

State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

Post Office Box 12267
COLUMBIA 29211

June 2, 2009

The Honorable Robert W. Harrell, Jr.
Speaker of the House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. Speaker and Members of the House:

I am vetoing and returning without my approval H. 3301, R. 98, which adds significant regulation and limits to payday lending practices. The major new regulations added by this bill include a limit on the number and amount of loans consumers may have at one time, a database to track outstanding payday loans, and a cooling-off period for consumers after they pay off a loan.

I have had any number of lengthy conversations with people who stood both for and against this bill, and in them I have seen firsthand the emotion that surrounds this issue. On the one hand one can go as far back as biblical times to hear insightful words on debt, interest, lenders and borrowers. And though many would see the interest rates charged as unfair, wrong or even unconscionable, there is obviously a real void in the marketplace for these borrowings and, as a consequence, this form of lending has grown tremendously. Human needs will always be met in some form or another, thus the philosophical question raised in this debate lies in whether or not everyone of those needs should be sanctioned, regulated or addressed by government. This administration has always fallen solidly on the side of maximizing individual liberty – so people are able to make both the stupid, and wise, decisions that are the hallmark of a free and market-based society. In this case the bill lumps all payday borrowers into the same spot, though the preponderance of borrowers understand its very high cost and use this costly service without consequence to others. For them the limitation of this available form of credit may come at a still higher cost.

There are a number of people who I admire tremendously who I know I will disappoint with this veto, but it is my hope that in time they see my consistency in pushing for limited government and maximized individual freedom as a good part of the foundation behind our friendship. To simply acquiesce to their view because of personal affinity, while moving counter to the themes this

administration has long advanced, would work to undermine the trust of thousands who have supported this administration's at times lonely stands against government's creeping growth into our lives and society. I comprehend their frustration with a legal system that does not differentiate between good and bad actors in any industry, but protection from all that is wrong in our legal system should not be the driver for this administration's action on a bill regarding consumer credit.

This administration has consistently stated that the best form of financial regulation, that is consistent with the liberty of the people, is to provide for full disclosure of the terms and conditions of financial agreements – and let individuals freely choose for themselves whether such agreements are in their best interest. Payday lending customers are well aware of the finance charges and interest rates associated with their payday loans. For instance, a January 2009 study on payday lending consumers conducted by Federal Reserve researcher Gregory Elliehausen found that over 97% of payday lending customers were aware of the finance charges when they took out the loans. Accordingly, we cannot support this bill that would severely limit customers' choices when the vast preponderance already know fully the terms and consequences of taking out payday loans. In many ways there is, in fact, a greater level of clarity on interest charged with these loans than with other forms of high interest rate debt as is found in overdraft charges with checks, or in many cases with credit cards.

This legislation also creates a government-required database to ensure that customers do not obtain credit beyond the government-imposed limits. Lending companies could voluntarily band together to house and share this same information without a government mandate to do so. The problem with a government sanctioned database lies in the way that government as a sanctioning authority can change database requirements in a way that might jeopardize personal information in the future. Many proponents of this bill have clearly stated their intentions to do just this.

Regardless of the legislation's effect on individual liberty and privacy rights, we would likely veto it anyway because there is strong evidence indicating that regulation of payday lending has the opposite effect of its intended purpose of protecting lower- and moderate-income consumers. In most cases, payday lending customers choose to take out these loans because they have very few credit options available to pay for unexpected expenses. For example, the Federal Reserve study cited above shows that 86% of payday lending customers took out payday loans because of an unexpected expense that could not be postponed. The same study also found that over 50% of payday lending customers did not believe they had any other credit options besides payday loans and that over 67% either did not have a credit card or they had an insufficient credit limit to pay for their expenses.

Limiting the amount and availability of credit for these consumers, as this legislation does, makes it more difficult for them to find credit, which, consequently, makes it more likely that they will suffer a financially devastating event – such as bankruptcy, eviction, foreclosure, or suspension of certain necessary services like electricity. In fact, a 2008 study conducted by Donald Morgan and Michael Strain of the Federal Reserve Bank of New York found that states that banned payday lending saw a significant increase in the filings of Chapter 7 bankruptcies soon after the ban took place; whereas, Hawaii's Chapter 7 bankruptcy filings actually decreased after it increased the limits on payday loan sizes. Moreover, the limits in this legislation will likely force many payday lending customers looking to avoid these devastating events to obtain credit from less desirable and more expensive

The Honorable Robert W. Harrell, Jr.

Page 3

June 2, 2009

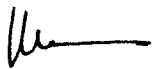
sources like pawnshops, illegal loan sharks, and unregulated internet lenders. In short, this legislation will have unforeseen adverse consequences for the ones whom this bill is meant to protect.

Finally, we are also troubled that this legislation focuses exclusively at the payday lending industry rather than other financial service providers who share blame on expensive credit. The problem of expensive credit is much broader than payday lending. It is well known that one of the primary contributing factors to our current economic troubles is too much personal debt arising from unaffordable mortgages and exorbitant credit card purchases; however, the General Assembly has not sought to place limits on financial services offered by these credit card issuers and banks. For example, this bill provides a cooling off period for payday lending customers, whereas credit card holders are free to amass more personal debt even while they have significant outstanding balances. Similarly, payday lenders can only make one loan at a time to a customer under this legislation, but banks can continue to issue second mortgages to homeowners who are already overleveraged. Government does not determine the appropriate loan value on a home mortgage or credit card debt – the marketplace does, so why single out just one component of that which traps some in debt? Not focusing on the larger issues of personal debt, or still other unregulated ways in which one might borrow money at high cost, ultimately means a bill like this offers a false sense of security toward making a difference in the high cost borrowing that is detrimental to many in our state.

Boiled down, it is this administration's abiding belief that government's role is not to protect people from their own actions, unless those actions in substantial form impact the lives of others. Given that the vast preponderance of those who use this costly service do so without complication, to this administration this signals it is not "ripe" for government regulation and control at the level put forth in this bill.

For the foregoing reasons, I am vetoing H. 3301, R. 98.

Sincerely,



Mark Sanford