

By: Carona

S.B. No. 1143

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) "Borrower" means an owner of personal property who pledges a security interest in the property to a lender in exchange for a loan of money.

(2) "Lender" means a person who:

(A) makes, offers to make, transacts, negotiates, or originates a limited recourse secured loan;

(B) arranges a limited recourse secured loan for another person; or

(C) acts as an agent for or assists another person in the origination or collection of a limited recourse secured loan.

(3) "Limited recourse secured loan" means a loan of money from a lender to a borrower in which the borrower has limited personal liability to repay the lender as provided by this chapter.

(4) "Pledged property" means the personal property

pledged by a borrower under a limited recourse secured loan.

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 and Subchapter L, Chapter 342, apply to this chapter.

[Sections 344.003-344.050 reserved for expansion]

SUBCHAPTER B. LICENSE AND REGULATION

Sec. 344.051. LICENSE REQUIRED. (a) A person must hold a license issued under this chapter to act as a lender.

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

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

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

(c) A license is not required under this chapter for a place of business:

- (1) devoted to accounting or other recordkeeping; and
- (2) at which loans are not made, offered, transacted, negotiated, originated, arranged, serviced, held, or collected under this chapter.

[Sections 344.053-344.100 reserved for expansion]

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

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

- (1) be under oath;
- (2) give the approximate location from which business is to be conducted;
- (3) identify the business's principal parties in interest; and
- (4) contain other relevant information that the commissioner requires for the findings required under Section 344.104.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee of \$500.

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

Sec. 344.102. BOND. (a) An applicant for a license under this chapter shall file with the application a bond that:

- (1) is in an amount not to exceed the total of \$50,000 for each license, not to exceed a total of \$1 million;
- (2) is satisfactory to the commissioner; and
- (3) is issued by a surety company qualified to do business as a surety in this state.

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

1 (c) The bond must be conditioned on:

2 (1) the license holder's faithful performance under
3 this chapter and rules adopted under this chapter; and

4 (2) the payment of all amounts that become due to the
5 state or another person under this chapter during the calendar year
6 for which the bond is given.

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

10 Sec. 344.103. INVESTIGATION OF APPLICATION. On the filing
11 of an application and a bond and on payment of the required fees,
12 the commissioner shall conduct an investigation to determine
13 whether to issue the license.

14 Sec. 344.104. APPROVAL OR DENIAL OF APPLICATION. (a) The
15 commissioner shall approve the application and issue to the
16 applicant a license to make loans under this chapter if the
17 commissioner finds that:

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

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

21 (B) warrant the belief that the business will be
22 operated lawfully and fairly, within the purposes of this chapter;
23 and

24 (2) the applicant has net assets of at least \$50,000
25 available for the operation of each licensed location.

26 (b) If the commissioner does not find the eligibility
27 requirements of Subsection (a), the commissioner shall notify the

1 applicant.

2 (c) If an applicant requests a hearing on the application
3 not later than the 30th day after the date of notification under
4 Subsection (b), the applicant is entitled to a hearing not later
5 than the 60th day after the date of the request.

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

12 Sec. 344.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION.
13 If the commissioner denies the application, the commissioner shall
14 retain the investigation fee and shall return to the applicant the
15 license fee submitted with the application.

16 [Sections 344.106-344.150 reserved for expansion]

17 SUBCHAPTER D. LICENSE

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

20 (1) the name of the license holder; and
21 (2) the address of the office from which the business
22 is to be conducted.

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

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

1 Sec. 344.153. MINIMUM ASSETS FOR LICENSE. A license holder
2 shall maintain for each office for which a license is held net
3 assets of at least \$50,000.

4 Sec. 344.154. ANNUAL LICENSE FEE. Not later than December
5 1, a license holder shall pay to the commissioner for each license
6 held an annual fee for the year beginning the next January 1, in an
7 amount determined as provided by Section 14.107.

8 Sec. 344.155. EXPIRATION OF LICENSE ON FAILURE TO PAY
9 ANNUAL FEE. If the annual fee for a license is not paid before the
10 16th day after the date on which the written notice of delinquency
11 of payment has been given to the license holder, the license expires
12 on the later of:

13 (1) that day; or

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

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

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

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

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

1 denial of the application.

