**South Carolina General Assembly**

122nd Session, 2017-2018

**H. 3336**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Ballentine, Funderburk, Bernstein and J.E. Smith

Document Path: l:\council\bills\nl\13643sd17.docx

Introduced in the House on January 10, 2017

Currently residing in the House Committee on **Judiciary**

Summary: Cancellation of judgments

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/15/2016 House Prefiled

12/15/2016 House Referred to Committee on **Judiciary**

1/10/2017 House Introduced and read first time ([House Journal‑page 165](file:///h:\hj\20170110.docx))

1/10/2017 House Referred to Committee on **Judiciary** ([House Journal‑page 165](file:///h:\hj\20170110.docx))

1/25/2017 House Member(s) request name added as sponsor: Funderburk

2/14/2017 House Member(s) request name added as sponsor: Bernstein, J.E.Smith

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**VERSIONS OF THIS BILL**

[12/15/2016](file:///p:\pprever\2017-18\3336_20161215.docx)

**A** **BILL**

TO AMEND SECTION 15‑35‑650, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ENTRY OF CANCELLATION OF JUDGMENTS, PAYMENT OF MONIES INTO COURT AND METHOD OF SATISFACTION OR RELEASE, SO AS TO REVISE THE MANNER JUDGMENTS ARE CANCELLED OF RECORD AND TO PROVIDE PROCEDURES IN SPECIFIED INSTANCES FOR THE TIMELY SATISFACTION OF JUDGMENT LIENS OR THE CANCELLATION OF JUDGMENTS AFTER FULL TENDER OF PAYMENT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15‑35‑650 of the 1976 Code is amended to read:

“Section 15‑35‑650. (A) All clerks of court shall enter the word ‘cancelled~~,~~’ ~~together with the signature of such officer,~~ upon the ~~margin or across the~~ indices of judgments when any such judgment is duly cancelled of record by the judgment creditor or his assignee, agent, legal counsel, or attorney‑in‑fact. Such cancellation a~~nd signature~~ shall be entered ~~in the margin opposite the names of the judgment debtor and judgment creditor, respectively, or across such names,~~ and the like cancellation, ~~shall~~ on the demand of the judgment debtor~~,~~ or his legal representative, shall be made on judgments theretofore cancelled of record. Upon failure of ~~such~~ the clerk of court to comply with the provisions of this section, he shall, in each instance, forfeit and pay to the judgment debtor the sum of ten dollars, to be recovered in any court of competent jurisdiction, and if ~~such~~ the failure ~~be~~ is wilful, ~~he shall, on~~ upon conviction~~,~~ he shall be fined not more than one hundred dollars or be imprisoned not more than thirty days, in the discretion of the court. The solicitor of each circuit shall see that the provisions of this section are complied with or shall ~~forthwith~~ prosecute the violators ~~thereof~~.

(B) If a tender of the amount due, together with interest and costs, has been made to the judgment creditor, and the creditor either refuses to accept the tender, or refuses to execute and deliver a cancellation of the judgment within ninety days, or if the whereabouts of the creditor are unknown after diligent investigation by the debtor’s counsel, the debtor’s counsel may deliver full tender to the clerk of court in the county where initially enrolled. Upon receipt of tender, the clerk of court has no further obligation to send notice or locate the creditor under this section, and if funds remain unclaimed for a period of two years after tendered, the funds shall escheat to the state pursuant to the Uniform Unclaimed Property Act in Chapter 18, Title 27.

(C) The creditor or its successor or assigns, may claim the funds paid by the debtor to the clerk of court within a period of two years after tendered to the clerk of court upon written request for payment, signed by the creditor or an authorized agent. Payment shall be made by the clerk of court within fourteen days, and the clerk of court shall retain ten percent, up to one hundred dollars. If the funds remain unclaimed after two years from the date of tender to the clerk of court, the funds, less ten percent, up to one hundred dollars, shall escheat to the State Treasurer pursuant to the Uniform Unclaimed Property Act in Chapter 18, Title 27.

(D) Any licensed attorney admitted to practice in the State of South Carolina who can provide proof of payment of funds by evidence of payment made payable to the judgment creditor, or other party entitled to receive payment may record, or cause to be recorded, an affidavit, in writing, duly executed in the presence of two witnesses and acknowledged pursuant to the Uniform Recognition of Acknowledgments Act in Chapter 3, Title 26, which states that full payment of the balance or payoff amount of the judgment has been made. This affidavit, duly recorded in the appropriate county, shall serve as notice of satisfaction of the judgment. Upon presentation of the instrument of satisfaction or release, the clerk of court must record the same. This section may not be construed to require an attorney to record an affidavit pursuant to this subsection or to create liability for failure to file the affidavit. The licensed attorney signing any such instrument which is false is guilty of perjury and subject to Section 16‑9‑10, and shall be liable for damages that any person may sustain as a result of the false affidavit, including reasonable attorney’s fees incurred in connection with the recovery of such damages. The affidavit referred to in this subsection shall be as follows:

‘STATE OF SOUTH CAROLINA JUDGMENT LIEN

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_ SATISFACTION AFFIDAVIT

PURSUANT TO SECTION

15‑35‑650(D) OF THE 1976 CODE FOR JUDGMENT ROLL \_\_\_\_

The undersigned on oath, being first duly sworn, hereby certifies as follows:

1. The undersigned is a licensed attorney admitted to practice in the State of South Carolina.

2. That with respect to the judgment of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Plaintiff(s) vs \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Defendant(s), dated \_\_\_\_\_\_\_ and recorded in the offices of the Clerk of Court or Register of Deeds in Judgment Roll \_\_\_\_\_\_\_\_:

a. [ ] That the undersigned was given written payoff information from the judgment creditor or authorized agent and made such payoff as instructed, and is in possession of a canceled check, wire transfer or other electronic confirmation from the undersigned’s bank of transfer to the account provided by the judgment creditor.

b. [ ] That the undersigned conducted a diligent investigation, and was unable to ascertain the whereabouts of the creditor, or the creditor refused to accept offer of full payment and the payment was submitted to the clerk of court pursuant to Section 15‑35‑650(B).

Under penalties of perjury, I declare that I have examined this affidavit this \_\_\_ day of \_\_\_\_ and, to the best of my knowledge and belief, it is true, correct, and complete.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Witness) (Signature)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Witness) (Name‑Please Print)

\_\_\_\_\_\_\_\_\_\_ (Attorney’s S.C. Bar number)

STATE OF SOUTH CAROLINA ACKNOWLEDGEMENT

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public for South Carolina

(Print Name of Notary Public) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’

Upon presentation to the Office of the Register of Deeds, the register is directed to record pursuant to Section 15‑35‑650(D) and mark the judgment satisfied or released of record.”

SECTION 2. This act takes effect July 1, 2017.

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