

By: Carona

S.B. No. 1143

Substitute the following for S.B. No. 1143:

By: Solomons

C.S.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 by

1 a borrower under a limited recourse secured loan that is evidenced  
2 by a state-issued certificate of title.

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

7 (b) Chapter 14 and Subchapter L, Chapter 342, apply to this  
8 chapter.

9 [Sections 344.003-344.050 reserved for expansion]

10 SUBCHAPTER B. LICENSE AND REGULATION

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

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

15 (c) A person is not eligible for a license under this  
16 chapter if the person holds a license as a motor vehicle dealer in  
17 any state or otherwise offers to sell motor vehicles to the public  
18 at wholesale or retail. This subsection does not prohibit issuance  
19 of a license to a person because the person uses the services of  
20 unaffiliated public or private auctions, regardless of whether the  
21 auctions are licensed dealers, to sell recovered pledged personal  
22 property, if the sale complies with all other provisions of this  
23 chapter.

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

27 (b) A lender who is required to hold a license under this

1 chapter must hold a separate license for each office at which loans  
2 are made, offered, transacted, negotiated, originated, arranged,  
3 serviced, held, or collected under this chapter.

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

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

10 [Sections 344.053-344.100 reserved for expansion]

11 SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

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

14 (1) be under oath;  
15 (2) give the approximate location from which business  
16 is to be conducted;  
17 (3) identify the business's principal parties in  
18 interest; and  
19 (4) contain other relevant information that the  
20 commissioner requires for the findings required under Section  
21 344.104.

22 (b) On the filing of one or more license applications, the  
23 applicant shall pay to the commissioner an investigation fee of  
24 \$500.

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

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

3           (1) is in an amount not to exceed the total of \$50,000  
4 for each license, not to exceed a total of \$1 million;

5           (2) is satisfactory to the commissioner; and

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

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

11       (c) The bond must be conditioned on:

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

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

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

20       Sec. 344.103. INVESTIGATION OF APPLICATION. On the filing  
21 of an application and a bond and on payment of the required fees,  
22 the commissioner shall conduct an investigation to determine  
23 whether to issue the license.

24       Sec. 344.104. APPROVAL OR DENIAL OF APPLICATION. (a) The  
25 commissioner shall approve the application and issue to the  
26 applicant a license to make loans under this chapter if the  
27 commissioner finds that:

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

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

4                   (B) warrant the belief that the business will be  
5 operated lawfully and fairly, within the purposes of this chapter;  
6 and

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

9           (b) If the commissioner does not find the eligibility  
10 requirements of Subsection (a), the commissioner shall notify the  
11 applicant.

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

16           (d) The commissioner shall approve or deny the application  
17 not later than the 60th day after the date of the filing of a  
18 completed application with payment of the required fees or, if a  
19 hearing is held, after the date of the completion of the hearing on  
20 the application. The commissioner and the applicant may agree to a  
21 later date in writing.

22           Sec. 344.105. DISPOSITION OF FEES ON DENIAL OF APPLICATION.  
23 If the commissioner denies the application, the commissioner shall  
24 retain the investigation fee and shall return to the applicant the  
25 license fee submitted with the application.

26           [Sections 344.106-344.150 reserved for expansion]

SUBCHAPTER D. LICENSE

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

(1) the name of the license holder; and

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

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

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

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

Sec. 344.154. ANNUAL LICENSE FEE. Not later than December 1, a license holder shall 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.

Sec. 344.155. EXPIRATION OF LICENSE ON FAILURE TO PAY ANNUAL FEE. 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:

(1) that day; or

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

Sec. 344.156. LICENSE SUSPENSION OR REVOCATION. After

1 notice and a hearing, the commissioner may suspend or revoke a  
2 license if the commissioner finds that:

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

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

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

13 Sec. 344.157. CORPORATE CHARTER FORFEITURE. (a) A license  
14 holder who violates this chapter is subject to revocation of the  
15 holder's license and, if the license holder is a corporation,  
16 forfeiture of its charter.