2 Sec. 344.157. CORPORATE CHARTER FORFEITURE. (a) A license
3 holder who violates this chapter is subject to revocation of the
4 holder's license and, if the license holder is a corporation,
5 forfeiture of its charter.

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

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

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

23 Sec. 344.160. SURRENDER OF LICENSE. A license holder may
24 surrender a license issued under this chapter by delivering to the
25 commissioner:

26 (1) the license; and

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

1 Sec. 344.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR
2 SURRENDER. (a) The suspension, revocation, or surrender of a
3 license issued under this chapter does not affect the obligation of
4 a contract between the license holder and a debtor entered into
5 before the revocation, suspension, or surrender.

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

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

13 (b) The commissioner shall amend a license holder's license
14 accordingly.

15 Sec. 344.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license
16 may be transferred or assigned only with the approval of the
17 commissioner.

18 [Sections 344.164-344.200 reserved for expansion]

19 SUBCHAPTER E. LOAN TERMS; DEFAULT

20 Sec. 344.201. COMPLIANCE WITH CHAPTER. A license holder
21 may not make, offer to make, transact, negotiate, originate,
22 arrange, service, hold, or collect a limited recourse secured loan
23 that does not meet all requirements and conditions of this chapter.

24 Sec. 344.202. PLEDGED PROPERTY. Any personal property may
25 be used to secure a limited recourse secured loan if:

26 (1) the property is currently owned by the borrower
27 and is not encumbered by any other outstanding encumbrance;

1 (2) ownership of the property is evidenced by a
2 state-issued certificate of title; and

3 (3) the borrower is allowed possession and use of the
4 property while the loan is outstanding.

5 Sec. 344.203. MAXIMUM AMOUNT OF LOAN AND LOAN TERM.

6 (a) The maximum loan amount under this chapter may not exceed the
7 lesser of \$2,000 or the fair market retail value of the pledged
8 property.

9 (b) A loan under this chapter must have an original term of
10 not less than seven days or more than 30 days.

11 (c) A lender may renew a limited recourse secured loan for
12 not more than four additional periods if:

13 (1) the term of each renewal period is within the
14 limits contained in Subsection (b);

15 (2) no interest, fees, or charges from prior loan or
16 renewal periods are capitalized or added to the principal amount in
17 any renewal; and

18 (3) any interest or fees charged in the renewal period
19 are not greater than charged in previous periods.

20 Sec. 344.204. MAXIMUM INTEREST AND FEE.

21 (a) Notwithstanding any law to the contrary, a lender making a
22 loan under this chapter may charge:

23 (1) an administrative fee that is not more than the
24 amount equal to three percent of the amount of the cash advance; and

25 (2) a rate of interest not to exceed:

26 (A) nine percent a month, on a cash advance of
27 \$1,000 or less; or

1 (B) nine percent a month, on the amount of cash
2 advance that is \$1,000 or less and three percent a month, on the
3 amount of cash advance that is more than \$1,000 and less than or
4 equal to \$2,000.

5 (b) The interest and fee under Subsection (a) may be charged
6 during the loan period and the same amount may be charged during any
7 renewal of the loan.

8 (c) The administrative fee under Subsection (a)(1) is
9 considered to be earned at the time a loan is made and is not subject
10 to refund.

11 (d) On prepayment of a loan under this chapter, the lender
12 is entitled to earn the interest authorized under Subsection (a)(2)
13 at a daily rate for the term that the loan is outstanding. The
14 lender shall repay any unearned interest received.

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

20 Sec. 344.206. SECURITY INTEREST AND DEFAULT. (a) The
21 lender may contract for a security interest under Chapter 9,
22 Business & Commerce Code, in the pledged property and record the
23 interest pursuant to law applicable to the property.

24 (b) The lender may, on a default by the borrower and after
25 the waiting period provided by Section 344.207, seek possession and
26 sale of the pledged property pursuant to Chapter 9, Business &
27 Commerce Code.

