**South Carolina General Assembly**

119th Session, 2011-2012

**S. 1259**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Cleary, Knotts, Thomas, Williams, Leventis, Ford, Land and Rankin

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Introduced in the Senate on February 23, 2012

Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Junior Lien Holders Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/23/2012 Senate Introduced and read first time ([Senate Journal‑page 8](file:///h:\sj%20archive\2012\02-23-12.docx))

2/23/2012 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 8](file:///h:\sj%20archive\2012\02-23-12.docx))

**VERSIONS OF THIS BILL**

[2/23/2012](file:///p:\pprever\2011-12\1259_20120223.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 3, TITLE 29 SO AS TO ENACT THE “SOUTH CAROLINA JUNIOR LIEN HOLDERS’ ACT”; TO PROVIDE CERTAIN DEFINITIONS, AND TO PROVIDE FOR THE DETERMINATION OF AN AMOUNT OWED BY A DEBTOR TO A JUNIOR LIEN HOLDER IN AN ACTION BROUGHT BY THE LIEN HOLDER FOR A MONETARY JUDGMENT AFTER FORECLOSURE ON THE PROPERTY SUBJECT TO THE LIEN, AND TO LIMIT THE TIME IN WHICH THIS ACTION MAY BE BROUGHT.

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

SECTION 1. This article must be known and may be cited as the “South Carolina Junior Lien Holders’ Act”.

SECTION 2. Chapter 3, Title 29 of the 1976 Code is amended by adding:

“Article 9

Junior Liens

Section 29‑3‑1010. For the purposes of this chapter:

(1) ‘Junior lien’ means a mortgage or other lien made subsequent to the lien of the mortgage foreclosed upon under this chapter. A junior lien may secure an obligation not secured by a mortgage or lien on real property if the obligation:

(a) is incurred by the debtor under an obligation secured by a mortgage or lien on real property; and

(b) has the effect of reaffirming the obligation that was secured by a previous mortgage on the real property.

(2) ‘Obligation secured by a junior lien on real property’ means, without limitation, an obligation that is not currently secured by a mortgage or other lien on real property if the obligation:

(a) is incurred by the debtor under an obligation secured by a junior lien on real property; and

(b) has the effect of reaffirming the obligation that was secured by a junior lien on real property.

Section 29‑3‑1020. Notwithstanding another provision of law:

(1) When a person to whom an obligation secured by a junior lien on real property is owed files an action to obtain a money judgment against the debtor under that obligation after a foreclosure sale or similar sale, the court in determining the amount owed by the debtor shall not include the amount of any proceeds received by, or payable to, the person pursuant to an insurance policy to compensate the person for losses incurred with respect to the property or the default obligation if:

(a) the person acquired the right to enforce an obligation secured by a junior lien on real property from a person who previously held that right; and

(b) the person files a civil action to obtain a money judgment against the debtor after a foreclosure sale or similar sale.

(2) A civil action brought by a person to whom an obligation secured by a junior lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a similar sale only may be commenced within six months after the date of the foreclosure sale or a similar sale.

(3)(a) After a hearing on the merits, the court shall award a money judgment against the debtor, guarantor, or surety who is personally liable for the debt. The court shall not render judgment for more than:

(i) the amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale;

(ii) the amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale; or

(iii) if the person seeking the judgment acquired the right to obtain the judgment from a person who previously held that right, the amount by which the amount of the consideration paid for that right exceeds the fair market value of the property sold at the time of sale or the amount for which the property was actually sold, whichever is greater, with interest from the date of sale and reasonable costs, whichever is the lesser amount.

(b) For the purposes of this section, the ‘amount of the indebtedness’ does not include any amount received by, or payable to, the judgment creditor or beneficiary of the lien pursuant to an insurance policy to compensate the judgment creditor or beneficiary for any losses incurred with respect to the property or the default on the debt.”

SECTION 3. This act takes effect upon approval by the Governor.

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