

Senate Bill 265

By: Senators Tillery of the 19th, Dugan of the 30th, Hufstetler of the 52nd, Gooch of the 51st, Summers of the 13th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 17 of Title 45 of the Official Code of Georgia Annotated,
2 relating to general provisions regarding notaries public, so as to provide for electronic
3 notarization of certain notarial acts using real time audio-video communication technology
4 when certain requirements are satisfied; to provide for and revise definitions; to provide for
5 an electronic seal of office; to provide for requirements and exemptions; to provide for
6 criminal penalties and civil liability, including compensatory and punitive damages; to
7 provide for class action lawsuits; to provide for related matters; to provide for conforming
8 changes; to provide an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 1 of Chapter 17 of Title 45 of the Official Code of Georgia Annotated, relating to
12 general provisions regarding notaries public, is amended by revising Code Section 45-17-1,
13 relating to definitions, as follows:

14 "45-17-1.

15 As used in this article, the term:

16 (1) 'Appear,' 'personally appear,' or 'in the presence of' means:

17 (A) Being in the same physical location as another individual at the same time and
 18 close enough to see, hear, communicate with, and exchange tangible identification
 19 credentials with such individual; or

20 (B) Interacting with another individual by means of real-time two-way audio-video
 21 communication technology that complies with the provisions of this article.

22 ~~(1)(2)~~ 'Attesting,' 'attestation,' or 'attested' means 'Attesting' and 'attestation' are
 23 ~~synonymous and mean~~ the notarial act of witnessing or attesting a signature or execution
 24 of a deed or other written instrument, where such notarial act does not involve the taking
 25 of an acknowledgment, the administering of an oath or affirmation, the taking of a
 26 verification, or the certification of a copy.

27 ~~(2)(3)~~ 'Notarial act' means any act that a notary public is authorized by law to perform
 28 and includes, without limitation, attestation, the taking of an acknowledgment, the
 29 administration of an oath or affirmation, the taking of a verification upon an oath or
 30 affirmation, and the certification of a copy, as provided for in Code Section 45-17-8.

31 ~~(3)(4)~~ 'Notarial certificate' means the notary's documentation of a notarial act.

32 (5) 'Notary public' means an official of integrity who performs notarial acts and whose
 33 commission is granted or denied by a clerk of superior court in a county in this state as
 34 provided for in Code Section 45-17-2.3."

35 **SECTION 2.**

36 Said article is further amended by revising Code Section 45-17-6, relating to seal of office,
 37 as follows:

38 "45-17-6.

39 (a)(1) For the authentication of ~~his~~ any notarial acts, each notary public must provide a
 40 seal of office, which seal shall have for its impression ~~his~~ the notary's name, the words
 41 'Notary Public,' the name of the state, and the county of ~~his~~ residence; or it shall have for
 42 its impression ~~his~~ the notary's name and the words 'Notary Public, Georgia, State at

43 Large.' Notaries commissioned or renewing their commission after July 1, 1985, shall
 44 provide a seal of office which shall have for its impression the notary's name, the words
 45 'Notary Public,' the name of the state, and the county of his appointment. The
 46 embossment of notarial certificates by the notary's seal shall be authorized but not
 47 necessary, and the use of a rubber or other type stamp, including an electronic seal of
 48 office, shall be sufficient for imprinting the notary's seal. An electronic seal of office in
 49 an appropriate file format shall include the notary's name, commission number,
 50 commission expiration date, and the words 'Notary Public, Georgia, Electronic Seal.' A
 51 scrawl or initials shall not be a sufficient notary seal. An official notarial act must be
 52 documented by the notary's seal.

53 (2) No document executed prior to July 1, 1986, which would otherwise be eligible for
 54 recording in the real property records maintained by any clerk of superior court or
 55 constitute record notice or actual notice of any matter to any person shall be ineligible for
 56 recording or fail to constitute such notice because of noncompliance with the requirement
 57 that the document contain a notary seal.

58 (b) It shall be unlawful for any person, firm, or corporation to supply a notary public seal
 59 to any person unless the person has presented the duplicate original of the certificate
 60 commissioning the person as a notary public. It shall be unlawful for any person to order
 61 or obtain a notary public seal unless such person is commissioned as a notary public."

