

## **BILL ANALYSIS**

Senate Research Center  
79R4241 DWS-F

S.B. 1143  
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### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

S.B. 1143 creates a new type of credit transaction, a limited recourse secured loan. It is a loan for a short period where the borrower pledges personal property to secure the loan but is allowed continued possession and use of such property during the loan term. Like a pawn, the borrower is not personally obligated to repay any amount. Upon default, the lender's only recourse is to seek possession and sale of the pledged personal property pursuant to the Uniform Commercial Code. Unlike a pawn, the borrower is entitled to any surplus received from such sale beyond the amount owed on the loan. The rate charged by this type of lender is significantly less than what is currently charged by unregulated payday lenders in Texas.

S.B. 1143 provides for the licensing and regulation of limited recourse secured lenders and provides many consumer protections.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the State Finance Commission in SECTION 1 (Section 344.301, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 4, Finance Code, by adding Chapter 344, as follows:

#### **CHAPTER 344. LIMITED RECOURSE SECURED LOAN**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 344.001. DEFINITIONS. Defines "borrower," "lender," "limited recourse secured loan," and "pledged property."

Sec. 344.002. APPLICABILITY OF OTHER LAW. Provides that 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 and that Chapter 14 (Consumer Credit Commissioner), Finance Code, and Subchapter L (Administration of Chapter), Chapter 342, Finance Code, apply to this chapter.

[Reserves Sections 344.003-344.050 for expansion.]

##### **SUBCHAPTER B. LICENSE AND REGULATION**

Sec. 344.051. LICENSE REQUIRED. Requires a person to hold a license issued under this chapter to act as a lender. Prohibits a person from using any device, subterfuge, or pretense to avoid the application of this section.

Sec. 344.052. ISSUANCE OF MORE THAN ONE LICENSE FOR A LENDER. Authorizes the consumer credit commissioner (commissioner) to issue more than one license to a lender on compliance with this chapter for each license. Requires a lender who is required to hold a license under this chapter to hold a separate license for each office at which loans are made, offered, transacted, negotiated, originated, arranged, serviced, held, or collected under this chapter. Provides that a license is not required under this chapter for certain places of business.

[Reserves Sections 344.053-344.100 for expansion.]

#### SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

Sec. 344.101. APPLICATION REQUIREMENTS. Sets forth the requirements for an application for a license under this chapter. Requires the applicant, on the filing of one or more license applications, to pay to the commissioner an investigation fee of \$500 and, on the filing of each license application, to pay to the commissioner for the license's year of issuance a license fee in an amount determined as provided by Section 14.107 (Fees).

Sec. 344.102. BOND. Requires an applicant for a license under this chapter to file with the application a bond that meets the requirements of this section, and sets forth said requirements. Provides criteria upon which the bond must be conditioned. Prohibits the aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter from exceeding the amount of the bond.

Sec. 344.103. INVESTIGATION OF APPLICATION. Requires the commissioner, on the filing of an application and a bond and on payment of the required fees, to conduct an investigation to determine whether to issue the license.

Sec. 344.104. APPROVAL OR DENIAL OF APPLICATION. Requires the commissioner to approve the application and issue to the applicant a license to make loans under this chapter upon making certain findings relating to the applicant's eligibility for a license under this chapter and, if the commissioner does not find said eligibility requirements, to notify the applicant. Entitles the applicant, if the applicant requests a hearing on the application not later than the 30th day after the date of notification, to a hearing not later than the 60th day after the date of request. Requires the commissioner to approve or deny the application not later than the 60th day after the date of filing the completed application and paying the required fees, or, if a hearing is held, after the date of the completion of the hearing on the application. Authorizes the commissioner and the applicant to agree to a later date in writing.

Sec. 344.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION. Requires the commissioner, if the commissioner denies the application, to retain the investigation fee and return to the applicant the license fee submitted with the application.

[Reserves Sections 344.106-344.150 for expansion.]

#### SUBCHAPTER D. LICENSE

Sec. 344.151. NAME AND PLACE ON LICENSE. Requires a license to state the name of the license holder and the address of the office from which the business is to be conducted. Prohibits a license holder from conducting business under this chapter at a place of business in this state or under a name other than those stated on the license.

Sec. 344.152. LICENSE DISPLAY. Requires a license holder to display a license at the place of business provided on the license.

Sec. 344.153. MINIMUM ASSETS FOR LICENSE. Requires a license holder to maintain net assets of at least \$50,000 for each office at which a license is held.

