

House Bill 1431 (COMMITTEE SUBSTITUTE)

By: Representative Fleming of the 79th

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 for attorney's fees; to provide alternative methods to cancel fully
5 satisfied judgments; to provide for an attorney affidavit; to provide for penalties; to provide
6 for related matters; to repeal 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 and the court may award
25 reasonable attorney's fees. Actual damages may be recovered, but in no event shall

1 (SEAL)

2 My commission expires: _____.

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

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

19 (2) Any one of the following:

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

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

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

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

30 **SECTION 3.**

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