62 **SECTION 3.**

63 Said article is further amended by revising subsection (a) of Code Section 45-17-8, relating
 64 to powers and duties generally, as follows:

65 "(a) Notaries public, excepted as prohibited in subsection (c) of Code Section 45-17-9,
 66 shall have authority to:

- 67 (1) Witness or attest signature or execution of deeds and other written instruments;
 68 (2) Take acknowledgments;

- 69 (3) Administer oaths and affirmations in all matters incidental to their duties as
70 commercial officers and all other oaths and affirmations which are not by law required
71 to be administered by a particular officer;
- 72 (4) Witness affidavits upon oath or affirmation;
- 73 (5) Take verifications upon oath or affirmation;
- 74 (6) Make certified copies, provided that the document presented for copying is an
75 original document and is neither a public record nor a publicly recorded document
76 certified copies of which are available from an official source other than a notary and
77 provided that the document was photocopied under supervision of the notary; and
- 78 (7) Perform such other acts as they are authorized to perform by other laws of this state."

79

SECTION 4.

80 Said article is further amended by revising Code Section 45-17-8.1, relating to the signature
81 and date of notarial act, as follows:

82 "45-17-8.1.

83 (a) Except as otherwise provided in this Code section, in documenting a notarial act, a
84 notary public shall sign on the notarial certification, by hand in ink or electronically as
85 provided in Code Section 45-17-9, only and exactly the name indicated on the notary's
86 commission and shall record on the notarial certification the exact date of the notarial act.

87 (b) The requirement of subsection (a) of this Code section for recording of the date of the
88 notarial act shall not apply to an attestation of deeds or any other instruments pertaining to
89 real property.

90 (c) No document executed prior to July 1, 1986, which would otherwise be eligible for
91 recording in the real property records maintained by any clerk of superior court or
92 constitute record notice or actual notice of any matter to any person shall be ineligible for
93 recording or fail to constitute such notice because of noncompliance with the present or any
94 prior requirements of this Code section."

95

SECTION 5.

96 Said article is further amended by revising Code Section 45-17-9, relating to where notarial
97 acts may be exercised, as follows:

98 "45-17-9.

99 (a) Notarial acts may be exercised in any county in the state.

100 (b) Except as provided in subsection (c) of this Code section, the requirement that a
101 notarial act occur in the presence of the notary public shall be satisfied when such act is
102 performed remotely if:

103 (1) The notary public is physically located in this state;

104 (2) The notary public uses real-time two-way audio-video communication technology
105 that meets the following requirements:

106 (A) Allows the parties to see, hear, and communicate with each other; and

107 (B) Is sufficiently secure to prevent interference with the authenticity, integrity, and
108 security of the transaction, to prevent corruption or loss of the recording of the
109 transaction, and to prevent unauthorized use of or tampering with the recording, record,
110 and backup record;

111 (3) The signatory is physically located in the United States, or one of its territories or
112 military bases, or at a United States embassy, consulate, or diplomatic mission location;

113 (4) The signatory presents evidence of his or her identity and location;

114 (5) The notary public witnesses the signature; and

115 (6) The notary public documents evidence of the acts provided for in paragraphs (1)
116 through (5) of this subsection.

117 (c) An electronic notarial act shall not be performed to:

118 (1) Create or execute a will, codicil, or testamentary trust; or

119 (2) Notarize the signature on any instrument or document executed for the conveyance
120 of real property located in this state, whether or not such document is recorded.

121 (d) A document electronically notarized as provided in subsection (b) of this Code section
122 shall be deemed to have been executed in this state at the time of signature."

123 **SECTION 6.**

124 Said article is further amended by revising Code Section 45-17-20, relating to penalty and
125 prosecution of violations of article, as follows:

126 "45-17-20.

127 (a) Any person who violates subsection (d) of Code Section 45-17-8 or performs any
128 notarial act without complying with the provisions of this article shall, upon a first or
129 second conviction, be guilty of a misdemeanor; provided, however, that, upon a third or
130 subsequent conviction, such person shall be guilty of a felony, punishable by imprisonment
131 of not less than one year nor more than five years, a fine of up to \$5,000.00, or both.