17 (b) When the attorney general is notified of a violation of  
18 this chapter and revocation of a license, the attorney general  
19 shall file suit in a district court in Travis County, if the license  
20 holder is a corporation, for forfeiture of the license holder's  
21 charter.

22 Sec. 344.158. LICENSE SUSPENSION OR REVOCATION FILED WITH  
23 PUBLIC RECORDS. The decision of the commissioner on the suspension  
24 or revocation of a license and the evidence considered by the  
25 commissioner in making the decision shall be filed in the public  
26 records of the commissioner.

27 Sec. 344.159. REINSTATEMENT OF SUSPENDED LICENSE; ISSUANCE

1 OF NEW LICENSE AFTER REVOCATION. The commissioner may reinstate a  
2 suspended license or issue a new license on application to a person  
3 whose license has been revoked if at the time of the reinstatement  
4 or issuance no fact or condition exists that clearly would have  
5 justified the commissioner's denial of an original application for  
6 the license.

7 Sec. 344.160. SURRENDER OF LICENSE. A license holder may  
8 surrender a license issued under this chapter by delivering to the  
9 commissioner:

10 (1) the license; and

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

12 Sec. 344.161. EFFECT OF LICENSE SUSPENSION, REVOCATION, OR  
13 SURRENDER. (a) The suspension, revocation, or surrender of a  
14 license issued under this chapter does not affect the obligation of  
15 a contract between the license holder and a debtor entered into  
16 before the revocation, suspension, or surrender.

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

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

24 (b) The commissioner shall amend a license holder's license  
25 accordingly.

26 Sec. 344.163. TRANSFER OR ASSIGNMENT OF LICENSE. A license  
27 may be transferred or assigned only with the approval of the

commissioner.

[Sections 344.164-344.200 reserved for expansion]

SUBCHAPTER E. LOAN TERMS; DEFAULT

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

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

(1) the property is currently owned by the borrower and is not encumbered by any other third-party encumbrance;

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

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

Sec. 344.203. MAXIMUM AMOUNT OF LOAN AND LOAN TERM. (a) The maximum loan amount under this chapter may not exceed the lesser of \$2,000 or the fair market retail value of the pledged property.

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

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

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

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

1           (3) the rate of any interest and fees charged in the  
2 renewal period is not greater than charged in previous periods.

3           Sec. 344.204. MAXIMUM INTEREST AND FEE. (a)  
4 Notwithstanding any law to the contrary, a lender making a loan  
5 under this chapter may charge:

6           (1) a rate of interest not to exceed three percent a  
7 month; and

8           (2) a fee that does not exceed one-tenth of the  
9 principal amount of the loan on the first \$1,000 of the loan, plus a  
10 fee that does not exceed seven percent of any portion of the  
11 principal in excess of \$1,000.

12           (b) The interest and fee under Subsection (a) may be charged  
13 during the loan period and the same percentages may be charged  
14 during any renewal of the loan.

15           (c) On prepayment in full of a loan under this chapter, the  
16 lender is entitled to earn the interest and fee authorized under  
17 Subsection (a) at a daily rate for the term that the loan is  
18 outstanding. The lender shall repay any unearned interest and fee  
19 received.

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

25           Sec. 344.206. SECURITY INTEREST AND DEFAULT. (a) The  
26 lender may contract for a security interest under Chapter 9,  
27 Business & Commerce Code, in the pledged property and record the

1 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 344.207, seek possession and  
4 sale of the pledged property pursuant to Chapter 9, Business &  
5 Commerce Code.

6 (c) The lender shall return to the borrower any surplus from  
7 the sale, after the lender deducts the amount of principal,  
8 interest, and fees outstanding on the loan plus any cost incurred as  
9 a result of the repossession and sale.

