.003-344.050 reserved for expansion]

2 SUBCHAPTER B. LICENSE AND REGULATION

3 Sec. 344.051. LICENSE REQUIRED. (a) A lender must hold a
4 license issued under this chapter to engage in the business of
5 making, transacting, or negotiating limited recourse secured
6 loans.

7 (b) A lender may not use any device, subterfuge, or pretense
8 to evade the application of this section.

9 Sec. 344.052. ISSUANCE OF MORE THAN ONE LICENSE FOR A
10 LENDER. (a) The commissioner may issue more than one license to a
11 lender on compliance with this chapter for each license.

12 (b) A lender who is required to hold a license under this
13 chapter must hold a separate license for each office at which loans
14 are made, negotiated, serviced, held, or collected under this
15 chapter.

16 (c) A license is not required under this chapter for:

17 (1) a place of business devoted to accounting or other
18 recordkeeping; and

19 (2) a place of business at which loans are not made,
20 negotiated, serviced, held, or collected under this chapter.

21 [Sections 344.053-344.100 reserved for expansion]

22 SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

23 Sec. 344.101. APPLICATION REQUIREMENTS. (a) The
24 application for a license under this chapter must:

25 (1) be under oath;

26 (2) give the approximate location from which business
27 is to be conducted;

1 (3) identify the business's principal parties in
2 interest; and

3 (4) contain other relevant information that the
4 commissioner requires for the findings required under Section
5 344.104.

6 (b) On the filing of one or more license applications, the
7 applicant shall pay to the commissioner an investigation fee of
8 \$200.

9 (c) On the filing of each license application, the applicant
10 shall pay to the commissioner for the license's year of issuance a
11 license fee in an amount determined as provided by Section 14.107.

12 Sec. 344.102. BOND. (a) If the commissioner requires, an
13 applicant for a license under this chapter shall file with the
14 application a bond that:

15 (1) is in an amount not to exceed the total of:

16 (A) \$50,000 for the first license; and

17 (B) \$10,000 for each additional license;

18 (2) is satisfactory to the commissioner; and

19 (3) is issued by a surety company qualified to do
20 business as a surety in this state.

21 (b) The bond must be in favor of this state for the use of
22 this state and the use of a person who has a cause of action under
23 this chapter against the license holder.

24 (c) The bond must be conditioned on:

25 (1) the license holder's faithful performance under
26 this chapter; and

27 (2) the payment of all amounts that become due to the

1 state or another person under this chapter during the calendar year
2 for which the bond is given.

3 (d) The aggregate liability of a surety to all persons
4 damaged by the license holder's violation of this chapter may not
5 exceed the amount of the bond.

6 Sec. 344.103. INVESTIGATION OF APPLICATION. On the filing
7 of an application and, if required, a bond, and on payment of the
8 required fees, the commissioner shall conduct an investigation to
9 determine whether to issue the license.

10 Sec. 344.104. APPROVAL OR DENIAL OF APPLICATION. (a) The
11 commissioner shall approve the application and issue to the
12 applicant a license to make loans under this chapter if the
13 commissioner finds that:

14 (1) the financial responsibility, experience,
15 character, and general fitness of the applicant are sufficient to:

16 (A) command the confidence of the public; and

17 (B) warrant the belief that the business will be
18 operated lawfully and fairly, within the purposes of this chapter;
19 and

20 (2) the applicant has net assets of at least \$25,000
21 available for the operation of the business.

22 (b) If the commissioner does not find the eligibility
23 requirements of Subsection (a), the commissioner shall notify the
24 applicant.

25 (c) If an applicant requests a hearing on the application
26 not later than the 30th day after the date of notification under
27 Subsection (b), the applicant is entitled to a hearing not later

1 than the 60th day after the date of the request.

2 (d) The commissioner shall approve or deny the application
3 not later than the 60th day after the date of the filing of a
4 completed application with payment of the required fees or, if a
5 hearing is held, after the date of the completion of the hearing on
6 the application. The commissioner and the applicant may agree to a
7 later date in writing.

8 Sec. 344.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION.
9 If the commissioner denies the application, the commissioner shall
10 retain the investigation fee and shall return to the applicant the
11 license fee submitted with the application.

12 [Sections 344.106-344.150 reserved for expansion]

13 SUBCHAPTER D. LICENSE

14 Sec. 344.151. NAME AND PLACE ON LICENSE. (a) A license
15 must state:

16 (1) the name of the license holder; and

17 (2) the address of the office from which the business
18 is to be conducted.