1 (c) The lender shall return to the borrower any surplus from
2 the sale, after the lender deducts the amount of principal and
3 interest outstanding on the loan plus any cost incurred as a result
4 of the repossession and sale.

5 Sec. 344.207. NOTICE AND WAITING PERIOD BEFORE
6 REPOSSESSION. (a) Before taking possession of pledged property
7 under Section 344.206, a lender shall send a notice to the borrower
8 notifying the borrower:

9 (1) of the existence of the default;
10 (2) that the borrower has 10 days to cure the default;
11 and
12 (3) of the action that must be taken to cure the
13 default.

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

17 Sec. 344.208. LIMITED RECOURSE. (a) A limited recourse
18 secured loan is made without personal recourse against the borrower
19 unless the borrower:

20 (1) engages in fraud against the lender in connection
21 with the loan;
22 (2) conceals a prior unreleased encumbrance on the
23 pledged property;
24 (3) encumbers the pledged property in violation of the
25 loan agreement after receiving the loan; or
26 (4) intentionally conceals or damages the pledged
27 property.

1 **(b) If the borrower engages in an activity listed in**
2 **Subsection (a), the lender is entitled to pursue the borrower**
3 **personally for all outstanding principal and interest owed under**
4 **the loan.**

5 **Sec. 344.209. LIMITED RECOURSE SECURED LOAN**
6 **AGREEMENTS--REQUIRED DISCLOSURES. Each limited recourse secured**
7 **loan agreement must include:**

8 **(1) all disclosures required to be made under the**
9 **Truth in Lending Act (15 U.S.C. Section 1601 et seq.);**

10 **(2) a statement that the loan is a limited recourse**
11 **secured loan governed by this chapter; and**

12 **(3) the following disclosure, which must appear**
13 **conspicuously in at least 10-point boldfaced type above the**
14 **borrower's signature:**

15 **"THIS IS A SHORT-TERM, HIGHER-COST LOAN. DO NOT BORROW FROM**
16 **THIS LENDER IF YOU CAN BORROW MONEY AT A LOWER COST. DO NOT BORROW**
17 **FROM THIS LENDER UNLESS YOU HAVE AN URGENT NEED FOR CASH.**

18 **"YOU RISK THE LOSS OF THE PERSONAL PROPERTY PLEDGED AS**
19 **COLLATERAL FOR THIS LOAN IF YOU DO NOT PAY ACCORDING TO THE LOAN**
20 **AGREEMENT.**

21 **"YOU SHOULD PAY OFF THIS LOAN AS QUICKLY AS POSSIBLE TO AVOID**
22 **PAYING EXCESSIVE CHARGES.**

23 **"YOU ARE NOT PERSONALLY LIABLE FOR ANY AMOUNT BORROWED IF YOU**
24 **DO NOT DAMAGE, CONCEAL, OR ENCUMBER THE PLEDGED PROPERTY OR DEFRAUD**
25 **THE LENDER. IF YOU DO NOT WISH TO REPAY THE LOAN OR CANNOT REPAY THE**
26 **LOAN, YOU NEED ONLY SURRENDER THE PLEDGED PROPERTY TO THE LENDER.**
27 **IF YOU DO SURRENDER THE PROPERTY, THE LENDER CANNOT DEMAND ANY**

1 FURTHER PAYMENTS.

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

6 [Sections 344.210-344.250 reserved for expansion]

7 SUBCHAPTER F. PROHIBITED ACTS AND PENALTIES

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

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

11 (2) make a limited recourse secured loan giving the
12 lender any recourse against the borrower other than the rights
13 granted under this chapter;

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

16 (4) enter into a limited recourse secured loan that
17 does not provide the borrower the right to rescind the loan without
18 cost by repaying the full principal amount borrowed by the close of
19 the next business day after the loan was executed;

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

23 (6) include any of the following in any limited
24 recourse secured loan agreement:

25 (A) a hold harmless clause, except that a lender
26 is not liable to the borrower or any other person for an injury or
27 damages sustained by the borrower or other person as a result of use

1 of the pledged property still in the possession of the borrower;

2 (B) a confession of judgment clause; or

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

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

6 Sec. 344.252. PRIVATE REMEDY FOR UNDISCLOSED, IMPROPERLY
7 DISCLOSED, OR EXCESSIVE CHARGES. (a) Any interest, fees, or
8 charges collected that are undisclosed, improperly disclosed, or in
9 excess of those allowed by this chapter may be recovered by the
10 borrower in an action at law or as otherwise agreed between the
11 parties. A borrower who prevails in a proceeding under this
12 subsection is entitled to reasonable attorney's fees and court
13 costs.

