

I am vetoing House Bill 1646 today because it abrogates Mississippi's common law with respect to consumer fraud by financial institutions and, as written, is grossly unfair to Mississippi borrowers. The bill arises from a legitimate concern by responsible banks and lenders that certain frivolous consumer fraud cases have resulted in unsubstantiated judgments and settlements, and that such cases pose a threat to the availability of credit and the viability of lending institutions. I am mindful of this genuine concern but I believe the bill, as submitted to me, is poorly crafted, provides the victims of fraud rights and remedies that are inadequate to the wrong and harm done, and may have constitutional problems.

The public policy and common law of this State currently give victims of fraud and deception the right to sue in court for compensatory damages, declaratory relief and injunctive relief. In egregious cases, punitive damages may be awarded. House Bill 1646 excludes all of these remedies and sets forth limited statutory penalties for loan companies found guilty of fraud, deception and false representations, regardless of the loss amount to the consumer. Where fraud is discovered and proven, the penalties are limited to the reimbursement of finance charges and, if these exceed \$500, interest paid on the loan. If the charges plus interest exceed \$1,500, the principal of the loan is also forgiven. Finance charges can include usurious interest and premium payments for credit life and disability insurance.

Although these consumer loans generally are for amounts of \$2,000 and below, the payments on these loans, with interest and finance charges, are significant to the borrower. In most instances, these amounts make a lawsuit uneconomical where the borrower has been wronged. The statutory limits in House Bill 1646 further diminish the borrower's recourse and relief where fraud has occurred, and there is no provision for a reasonable attorney's fee where the borrower prevails.

Statutory remedies can be good policy, but where they are both exclusive and inadequate such remedies not only limit risk but also fail to deter unlawful, harmful conduct. The acts in question under this legislation are intentional and deliberate. These acts of unscrupulous companies must be punished and discouraged. The statutory amounts represent essentially a cost of doing business for loan companies engaged in deceptive practices.

Under House Bill 1646, a consumer could not have a judge issue an injunction against enforcement of a consumer contract procured through fraudulent means and a consumer cannot be awarded full compensation for losses and expenses incurred. Many consumer loan contracts have clauses that mandate arbitration, thereby placing disputes in a forum perceived as more neutral and where excessive awards are not given. Thus, lenders are less susceptible to large awards to borrowers who have been harmed.

Bear in mind there are more than a few instances where poor and elderly Mississippians have lost their homes, lifelong savings and financial viability by means of fraud and deception to unscrupulous financial institutions. House Bill 1646 removes any deterrence to such practices by loan companies and completely alters the balance between lending institutions that can take care of themselves and financially vulnerable Mississippians without the resources to do so.

An example of such deceptive practices is where a force-placed, single-premium, up-front credit life insurance premium is required at closing. These “other charges” paid as part of closing costs can amount to 10% of the loan, which amounts are worked into the loan total with extremely high interest rates. The beneficiary of the insurance is the lender. In too many cases, credit life insurance is sold without the knowledge of the consumer.

Further, the Department of Banking and Consumer Finance does not currently have the resources to investigate charges brought by consumers. Additional personnel and funding would be required to provide Mississippians with the protection sought by this legislation. House Bill 1646 does not address this vital issue.

Numerous members of the financial community have expressed to me that the bill is flawed and can be “cleaned up” next year. If the bill is flawed, it should be sent back for reconsideration and correction. I am convinced legislation can be crafted that guards legitimate lenders and practices from excessive judgments, offers appropriate remedies to wronged borrowers and adequate deterrence against predatory practices, and preserves the availability of capital in areas of need. This legislation could be prepared in this session and I earnestly encourage the leadership and the members to take up and pass such a bill before Sine Die. It is the right thing to do.

I urge the members to sustain the veto and reject House Bill 1646.