10 Sec. 344.207. NOTICE AND WAITING PERIOD BEFORE  
11 REPOSSESSION. (a) Before taking possession of pledged property  
12 under Section 344.206, a lender shall send a notice to the borrower  
13 notifying the borrower:

14 (1) of the existence of the default;

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

16 and

17 (3) of the action that must be taken to cure the  
18 default.

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

22 Sec. 344.208. LIMITED RECOURSE. (a) A limited recourse  
23 secured loan is made without personal recourse against the borrower  
24 unless the borrower:

25 (1) engages in fraud against the lender in connection  
26 with the loan;

27 (2) conceals a prior unreleased encumbrance on the

pledged property;

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

(4) intentionally conceals or damages the pledged property.

(b) If the borrower engages in an activity listed in Subsection (a), 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. Each limited recourse secured loan agreement must include:

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

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

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

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

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

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

1       "YOU ARE NOT PERSONALLY LIABLE FOR ANY AMOUNT BORROWED IF YOU  
2 DO NOT DAMAGE, CONCEAL, OR ENCUMBER THE PLEDGED PROPERTY OR DEFRAUD  
3 THE LENDER. IF YOU DO NOT WISH TO REPAY THE LOAN OR CANNOT REPAY THE  
4 LOAN, YOU NEED ONLY SURRENDER THE PLEDGED PROPERTY TO THE LENDER.  
5 IF YOU DO SURRENDER THE PROPERTY, THE LENDER CANNOT DEMAND ANY  
6 FURTHER PAYMENTS.

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

11       [Sections 344.210-344.250 reserved for expansion]

12       SUBCHAPTER F. PROHIBITED ACTS AND PENALTIES

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

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

16           (2) make a limited recourse secured loan giving the  
17 lender any recourse against the borrower other than the rights  
18 granted under this chapter;

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

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

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

1           (6) include any of the following in any limited  
2 recourse secured loan agreement:

3                   (A) a hold harmless clause, except that a lender  
4 is not liable to the borrower or any other person for an injury or  
5 damages sustained by the borrower or other person as a result of use  
6 of the pledged property still in the possession of the borrower;

7                   (B) a confession of judgment clause; or

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

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

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

19           (b) Before pursuing a proceeding under Subsection (a), the  
20 borrower shall provide the lender with a written notice of the  
21 intended proceeding by certified mail, return receipt requested.  
22 The notice must specifically identify the interest, fees, or  
23 charges that the borrower contends were undisclosed, improperly  
24 disclosed, or excessive. If before the 31st day after the date of  
25 receipt of the notice the lender tenders to the borrower the  
26 undisclosed, improperly disclosed, or excessive interest, fees, or  
27 charges, the tender is a defense to any further proceedings. If the

1 lender does not make the tender and in the proceeding the borrower  
2 prevails and establishes that the interest, fees, or charges were  
3 undisclosed, improperly disclosed, or excessive, the borrower is  
4 entitled to recover from the lender two times the amount of  
5 undisclosed, improperly disclosed, or excessive interest, fees, or  
6 charges.

7 [Sections 344.253-344.300 reserved for expansion]

8 SUBCHAPTER G. ADMINISTRATION OF CHAPTER

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

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

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

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

16 (a) The commissioner or the commissioner's representative shall,  
17 at the times the commissioner considers 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 representative to make a copy of an item that may be investigated  
3 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. Section 341.502(a), Finance Code, is amended to  
23 read as follows:

24       (a) A contract for a loan under Chapter 342, a loan under  
25 Chapter 344, a retail installment transaction under Chapter 348, or  
26 a home equity loan regulated by the Office of Consumer Credit  
27 Commissioner, whether in English or Spanish, must be written in

1 plain language designed to be easily understood by the average  
2 consumer. The contract must be printed in an easily readable font  
3 and type size.

4 SECTION 3. The requirement that a person hold a license  
5 under Chapter 344, Finance Code, as added by this Act, applies only  
6 on and after January 1, 2006.

7 SECTION 4. This Act takes effect September 1, 2005.