132 ~~(b) Any person who performs any notarial service without complying with the provisions~~
133 ~~of this article shall, upon the first or second conviction, be guilty of a misdemeanor and~~
134 ~~upon a third or subsequent conviction be guilty of a felony, punishable by imprisonment~~
135 ~~of not less than one year nor more than five years, a fine of up to \$5,000.00, or both. Any~~
136 ~~person, including, but not limited to, a notary public, a mortgage lender or its affiliates,~~
137 ~~employees, agents, and attorneys, or an attorney or the attorney's employee or agent, that~~
138 ~~aids or abets another person in violating this article, including, but not limited to, directing~~
139 ~~the performance of an unauthorized notarial act, shall, upon a first or second conviction,~~
140 ~~be guilty of a misdemeanor; provided, however, that, upon a third or subsequent~~
141 ~~conviction, such person shall be guilty of a felony, punishable by imprisonment of not less~~
142 ~~than one year nor more than five years, a fine of up to \$5,000.00, or both."~~

143 **SECTION 7.**

144 Said article is further amended by adding a new Code section to read as follows:

145 "45-17-21.

146 (a) While participating in a residential or commercial real estate closing involving property
147 located in this state, any person, including, but not limited to, a notary public, a mortgage
148 lender or its affiliates, employees, agents and attorneys, or an attorney or the attorney's
149 employee or agent, that engages in conduct that constitutes an unlawful notarial act,
150 knowingly aids and abets another person in committing an unlawful notarial act, or
151 otherwise violates the provisions of this article regulating real estate transactions, shall be
152 liable for damages resulting from such illegal conduct. Such damages shall include, but
153 not be limited to:

154 (1) Actual monetary losses incurred by the plaintiff as a result of a violation of this
155 article;

156 (2) Any expenses paid by the plaintiff for the services of the notary public, mortgage
157 lender or its affiliates, employees, agents, and attorneys, or attorney or attorney's
158 employee or agent that violated this article;

159 (3) De minimis or nominal damages incurred by the plaintiff as a result of a violation of
160 this article; and

161 (4) Any monetary losses incurred by a business competitor as a result of a violation of
162 this article.

163 (b) In addition to the penalties provided for in Code Section 45-17-20 and in subsection (a)
164 of this Code section, in an individual cause of action, a court may award punitive damages
165 of \$1,000.00 per buyer and \$1,000.00 per seller. The court shall consider the frequency
166 and persistence of noncompliance by the defendant, the nature of such noncompliance, and
167 the extent to which such noncompliance was intentional.

168 (c) In addition to the penalties provided for in Code Section 45-17-20 and in subsection (a)
169 of this Code section, in a class action lawsuit, a court may award punitive damages not
170 exceeding \$1,000.00 per class member, provided that the aggregate of such punitive
171 damages not exceed the lesser of \$500,000.00 or 1 percent of the collective net worth of

172 the defendant. The court shall consider the frequency and persistence of noncompliance
173 by the defendant, the nature of such noncompliance, the extent to which such
174 noncompliance was intentional, the number of persons or sales impacted by the violation,
175 the impact of the judgment, and the resources of the defendant.

176 (d) The court may provide such equitable relief it deems necessary or proper, including
177 invalidating the sale of the real estate property at issue and enjoining the defendants from
178 further violations of this article.

179 (e) A person shall not be held liable for punitive damages in any action brought under this
180 article if the person shows by a preponderance of the evidence that the violation was not
181 intentional and resulted from a bona fide error notwithstanding the maintenance of
182 procedures implemented to avoid such error.

183 (f) A cause of action brought under this Code section may be filed in any court of
184 competent jurisdiction within this state without regard to the amount in controversy. Such
185 cause of action shall be filed within one year from the date on which the violation occurred.

186 (g) Upon a finding by the court that an action under this Code section was brought in bad
187 faith and for the sole purpose of harassment, the court may award the defendant court costs
188 and reasonable attorney fees."

189 **SECTION 8.**

190 This Act shall become effective upon its approval by the Governor or upon its becoming law
191 without such approval.

192 **SECTION 9.**

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