19 (b) A license holder may not conduct business under this
20 chapter under a name or at a place of business in this state other
21 than the name or office stated on the license.

22 Sec. 344.152. LICENSE DISPLAY. A license holder shall
23 display a license at the place of business provided on the license.

24 Sec. 344.153. MINIMUM ASSETS FOR LICENSE. A license holder
25 shall maintain for each office for which a license is held net
26 assets of at least \$25,000 that are used or readily available for
27 use in conducting the business of that office.

1 Sec. 344.154. ANNUAL LICENSE FEE. Not later than December
2 1, a license holder shall pay to the commissioner for each license
3 held an annual fee for the year beginning the next January 1, in an
4 amount determined as provided by Section 14.107.

5 Sec. 344.155. EXPIRATION OF LICENSE ON FAILURE TO PAY
6 ANNUAL FEE. If the annual fee for a license is not paid before the
7 16th day after the date on which the written notice of delinquency
8 of payment has been given to the license holder, the license expires
9 on the later of:

10 (1) that day; or

11 (2) December 31 of the last year for which an annual
12 fee was paid.

13 Sec. 344.156. LICENSE SUSPENSION OR REVOCATION. After
14 notice and a hearing, the commissioner may suspend or revoke a
15 license if the commissioner finds that:

16 (1) the license holder failed to pay the annual
17 license fee, an examination fee, an investigation fee, or another
18 charge imposed by the commissioner under this chapter;

19 (2) the license holder, knowingly or without the
20 exercise of due care, violated this chapter or a rule adopted or
21 order issued under this chapter; or

22 (3) a fact or condition exists that, if it had existed
23 or had been known to exist at the time of the original application
24 for the license, clearly would have justified the commissioner's
25 denial of the application.

26 Sec. 344.157. CORPORATE CHARTER FORFEITURE. (a) A license
27 holder who violates this chapter is subject to revocation of the

1 holder's license and, if the license holder is a corporation,
2 forfeiture of its charter.

3 (b) When the attorney general is notified of a violation of
4 this chapter and revocation of a license, the attorney general
5 shall file suit in a district court in Travis County, if the license
6 holder is a corporation, for forfeiture of the license holder's
7 charter.

8 Sec. 344.158. LICENSE SUSPENSION OR REVOCATION FILED WITH
9 PUBLIC RECORDS. The decision of the commissioner on the suspension
10 or revocation of a license and the evidence considered by the
11 commissioner in making the decision shall be filed in the public
12 records of the commissioner.

13 Sec. 344.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE
14 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a
15 suspended license or issue a new license on application to a person
16 whose license has been revoked if at the time of the reinstatement
17 or issuance no fact or condition exists that clearly would have
18 justified the commissioner's denial of an original application for
19 the license.

20 Sec. 344.160. SURRENDER OF LICENSE. A license holder may
21 surrender a license issued under this chapter by delivering to the
22 commissioner:

23 (1) the license; and

24 (2) a written notice of the license's surrender.

25 Sec. 344.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR
26 SURRENDER. (a) The suspension, revocation, or surrender of a
27 license issued under this chapter does not affect the obligation of

1 a contract between the license holder and a borrower entered into
2 before the revocation, suspension, or surrender.

3 (b) Surrender of a license does not affect the license
4 holder's civil or criminal liability for an act committed before
5 surrender.

6 Sec. 344.162. MOVING AN OFFICE. (a) A license holder shall
7 give written notice to the commissioner before the 30th day
8 preceding the date the license holder moves an office from the
9 location provided on the license.

10 (b) The commissioner shall amend a license holder's license
11 accordingly.

12 Sec. 344.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license
13 may be transferred or assigned only with the approval of the
14 commissioner.

15 [Sections 344.164-344.200 reserved for expansion]

16 SUBCHAPTER E. LOAN TERMS; DEFAULT

17 Sec. 344.201. PLEDGED PROPERTY. Personal property may be
18 used to secure a limited recourse secured loan only if the property
19 is currently owned by the borrower and is not encumbered by any
20 other outstanding encumbrance.

21 Sec. 344.202. POSSESSION BY BORROWER. A limited recourse
22 secured loan must allow the borrower to possess and use the pledged
23 property while the loan is outstanding.