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

Sec. 344.155. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. Provides that, if the annual fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license

holder, the license expires on the later of that day or December 31 of the last year for which an annual fee was paid.

Sec. 344.156. LICENSE SUSPENSION OR REVOCATION. Authorizes the commissioner, after notice and a hearing, to suspend or revoke a license upon making certain findings.

Sec. 344.157. CORPORATE CHARTER FORFEITURE. Provides that a license holder who violates this chapter is subject to revocation of the holder's license and, if the license holder is a corporation, forfeiture of its charter. Requires the attorney general, when notified of a violation of this chapter and revocation of a license, to file suit in a district court in Travis County, if the license holder is a corporation, for forfeiture of the license holder's charter.

Sec. 344.158. LICENSE SUSPENSION OR REVOCATION FILED WITH PUBLIC RECORDS. Requires the decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision to be filed in the public records of the commissioner.

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

Sec. 344.160. SURRENDER OF LICENSE. Authorizes a license holder to surrender a license issued under this chapter by delivering the license and a written notice of the license's surrender to the commissioner.

Sec. 344.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR SURRENDER. Provides that the suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a debtor entered into before the revocation, suspension, or surrender, and that the surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Sec. 344.162. MOVING AN OFFICE. Sets forth requirements for a license holder and the commissioner in the event that a license holder moves the location of an office.

Sec. 344.163. TRANSFER OR ASSIGNMENT OF LICENSE. Authorizes a license to be transferred or assigned only with the approval of the commissioner.

[Reserves Sections 344.164-344.200 for expansion.]

#### SUBCHAPTER E. LOAN TERMS; DEFAULT

Sec. 344.201. COMPLIANCE WITH CHAPTER. Prohibits a license holder from making, offering to make, transacting, negotiating, originating, arranging, securing, holding, or collecting a limited recourse secured loan that does not meet all requirements and conditions of this chapter.

Sec. 344.202. PLEDGED PROPERTY. Sets forth specific personal property which may be used to secure a limited recourse secured loan.

Sec. 344.203. MAXIMUM AMOUNT OF LOAN AND LOAN TERM. Prohibits the maximum loan amount under this chapter from exceeding the lesser of \$2,000 or the fair market retail value of the pledged property. Requires a loan under this chapter to have an original term of not less than seven days or more than 30 days. Authorizes a lender to renew a limited recourse secured loan for not more than five additional periods if certain requirements are met.

Sec. 344.204. **MAXIMUM INTEREST AND FEE.** Authorizes a lender making a loan under this chapter, notwithstanding any law to the contrary, to charge a rate of interest not to exceed three percent a month and a fee, which is not interest, that does not exceed one-tenth of the principal amount of the loan. Authorizes the interest and fee to be charged during any renewal of the loan.

Sec. 344.205. **COST OF LIEN RECORDATION.** Authorizes a contract for a loan under this chapter to include a charge for any fees paid to a governmental agency in connection with the loan, including any fee charged to record the lender's security interest in the pledged property.

Sec. 344.206. **SECURITY INTEREST AND DEFAULT.** Authorizes the lender to contract for a security interest under Chapter 9 (Secured Transactions), Business and Commerce Code, in the pledged property and record the interest pursuant to law applicable to the property and, on a default by the borrower and after the waiting period provided in Section 344.207, to seek possession and sale of the pledged property pursuant to Chapter 9, Business and Commerce Code. Requires the lender to return to the borrower any surplus from the sale, after the lender deducts the amount of principal and interest outstanding on the loan plus any cost incurred as a result of the repossession and sale.

Sec. 344.207. **NOTICE AND WAITING PERIOD BEFORE REPOSSESSION.** Requires a lender, before taking possession of pledged property under Section 344.206, to send a specific notice to the borrower. Authorizes the lender to take possession of the pledged property only if the borrower does not cure the default as stated in the notice before the 11th day after the date of the notice.

Sec. 344.208. **LIMITED RECOURSE.** Provides that a limited recourse secured loan is made without personal recourse against the borrower unless the borrower engages in certain activities. Provides that, if the borrower engages in certain activities, the lender is entitled to pursue the borrower personally for all outstanding principal and interest owed under the loan.

Sec. 344.209. **LIMITED RECOURSE SECURED LOAN AGREEMENTS--REQUIRED DISCLOSURES.** Requires each limited recourse secured loan agreement to include specific disclosures.

[Reserves Sections 344.210-344.250 for expansion.]

