**South Carolina General Assembly**

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**H. 3106**

**STATUS INFORMATION**

General Bill

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

Summary: Magistrates Court

**HISTORY OF LEGISLATIVE ACTIONS**

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12/11/2014 House Prefiled

12/11/2014 House Referred to Committee on **Judiciary**

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1/13/2015 House Referred to Committee on **Judiciary** ([House Journal‑page 98](file:///h:\HJ%20Archive\2015\01-13-15.docx))

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**VERSIONS OF THIS BILL**

[12/11/2014](file:///p:\pprever\2015-16\3106_20141211.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 22-3-350 SO AS TO ALLOW A PLAINTIFF WHO HAS OBTAINED A JUDGMENT AGAINST A DEFENDANT IN MAGISTRATES COURT TO FILE A PETITION WITH A JUDGE WITH JURISDICTION OVER THE ORIGINAL JUDGMENT FOR A WRIT OF GARNISHMENT OF THE STATE INCOME TAX REFUND OF THE DEFENDANT, AND TO PROVIDE PROCEDURES FOR THIS GARNISHMENT INCLUDING SERVICE OF THE WRIT OF GARNISHMENT UPON THE DIRECTOR OF THE STATE DEPARTMENT OF REVENUE AND THE DEFENDANT, OBJECTIONS TO THE WRIT OF GARNISHMENT, AND DEPOSIT OF THE STATE INCOME TAX REFUND, AMONG OTHER THINGS; AND TO AMEND SECTION 15‑19‑220, RELATING TO PROPERTY WHICH IS SUBJECT TO ATTACHMENT, SO AS TO INCLUDE STATE INCOME TAX REFUNDS.

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

SECTION 1. Article 3, Chapter 3, Title 22 of the 1976 Code is amended by adding:

“Section 22-3-350. (A) Notwithstanding another provision of law, a magistrate with jurisdiction over the original judgment, upon petition by a plaintiff who has obtained a judgment in this State against another may issue a writ of garnishment of the state income tax refund of the defendant against whom the judgment has been rendered.

(B) A plaintiff shall serve the writ of garnishment issued from a magistrates court in this State upon the Director of the state Department of Revenue or his designee who must be employed with the Department of Revenue and authorized to receive garnishment process. In addition to the writ of garnishment, the plaintiff also must provide a statement signed by him or his attorney identifying the full amount of the judgment.

(C) Within seven business days of service of the writ of garnishment on the Director of the Department of Revenue or his designee, the plaintiff shall:

(1) serve a copy of the writ of garnishment upon the defendant; and

(2) serve upon the Director of the Department of Revenue or his designee a discovery request, if necessary, for information related to the garnishment proceeding that may be in the possession of the Department of Revenue.

(D) If a discovery request is made pursuant to the provisions of subsection (C)(2), the Department of Revenue only shall provide that information in its possession that is not otherwise exempted or prohibited by law from disclosure.

(E) The Department of Revenue shall intercept a state income tax refund that is subject to a writ of garnishment served upon the Department of Revenue pursuant to this section. Upon intercepting a state income tax refund pursuant to a writ of garnishment, the Department of Revenue shall:

(1) calculate the amount available from the interception to satisfy all or part of the garnishment, if the defendant filed a joint state income tax return such amount is not subject to apportionment, and within ninety days after establishing other liability for which the state income tax refund may be applied, shall:

(a) file with the court a verified disclosure that identifies the intercepted amount, less any setoff, counterclaim, or other demand of the State against the defendant; and

(b) serve upon the plaintiff and defendant a copy of the disclosure described in subitem (a).

(2) unless notified by the court that objections to the writ of garnishment have been filed, deposit the amount available for the garnishment with either of the following pursuant to the terms of the writ not less than twenty‑eight days after filing the disclosure pursuant to item (1):

(a) the clerk of the court; or

(b) the plaintiff’s attorney of record in the garnishment action or, if the plaintiff is not represented by counsel, the plaintiff or the plaintiff’s designee.

(F) Objections to the writ of garnishment of a state income tax refund must be filed with the court within fourteen days after the date of service of the disclosure on the defendant.

(G) A disclosure described in subsection (E) is not required to be made under oath.

(H) The state’s liability to the plaintiff under a writ of garnishment issued under this section is limited to the amount of the state income tax refund due to the defendant for the period the writ is in effect, less any setoff, counterclaim, or other demand of the State against the defendant. As used in this subsection, ‘State’ includes the Department of Revenue.

(I) If all or a portion of an intercepted state income tax refund is deposited with the clerk of the court under subsection (E), the court shall convey the deposited amount to the plaintiff’s attorney of record in the garnishment action or, if the plaintiff is not represented by counsel, to the plaintiff.

(J) The Department of Revenue is authorized to promulgate regulations consistent with the provisions of this section in order to provide a procedure for the appropriate manner in which to carry out the provisions of this section not inconsistent with or specifically delineated herein.”

SECTION 2. Section 15‑19‑220 of the 1976 Code is amended to read:

“Section 15‑19‑220. The rights or shares which any defendant may have in any vessel or in the stock of any association or corporation, together with the interest and profits ~~thereon~~, state income tax refunds as provided in Section 22‑3‑350, and all other property of ~~such~~ a defendant in this State, except that exempt from attachment by the Constitution, shall be liable to be attached and levied upon and sold to satisfy the judgment and execution.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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