House Bill 1256 (AS PASSED HOUSE AND SENATE)
By: Representatives Mobley of the 69th and Benfield of the 67th

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 17 of Title 45 of the Official Code of Georgia Annotated, relating to notaries public, so as to provide for denial of a notary recommission if the applicant engages in false or misleading advertising or the unauthorized practice of law; to provide that notaries who are not licensed to practice law must post notice of this fact; to provide that notaries who are not licensed to practice law are prohibited from rendering any service that constitutes the unauthorized practice of law; to provide that notaries who are not authorized to practice law may not hold themselves out as legal consultants or experts; to provide that notaries must post a fee schedule at their place of business; to provide for injunctive and other relief against notaries who violate these provisions; to amend Code Section 44-14-231 of the Official Code of Georgia Annotated, relating to petition for writ of possession, jurisdiction and venue, and oath, so as to conform the affidavit requirements of said Code section to Code Section 9-10-113 allowing such affidavits to be made before notaries public, magistrates, judges, or state or county officers; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 17 of Title 45 of the Official Code of Georgia Annotated, relating to notaries public, is amended by striking in its entirety Code Section 45-17-2.3, relating to grant or denial of a notary commission, and inserting in its place the following:

"45-17-2.3.

(a) After an applicant submits to the clerk of superior court of the county the application, endorsements, and declaration of applicant as required in Code Section 45-17-2.1, the clerk of superior court shall either grant or deny a commission or recommission as a notary public within ten days following the applicant´s submission of the necessary documents.

(b) The clerk of superior court may in his or her discretion deny a commission or recommission to an applicant based on any of the following grounds:

(1) The applicant´s criminal history;

(2) Revocation, suspension, or restriction of any notary commission or professional license issued to the applicant by this or any other state; ~~or~~

(3) The commission in this or any state of any act enumerated in subsection (a) of Code Section 45-17-15, whether or not criminal penalties or commission suspension or revocation resulted~~.~~ ; or

(4) The applicant is found by the State Bar of Georgia, a court of this state, or a court of any other state to have engaged in the unauthorized practice of law.

(c) Any applicant who is denied a notarial commission or recommission by the clerk of superior court shall upon demand be allowed a hearing and adjudication before the superior court clerk with a right of de novo appeal to the superior court, such appeal to be determined by the court without the intervention of a jury."

SECTION 2.

Said title is further amended by striking in its entirety Code Section 45-17-8.2, relating to misrepresentation by notaries public, and inserting in its place the following:

"45-17-8.2.

(a) A notary shall not make claims to have or imply he or she has powers, qualifications, rights, or privileges that the office of notary does not authorize, including the powers to counsel on immigration matters and to give legal advice.

(b) A notary who is not an attorney licensed to practice law in this state who advertises the person´s services as a notary public in English or any other language, by radio, television, signs, pamphlets, newspapers, other written communication, or in any other manner, shall post or otherwise include with the advertisement the notice set forth in this subsection in English and in every other language used for the advertisement. The notice shall be of a conspicuous size, if in writing, and shall state: 'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF GEORGIA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.' If the advertisement is made by radio or television, the statement may be modified but must include substantially the same message.

(c) A notary who is not an attorney licensed to practice law in this state is prohibited from representing or advertising that the notary is a 'legal consultant' or an expert on legal matters.

(d) A notary who is not an attorney licensed to practice law in this state is prohibited from rendering any service that constitutes the unauthorized practice of law.

(e) A notary required to comply with the provisions of subsection (b) of this Code section shall prominently post at the notary public´s place of business a schedule of fees established by law which a notary may charge. The fee schedule shall be written in English

and in any non-English language in which the notary services were solicited and shall contain the notice required in subsection (b) of this Code section, unless the notice is otherwise prominently posted at the notary public´s place of business.

(f) The Attorney General or prosecuting attorney may seek injunctive relief against any notary public who violates the provisions of this Code section. Nothing in this Code section diminishes the authority of the State Bar of Georgia.

(g) A violation of subsection (c) or (d) of this Code section constitutes a deceptive trade practice under Code Section 10-1-427 in addition to any other penalties provided by law.″

SECTION 3.

Code Section 44-14-231 of the Official Code of Georgia Annotated, relating to petition for writ of possession, jurisdiction and venue, and oath, is amended by striking said Code section in its entirety and inserting in its place the following:

"44-14-231.

Upon a statement of the facts under oath, any person holding a security interest on personal property and wishing to foreclose the security interest may petition, by affidavit, either in person or by his or her agent or attorney in fact or at law, for a writ of possession. Such affidavit shall be made pursuant to the requirements of Code Section 9-10-113 ~~before any judge of the superior court, any magistrate, any judge of any other court having jurisdiction over such proceedings, or any clerk of any such court within the county where the debtor may reside or where the secured property is located. If the person holding the security interest is not a resident of the county where the debtor resides or where the secured property is located, any oath required by this Code section may be made before a judge of any court of record within this state~~ and forwarded with the petition to the appropriate judge, magistrate, or clerk in the county where the debtor may reside or where the secured property is located."

SECTION 4.

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