24 Sec. 344.203. MINIMUM TERM AND MAXIMUM AMOUNT OF LOAN. (a)
25 A loan under this chapter may not have a term of less than 30 days.

26 (b) The maximum loan amount under this chapter is \$5,000.

27 Sec. 344.204. MAXIMUM INTEREST RATES. (a) Notwithstanding

1 any statute to the contrary, a loan under this chapter may provide
2 for a rate of interest that does not exceed the following maximum
3 monthly finance rate:

4 (1) on a loan of \$500 or less, a monthly finance rate
5 of 17 percent;

6 (2) on a loan that is more than \$500 but not more than
7 \$2,500, a monthly finance rate of 15 percent; and

8 (3) on a loan that is more than \$2,500 but not more
9 than \$5,000, a monthly finance rate of 13 percent.

10 (b) Interest shall be computed on a limited recourse secured
11 loan on a daily basis at the rate of 1/30th of the monthly finance
12 rate multiplied by the outstanding principal balance.

13 Sec. 344.205. PREPAYMENT. The borrower is entitled to
14 prepay any or all of the principal balance of a limited recourse
15 secured loan without penalty.

16 Sec. 344.206. AMOUNTS AUTHORIZED TO BE INCLUDED IN
17 CONTRACT. A contract for a loan under this chapter may include a
18 charge for:

19 (1) any fees actually paid to a government agency in
20 connection with the loan, including any fee charged to record the
21 lender's security interest in the pledged property; and

22 (2) fees for optional insurance or for an automobile
23 club membership under Chapter 722, Transportation Code, if the
24 insurance or club membership is not required by the lender as a
25 condition of the borrower obtaining a loan.

26 Sec. 344.207. SECURITY INTEREST AND REPOSSESSION. (a) The
27 lender may contract for a security interest in the pledged property

1 and record the interest pursuant to law applicable to the property.

2 (b) The lender may, on a default by the borrower and after
3 the waiting period provided by Section 344.208, take possession of
4 the pledged property:

5 (1) pursuant to judicial process; or

6 (2) without judicial process, if the lender proceeds
7 without breach of the peace.

8 (c) After repossession, the lender shall sell the pledged
9 property in a commercially reasonable manner. If there exists any
10 surplus from the sale after the lender deducts from the sale
11 proceeds the amount of principal and interest outstanding on the
12 loan plus any cost incurred as a result of the repossession and
13 sale, the surplus shall be returned to the borrower not later than
14 15 business days after the date of the sale.

15 Sec. 344.208. NOTICE AND WAITING PERIOD BEFORE
16 REPOSSESSION. (a) Before taking possession of pledged property
17 under Section 344.207, a lender shall send a notice to the borrower
18 notifying the borrower:

19 (1) of the existence of the default;

20 (2) that the borrower has 10 days to cure the default;

21 and

22 (3) of the action that must be taken to cure the
23 default.

24 (b) The lender may take possession of the pledged property
25 only if the borrower does not cure the default as stated in the
26 notice before the 11th day after the date of the notice.

27 Sec. 344.209. LIMITED RECOURSE. (a) A limited recourse

1 secured loan is made without personal recourse against the borrower
2 unless the borrower:

3 (1) engages in fraud against the lender in connection
4 with the loan;

5 (2) conceals a prior unreleased encumbrance on the
6 pledged property;

7 (3) encumbers the pledged property in violation of the
8 loan agreement after receiving the loan; or

9 (4) intentionally conceals or damages the pledged
10 property.

11 (b) If the borrower engages in an activity listed in
12 Subsection (a), the lender is entitled to pursue the borrower
13 personally for all outstanding principal and interest owed under
14 the loan.

15 Sec. 344.210. LIMITED RECOURSE SECURED LOAN
16 AGREEMENTS--REQUIRED DISCLOSURES. Each limited recourse secured
17 loan agreement must include:

18 (1) all disclosures required to be made under the
19 Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended;

20 (2) a statement that the loan is a limited recourse
21 secured loan governed by this chapter; and

22 (3) the following disclosure, which must appear
23 conspicuously in at least 10-point boldfaced type above the
24 borrower's signature:

25 "THIS IS A SHORT-TERM, HIGHER-INTEREST LOAN. DO NOT BORROW
26 FROM THIS LENDER IF YOU CAN BORROW MONEY AT A LOWER INTEREST RATE.
27 DO NOT BORROW FROM THIS LENDER UNLESS YOU HAVE AN URGENT NEED FOR

1 CASH.

2 "YOU RISK THE LOSS OF THE PERSONAL PROPERTY PLEDGED AS
3 COLLATERAL FOR THIS LOAN IF YOU DO NOT PAY ACCORDING TO THE LOAN
4 AGREEMENT.

