

House Bill 1431

By: Representative Fleming of the 79<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 9-13-80 of the Official Code of Georgia Annotated, relating to  
2 executions being cancelled when satisfied and private rights of action, so as to provide  
3 specific deadlines and remedies for cancellation of record of fully satisfied judgment  
4 executions; to provide alternative methods to cancel fully satisfied judgments; to provide for  
5 an attorney affidavit; to provide for penalties; to provide for related matters; to repeal  
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 9-13-80 of the Official Code of Georgia Annotated, relating to executions  
10 being cancelled when satisfied and private rights of action, is amended by striking the Code  
11 section and inserting in lieu thereof the following:

12 "9-13-80.

13 (a) Upon the satisfaction of the entire debt upon which an execution has been issued, the  
14 plaintiff in execution or his or her attorney shall timely direct the clerk to cancel the  
15 execution and mark the judgment satisfied. Such direction shall be delivered to the clerk  
16 not later than 30 days following the date upon which the execution was fully satisfied.

17 (b)(1) A private right of action shall be granted to a judgment debtor upon the failure of  
18 such plaintiff or counsel to comply with the provisions of subsection (a) of this Code  
19 section.

20 (2) Failure to direct cancellation and satisfaction within 60 days after satisfaction of the  
21 entire debt shall be prima-facie evidence of untimeliness.

22 (3) Recovery may be had by way of motion in the action precipitating the judgment and  
23 execution or by separate action in any court of competent jurisdiction.

24 (4) Damages shall be presumed in the amount of \$100.00. Actual damages may be  
25 recovered, but in no event shall recovery exceed \$500.00.

1 (c) In order to authorize the clerk of superior court to make an entry of satisfaction with  
2 respect to an execution on the general execution docket, there shall be presented for filing  
3 on the general execution docket:

- 4 (1) A satisfaction upon the original execution deed itself;
- 5 (2) A satisfaction as provided in subsection (d) of this Code section; or
- 6 (3) A satisfaction as provided in subsection (e) of this Code section.

7 Any clerk of superior court who cancels of record any execution in the manner authorized  
8 in this subsection shall be immune from any civil liability, either in such clerk's official  
9 capacity or personally, for so canceling of record such security deed.

10 (d) Proof of satisfaction of an execution, the original of which has been lost, stolen, or  
11 otherwise mislaid, may be made based upon a document executed by the plaintiff in  
12 execution or owner or holder of record of such execution and who so swears in such  
13 document, which document shall be recorded in the execution docket and shall be in  
14 substantially the following form:

15           \_\_\_\_\_ County, Georgia

16 The indebtedness, penalties, and interest referred to in that certain writ of fi. fa. styled  
17           \_\_\_\_\_ v. \_\_\_\_\_, dated \_\_\_\_\_, and of record in General  
18 Execution Docket Book \_\_\_\_\_, Page \_\_\_\_\_, in the office of the clerk of the Superior  
19 Court of \_\_\_\_\_ County, Georgia, having been satisfied in full and the undersigned  
20 being the present owner of such writ of fi. fa. by virtue of being the plaintiff in fi. fa. or  
21 the heir, assign, transferee, or devisee of the original plaintiff in fi. fa., the clerk of such  
22 superior court is authorized and directed to make an entry of satisfaction with respect to  
23 such writ of fi. fa.

24 In witness whereof, the undersigned has set his or her hand and seal, this \_\_\_\_\_ day of  
25 \_\_\_\_\_.

26 \_\_\_\_\_ (SEAL)  
27 Signature

28 Signed, sealed, and  
29 delivered on the  
30 date above shown

31 \_\_\_\_\_  
32 Notary Public

33 (SEAL)

34 My commission expires: \_\_\_\_\_.

1 (e) In the event that a plaintiff in execution or any person that owns or holds an execution  
2 has failed to properly transmit a legally sufficient satisfaction or cancellation to authorize  
3 and direct the clerk or clerks to cancel the execution of record within 60 days after a written  
4 notice mailed to such plaintiff in execution or owner or holder of record by registered or  
5 certified mail or statutory overnight delivery, return receipt requested, the clerk or clerks  
6 are authorized and directed to cancel the execution upon recording an affidavit by the  
7 attorney for the judgment debtor against whom the execution was issued or any attorney  
8 who has caused the indebtedness and other obligations under the execution to be paid in  
9 full. The notice shall be mailed to the plaintiff in execution or owner or holder of record,  
10 shall identify the execution, and shall include a recital or explanation of this subsection.  
11 The affidavit shall include a recital of actions taken to comply with this subsection. Such  
12 affidavit shall include as attachments the following items:

13 (1) A written verification which was given at the time of payment by the plaintiff in  
14 execution or owner or holder of record of the amount necessary to pay off such  
15 obligations; and

16 (2) Any one of the following:

17 (A) Copies of the front and back of a canceled check to the plaintiff in execution or  
18 owner or holder of record showing payment of such obligations;

19 (B) Confirmation of a wire transfer to the owner or holder of record showing payment  
20 of such obligations; or

21 (C) A bank receipt showing payment to the plaintiff in execution or owner or holder  
22 of record of such obligations.

23 (f) Any person who files an affidavit in accordance with subsection (e) of this Code  
24 section which affidavit is fraudulent shall be guilty of a felony and shall be punished by  
25 imprisonment for not less than one year nor more than three years or by a fine of not less  
26 than \$1,000.00 nor more than \$5,000.00, or both."

### 27 **SECTION 3.**

28 All laws and parts of laws in conflict with this Act are repealed.