14 (b) Before pursuing a proceeding under Subsection (a), the
15 borrower shall provide the lender with a written notice of the
16 intended proceeding by certified mail, return receipt requested.
17 The notice must specifically identify the interest, fees, or
18 charges that the borrower contends were undisclosed, improperly
19 disclosed, or excessive. If before the 31st day after the date of
20 receipt of the notice the lender tenders to the borrower the
21 undisclosed, improperly disclosed, or excessive interest, fees, or
22 charges, the tender is a defense to any further proceedings. If the
23 lender does not make the tender and in the proceeding the borrower
24 prevails and establishes that the interest, fees, or charges were
25 undisclosed, improperly disclosed, or excessive, the borrower is
26 entitled to recover from the lender two times the amount of
27 undisclosed, improperly disclosed, or excessive interest, fees, or

1 charges.

2 [Sections 344.253-344.300 reserved for expansion]

3 SUBCHAPTER G. ADMINISTRATION OF CHAPTER

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

6 (b) The commissioner shall recommend proposed rules to the
7 finance commission.

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

10 Sec. 344.302. EXAMINATION OF LENDERS; ACCESS TO RECORDS.

11 (a) The commissioner or the commissioner's representative shall,
12 at the times the commissioner considers necessary:

13 (1) examine each place of business of each lender
14 licensed under this chapter; and

15 (2) investigate the lender's transactions, including
16 loans, and records, including books, accounts, papers, and
17 correspondence, to the extent the transactions and records pertain
18 to the business regulated under this chapter.

19 (b) The lender shall:

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

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

26 (c) During an examination the commissioner or the
27 commissioner's representative may administer oaths and examine any

1 person under oath on any subject pertinent to a matter that the
2 commissioner is authorized or required to consider, investigate, or
3 secure information about under this chapter.

4 (d) Information obtained under this section is
5 confidential.

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

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

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

20 (1) a certificate of good standing; or

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

22 Sec. 344.305. TRANSCRIPT OF HEARING PUBLIC RECORD. The
23 transcript of a hearing held by the commissioner under this chapter
24 is a public record.

25 Sec. 344.306. APPOINTMENT OF AGENT. (a) A lender licensed
26 under this chapter shall maintain on file with the commissioner a
27 written appointment of a resident of this state as the lender's

1 agent for service of all judicial or other process or legal notice,
2 unless the lender has appointed an agent under another statute of
3 this state.

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

7 Sec. 344.307. PAYMENT OF EXAMINATION COSTS AND
8 ADMINISTRATION EXPENSES. A lender shall pay to the commissioner an
9 amount assessed by the commissioner to cover the direct and
10 indirect costs of an examination of the lender and a proportionate
11 share of general administrative expense.

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

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

18 (1) the fourth anniversary of the date of the loan; or
19 (2) the second anniversary of the date on which the
20 final entry is made in the record.

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

23 (d) The commissioner shall accept a lender's system of
24 records if the system discloses the information reasonably required
25 under Subsection (a).

26 (e) A lender shall keep each obligation signed by a borrower
27 at an office in this state designated by the lender unless the

1 obligation is transferred under an agreement that gives the
2 commissioner access to the obligation.

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

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

11 (1) under oath; and

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

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

14 (d) The commissioner shall annually prepare and publish a
15 consolidated analysis and recapitulation of reports filed under
16 this section.

17 SECTION 2. The requirement that a person hold a license
18 under Chapter 344, Finance Code, as added by this Act, applies only
19 on and after January 1, 2006.

20 SECTION 3. This Act takes effect September 1, 2005.