5 "YOU SHOULD PAY OFF THIS LOAN AS QUICKLY AS POSSIBLE TO AVOID
6 PAYING EXCESS INTEREST.

7 "YOU ARE NOT PERSONALLY LIABLE FOR ANY AMOUNT BORROWED IF YOU
8 DO NOT DAMAGE, CONCEAL, OR ENCUMBER THE PLEDGED PROPERTY OR DEFRAUD
9 THE LENDER. IF YOU DO NOT WISH TO REPAY THE LOAN OR CANNOT REPAY THE
10 LOAN YOU NEED ONLY SURRENDER THE PLEDGED PROPERTY TO THE LENDER. IF
11 YOU DO SURRENDER THE PROPERTY, THE LENDER CANNOT DEMAND ANY FURTHER
12 PAYMENTS.

13 "YOU HAVE THE RIGHT TO CANCEL THIS LOAN WITHOUT PAYING ANY
14 INTEREST BY REPAYING TO THE LENDER THE FULL PRINCIPAL AMOUNT
15 BORROWED NO LATER THAN THE CLOSE OF THE LENDER'S NEXT BUSINESS DAY
16 FOLLOWING THE DATE OF THIS AGREEMENT."

17 [Sections 344.211-344.250 reserved for expansion]

18 SUBCHAPTER F. PROHIBITED ACTS AND PENALTIES

19 Sec. 344.251. PROHIBITED ACTS. (a) A lender may not:

20 (1) enter into a limited recourse secured loan with a
21 borrower under 18 years of age;

22 (2) make a limited recourse secured loan giving the
23 lender any recourse against the borrower other than the rights
24 granted under this chapter;

25 (3) charge any interest or fee other than as permitted
26 by this chapter;

27 (4) make a limited recourse secured loan that does not

1 provide the borrower the right to rescind the loan without cost by
2 repaying the full principal amount borrowed by the close of the
3 lender's next business day after the loan was executed;

4 (5) threaten to use criminal process or use any other
5 unfair or deceptive practice in making or collecting a loan under
6 this chapter; or

7 (6) include any of the following in any limited
8 recourse secured loan agreement:

9 (A) a hold harmless clause, except that a lender
10 is not liable to the borrower or any other person for an injury or
11 damages sustained by the borrower or other person as a result of an
12 accident involving the pledged property still in the possession of
13 the borrower;

14 (B) a confession of judgment clause; or

15 (C) a waiver of any provision of this chapter.

16 (b) A lender who violates Subsection (a) forfeits all
17 interest contracted for on the limited recourse secured loan.

18 Sec. 344.252. PRIVATE REMEDY FOR UNDISCLOSED OR EXCESSIVE
19 CHARGES. (a) Any interest, fees, or charges collected that are
20 undisclosed or in excess of those allowed by this chapter may be
21 recovered by the borrower in an action at law or as otherwise agreed
22 between the parties. A borrower who prevails in an action at law is
23 entitled to reasonable attorney's fees and court costs.

24 (b) Before pursuing an action at law under Subsection (a),
25 the borrower shall provide the lender with a written notice of the
26 intended action by certified mail, return receipt requested. The
27 notice must specifically identify the interest, fees, or charges

1 that the borrower contends were undisclosed, incorrectly
2 disclosed, or excessive. If before the 31st day after the date of
3 receipt of the notice the lender tenders to the borrower the
4 excessive interest, fees, or charges, the tender is a defense to any
5 further proceedings.

6 [Sections 344.253-344.300 reserved for expansion]

7 SUBCHAPTER G. ADMINISTRATION OF CHAPTER

8 Sec. 344.301. ADOPTION OF RULES. (a) The finance
9 commission may adopt rules to enforce this chapter.

10 (b) The commissioner shall recommend proposed rules to the
11 finance commission.

12 (c) A rule shall be entered in a permanent book. The book is
13 a public record and shall be kept in the office of the commissioner.