#### SUBCHAPTER F. PROHIBITED ACTS AND PENALTIES

Sec. 344.251. **PROHIBITED ACTS.** Sets forth specific acts from which the lender is prohibited and provides that a lender who violates said prohibition forfeits all interest contracted for on the limited recourse secured loan.

Sec. 344.252. **PRIVATE REMEDY FOR UNDISCLOSED, IMPROPERLY DISCLOSED, OR EXCESSIVE CHARGES.** Authorizes any interest, fees, or charges collected that are undisclosed, improperly disclosed, or in excess of those allowed by this chapter to be recovered by the borrower in an action at law or as otherwise agreed between the parties. Provides that a borrower who prevails in a proceeding under this subsection is entitled to reasonable attorney's fees and court costs. Requires the borrower, before pursuing a proceeding under this section, to provide the lender with a written notice of the intended proceeding by certified mail, return receipt requested. Sets forth specific information which must be included in the notice and provides that, if before the 31st day after the date of receipt of the notice the lender tenders to the borrower the undisclosed, improperly disclosed, or excessive interest, fees, or charges, the tender is a defense to any further proceedings. Provides that if the lender does not make the tender and in the proceeding the borrower prevails and establishes that the interest, fees, or charges were undisclosed, improperly disclosed, or excessive, the

borrower is entitled to recover from the lender two times the amount of undisclosed, improperly disclosed, or excessive interest, fees, or charges.

[Reserves Sections 344.253-344.300 for expansion.]

#### SUBCHAPTER G. ADMINISTRATION OF CHAPTER

Sec. 344.301. **ADOPTION OF RULES.** Authorizes the State Finance Commission (commission) to adopt rules to enforce this chapter. Requires the commissioner to recommend proposed rules to the commission. Requires a rule to be entered in a permanent book which is a public record and is required to be kept in the office of the commissioner.

Sec. 344.302. **EXAMINATION OF LENDERS; ACCESS TO RECORDS.** (a) Requires the commissioner, or the commissioner's representative, at the time the commissioner considers necessary, to make certain examinations and investigations of lenders licensed under this chapter.

(b) Requires the lender to allow the commissioner or the commissioner's representative free access to certain structures, locations, and documents, and to copy certain items, in order to comply with the requirements of this section.

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

(d) Provides that information obtained under this section is confidential.

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

Sec. 344.303. **GENERAL INVESTIGATION.** Authorizes the commissioner or the commissioner's representative, to discover a violation of this chapter or to obtain information required under this chapter, to investigate the records of a person, including a lender, who the commissioner has reasonable cause to believe is violating this chapter regardless of whether the person claims to not be subject to this chapter.

Sec. 344.304. **CERTIFICATE; CERTIFIED DOCUMENT.** Requires the commissioner, on application by any person and on payment of any associated cost, to furnish specific certificates or copies under the commissioner's seal and signed by the commissioner or an assistant of the commissioner.

Sec. 344.305. **TRANSCRIPT OF HEARING PUBLIC RECORD.** Provides that the transcript of a hearing held by the commissioner under this chapter is a public record.

Sec. 344.306. **APPOINTMENT OF AGENT.** Requires a lender licensed under this chapter to maintain on file with the commissioner a written appointment of a resident of this state as the lender's agent for service of all judicial or other process or legal notice, unless the lender has appointed an agent under another statute of this state. Authorizes service of all judicial or other process or legal notice to be made on the commissioner if a lender does not comply with this section.

Sec. 344.307. **PAYMENT OF EXAMINATION COSTS AND EXPENSES.** Requires a lender to pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect costs of an examination of the lender and a proportionate share of general administrative expense.

Sec. 344.308. **LENDER'S RECORDS.** (a) Requires a lender to maintain a record of each loan made under this chapter as is necessary to enable the commissioner to determine whether the lender is complying with this chapter.

- (b) Requires a lender to keep the record and make it available at the lender's principal place of business until a specific date.
- (c) Requires a record described by Subsection (a) to be prepared in accordance with accepted accounting practices.
- (d) Requires the commissioner to accept a lender's system of records if the system discloses the information reasonably required under Subsection (a).
- (e) Requires a lender to keep each obligation signed by a borrower at an office in this state designated by the lender unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

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

- (b) Sets forth the requirements for a report under this section.
- (c) Provides that a report under this section is confidential.
- (d) Requires the commissioner to annually prepare and publish a consolidated analysis and recapitulation of reports filed under this section.

SECTION 2. Makes application of the requirement that a person hold a license under Chapter 344, Finance Code, as added by this Act, prospective to January 1, 2006.

SECTION 3. Effective date: September 1, 2005.