

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 shall  
10 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; and

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

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

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

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

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

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

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

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

20           (1) a rate of interest not to exceed three percent a  
21 month; and

22           (2) a fee, which is not interest, that does not exceed  
23 one-tenth of the principal amount of the loan.

24           (b) The interest and fee under Subsection (a) may be charged  
25 during the loan period and the same amount may be charged during any  
26 renewal of the loan.

27           Sec. 344.205. COST OF LIEN RECORDATION. A contract for a

1 loan under this chapter may include a charge for any fees paid to a  
2 governmental agency in connection with the loan, including any fee  
3 charged to record the lender's security interest in the pledged  
4 property.

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

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

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

17 Sec. 344.207. NOTICE AND WAITING PERIOD BEFORE  
18 REPOSSESSION. (a) Before taking possession of pledged property  
19 under Section 344.206, a lender shall send a notice to the borrower  
20 notifying the borrower:

21 (1) of the existence of the default;  
22 (2) that the borrower has 10 days to cure the default;  
23 and  
24 (3) of the action that must be taken to cure the  
25 default.

26 (b) The lender may take possession of the pledged property  
27 only if the borrower does not cure the default as stated in the

1 notice before the 11th day after the date of the notice.

2 Sec. 344.208. LIMITED RECOURSE. (a) A limited recourse  
3 secured loan is made without personal recourse against the borrower  
4 unless the borrower:

5 (1) engages in fraud against the lender in connection  
6 with the loan;

7 (2) conceals a prior unreleased encumbrance on the  
8 pledged property;

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

11 (4) intentionally conceals or damages the pledged  
12 property.

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

17 Sec. 344.209. LIMITED RECOURSE SECURED LOAN  
18 AGREEMENTS--REQUIRED DISCLOSURES. Each limited recourse secured  
19 loan agreement must include:

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

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

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

27 "THIS IS A SHORT-TERM, HIGHER-COST LOAN. DO NOT BORROW FROM

1 THIS LENDER IF YOU CAN BORROW MONEY AT A LOWER COST. DO NOT BORROW  
2 FROM THIS LENDER UNLESS YOU HAVE AN URGENT NEED FOR CASH.

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

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

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

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

18 [Sections 344.210–344.250 reserved for expansion]

19 SUBCHAPTER F. PROHIBITED ACTS AND PENALTIES

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

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

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

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

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

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

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

10           (A) a hold harmless clause, except that a lender  
11 is not liable to the borrower or any other person for an injury or  
12 damages sustained by the borrower or other person as a result of use  
13 of the pledged property still in the possession of 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, IMPROPERLY  
19 DISCLOSED, OR EXCESSIVE CHARGES. (a) Any interest, fees, or  
20 charges collected that are undisclosed, improperly disclosed, or in  
21 excess of those allowed by this chapter may be recovered by the  
22 borrower in an action at law or as otherwise agreed between the  
23 parties. A borrower who prevails in a proceeding under this  
24 subsection is entitled to reasonable attorney's fees and court  
25 costs.

26           (b) Before pursuing a proceeding under Subsection (a), the  
27 borrower shall provide the lender with a written notice of the

1 intended proceeding by certified mail, return receipt requested.  
2 The notice must specifically identify the interest, fees, or  
3 charges that the borrower contends were undisclosed, improperly  
4 disclosed, or excessive. If before the 31st day after the date of  
5 receipt of the notice the lender tenders to the borrower the  
6 undisclosed, improperly disclosed, or excessive interest, fees, or  
7 charges, the tender is a defense to any further proceedings. If the  
8 lender does not make the tender and in the proceeding the borrower  
9 prevails and establishes that the interest, fees, or charges were  
10 undisclosed, improperly disclosed, or excessive, the borrower is  
11 entitled to recover from the lender two times the amount of  
12 undisclosed, improperly disclosed, or excessive interest, fees, or  
13 charges.

14 [Sections 344.253-344.300 reserved for expansion]

15 SUBCHAPTER G. ADMINISTRATION OF CHAPTER

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

18 (b) The commissioner shall recommend proposed rules to the  
19 finance commission.

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

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

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

25 (1) examine each place of business of each lender  
26 licensed under this chapter; and

27 (2) investigate the lender's transactions, including

1 loans, and records, including books, accounts, papers, and  
2 correspondence, to the extent the transactions and records pertain  
3 to the business regulated under this chapter.

4 (b) The lender shall:

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

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

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

16 (d) Information obtained under this section is  
17 confidential.

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

20 Sec. 344.303. GENERAL INVESTIGATION. To discover a  
21 violation of this chapter or to obtain information required under  
22 this chapter, the commissioner or the commissioner's  
23 representative may investigate the records, including books,  
24 accounts, papers, and correspondence, of a person, including a  
25 lender, who the commissioner has reasonable cause to believe is  
26 violating this chapter regardless of whether the person claims to  
27 not be subject to this chapter.

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

5           (1) a certificate of good standing; or

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

7       Sec. 344.305. TRANSCRIPT OF HEARING PUBLIC RECORD. The  
8 transcript of a hearing held by the commissioner under this chapter  
9 is a public record.

10       Sec. 344.306. APPOINTMENT OF AGENT. (a) A lender licensed  
11 under this chapter shall maintain on file with the commissioner a  
12 written appointment of a resident of this state as the lender's  
13 agent for service of all judicial or other process or legal notice,  
14 unless the lender has appointed an agent under another statute of  
15 this state.

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

19       Sec. 344.307. PAYMENT OF EXAMINATION COSTS AND  
20 ADMINISTRATION EXPENSES. A lender shall pay to the commissioner an  
21 amount assessed by the commissioner to cover the direct and  
22 indirect costs of an examination of the lender and a proportionate  
23 share of general administrative expense.

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

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

3                (1) the fourth anniversary of the date of the loan; or  
4                (2) the second anniversary of the date on which the  
5 final entry is made in the record.

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

8        (d) The commissioner shall accept a lender's system of  
9 records if the system discloses the information reasonably required  
10 under Subsection (a).

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

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

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

23                (1) under oath; and

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

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

26        (d) The commissioner shall annually prepare and publish a  
27 consolidated analysis and recapitulation of reports filed under

1 this section.

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

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