14 Sec. 344.302. EXAMINATION OF LENDERS; ACCESS TO
15 RECORDS. (a) The commissioner or the commissioner's
16 representative shall, at the times the commissioner considers
17 necessary:

18 (1) examine each place of business of each lender
19 licensed under this chapter; and

20 (2) investigate the lender's transactions, including
21 loans, and records, including books, accounts, papers, and
22 correspondence, to the extent the transactions and records pertain
23 to the business regulated under this chapter.

24 (b) The lender shall:

25 (1) give the commissioner or the commissioner's
26 representative free access to the lender's office, place of
27 business, files, safes, and vaults; and

1 (2) allow the commissioner or the commissioner's
2 authorized representative to make a copy of an item that may be
3 investigated under Subsection (a)(2).

4 (c) During an examination the commissioner or the
5 commissioner's representative may administer oaths and examine any
6 person under oath on any subject pertinent to a matter that the
7 commissioner is authorized or required to consider, investigate, or
8 secure information about under this chapter.

9 (d) Information obtained under this section is
10 confidential.

11 (e) A lender's violation of Subsection (b) is a ground for
12 the suspension or revocation of the lender's license.

13 Sec. 344.303. GENERAL INVESTIGATION. To discover a
14 violation of this chapter or to obtain information required under
15 this chapter, the commissioner or the commissioner's
16 representative may investigate the records, including books,
17 accounts, papers, and correspondence, of a person, including a
18 lender, who the commissioner has reasonable cause to believe is
19 violating this chapter regardless of whether the person claims to
20 not be subject to this chapter.

21 Sec. 344.304. CERTIFICATE; CERTIFIED DOCUMENT. On
22 application by any person and on payment of any associated cost, the
23 commissioner shall furnish, under the commissioner's seal and
24 signed by the commissioner or an assistant of the commissioner:

25 (1) a certificate of good standing; or

26 (2) a certified copy of a license, rule, or order.

27 Sec. 344.305. TRANSCRIPT OF HEARING PUBLIC RECORD. The

1 transcript of a hearing held by the commissioner under this chapter
2 is a public record.

3 Sec. 344.306. APPOINTMENT OF AGENT. (a) A lender licensed
4 under this chapter shall maintain on file with the commissioner a
5 written appointment of a resident of this state as the lender's
6 agent for service of all judicial or other process or legal notice,
7 unless the lender has appointed an agent under another statute of
8 this state.

9 (b) If a lender does not comply with this section, service
10 of all judicial or other process or legal notice may be made on the
11 commissioner.

12 Sec. 344.307. PAYMENT OF EXAMINATION COSTS AND
13 ADMINISTRATION EXPENSES. A lender shall pay to the commissioner an
14 amount assessed by the commissioner to cover the direct and
15 indirect costs of an examination of the lender and a proportionate
16 share of general administrative expense.

17 Sec. 344.308. LENDER'S RECORDS. (a) A lender shall
18 maintain a record of each loan made under this chapter as is
19 necessary to enable the commissioner to determine whether the
20 lender is complying with this chapter.

21 (b) A lender shall keep the record and make it available at
22 the lender's principal place of business until the later of:

23 (1) the fourth anniversary of the date of the loan; or
24 (2) the second anniversary of the date on which the
25 final entry is made in the record.

26 (c) A record described by Subsection (a) must be prepared in
27 accordance with accepted accounting practices.

1 (d) The commissioner shall accept a lender's system of
2 records if the system discloses the information reasonably required
3 under Subsection (a).

4 (e) A lender shall keep each obligation signed by a borrower
5 at an office in this state designated by the lender unless the
6 obligation is transferred under an agreement that gives the
7 commissioner access to the obligation.

8 Sec. 344.309. ANNUAL REPORT. (a) Each year, not later
9 than May 1 or a later date set by the commissioner, a lender shall
10 file with the commissioner a report that contains relevant
11 information required by the commissioner concerning the lender's
12 business and operations during the preceding calendar year for each
13 office of the lender in this state in which business is conducted
14 under this chapter.

15 (b) A report under this section must be:

16 (1) under oath; and

17 (2) in the form prescribed by the commissioner.

18 (c) A report under this section is confidential.

19 (d) The commissioner shall annually prepare and publish a
20 consolidated analysis and recapitulation of reports filed under
21 this section.

22 SECTION 2. (a) This Act takes effect September 1, 2003.

23 (b) The requirement that a person hold a license under
24 Chapter 344, Finance Code, as added by this Act, applies only on and
25 after January 1, 2004.