

Senate Bill 301

By: Senators Williams of the 25th, Gooch of the 51st, Robertson of the 29th, Harbin of the 16th, Ginn of the 47th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 50 of the Official Code of Georgia Annotated, relating to state
2 flag, seal, and other symbols, so as to revise provisions for the protection of government
3 statues, monuments, plaques, banners, and other commemorative symbols; to provide for
4 construction; to provide for severability; to provide for related matters; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 3 of Title 50 of the Official Code of Georgia Annotated, relating to state flag, seal,
9 and other symbols, is amended by revising subsections (b) and (c) of Code Section 50-3-1,
10 relating to description of state flag, militia to carry flag, defacing public monuments, and
11 relocation of monuments, and adding new subsections to read as follows:

12 "(b)(1) As used in this subsection, the term:

13 (A) 'Agency' means any state or local government entity, including any department,
14 agency, bureau, authority, board, educational institution, commission, or
15 instrumentality or subdivision thereof, and specifically including a local board of

16 education, the Board of Regents of the University System of Georgia, and any
17 institution of the University System of Georgia.

18 (B) 'Monument' means a monument, plaque, statue, marker, flag, banner, structure
19 name, display, or memorial constructed and located with the intent of being
20 permanently displayed and perpetually maintained that is:

21 (i) Dedicated to a historical entity or historically significant military, religious, civil,
22 civil rights, political, social, or cultural events or series of events; or

23 (ii) Dedicated to, honors, or recounts the military service of any past or present
24 military personnel of this state; the United States of America or the several states
25 thereof; or the Confederate States of America or the several states thereof.

26 (C) 'Officer' means an officer, official, body, employee, contractor, representative, or
27 agent of any agency, whether appointed or elected.

28 (2) It shall be unlawful for any person, firm, corporation, officer, agency, or other entity
29 to mutilate, deface, defile, damage, destroy, lose, or abuse contemptuously any publicly
30 or privately owned monument located, erected, constructed, created, or maintained on
31 real property owned by an agency or the State of Georgia. No person, firm, corporation,
32 officer, or agency, or other entity shall remove or conceal from display any such
33 monument for the purpose of preventing the visible display of the same. ~~A violation of~~
34 ~~this paragraph shall constitute~~ person that violates this Code section shall be guilty of a
35 misdemeanor.

36 (3) No publicly or privately owned monument erected, constructed, created, or
37 maintained on the public property of this state or its agencies, departments, authorities,
38 or instrumentalities or on real property owned by an agency or the State of Georgia shall
39 be relocated, removed, concealed, obscured, or altered in any fashion by any officer or
40 agency; provided, however, that appropriate measures for the preservation, ~~protection,~~
41 ~~and interpretation~~ and protection in place of such monument or memorial shall not be
42 prohibited.

43 (4) Any person, firm, corporation, officer, agency, or other entity that ~~damages, destroys,~~
44 ~~or loses a monument or that takes or removes a monument without replacing it~~ violates
45 this Code section shall be liable for treble the amount of the full cost of repair or
46 replacement of such monument and may be subject to exemplary damages ~~unless such~~
47 ~~person or entity was authorized to take such action by the public entity owning such~~
48 ~~monument.~~ In addition to treble the cost of repair or replacement and possible exemplary
49 damages, the person, firm, corporation, officer, agency, or other entity shall also be liable
50 for the attorney's fees and court costs expended by the ~~public entity owner of the~~
51 ~~monument or person, group, or legal entity~~ claimant under this Code section in any action
52 or proceeding required to establish liability and collect amounts owed. Should a ~~public~~
53 ~~entity owner of the monument or person, group, or other legal entity~~ prevail in any action
54 claimant under this Code section prevail in any action, such prevailing party claimant
55 shall use the moneys collected from the party mutilating, defacing, defiling, damaging,
56 destroying, losing, abusing, or relocating such monument to timely pay for the cost of ~~or~~
57 ~~repair or placement~~ restoration of the monument to its former condition prior to being
58 mutilated, defaced, defiled, damaged, destroyed, lost, abused, or relocated ~~upon moneys~~
59 ~~being collected from the party damaging, destroying, or losing such monument.~~

60 (5) ~~A public entity owning a monument or any~~ Any interested person, group, or legal
61 entity, without regard to ownership of the monument or a specialized and personalized
62 injury, shall have standing and a right to bring a cause of action for any conduct
63 prohibited by this Code section ~~for damages as permitted by this Code section.~~ Such
64 claimant may bring an action individually or in a representative capacity against the
65 person, firm, corporation, officer, agency, or other entity that violates this Code section
66 to seek injunctive relief and to recover attorney's fees, expenses of litigation, and general
67 and exemplary damages sustained as a result of such unlawful actions. Such action shall
68 be brought in the superior court of the county in which the monument was located.

69 (6) Except as provided in this paragraph, it shall be unlawful for any person, firm,
70 corporation, officer, agency, or other entity acting without authority to mutilate, deface,
71 defile, abuse contemptuously, relocate, remove, conceal, damage, destroy, alter, or
72 obscure any privately owned monument located on privately owned property. Any
73 person or entity that suffers injury or damages as a result of a violation of this paragraph
74 may bring an action individually or in a representative capacity against the person or
75 persons, firm, corporation, officer, agency, or other entity committing such violations to
76 seek to recover general and exemplary damages sustained as a result of such person's or
77 persons' unlawful actions of any such defendant. Any person, firm, corporation, officer,
78 agency, or other entity that damages, destroys, or loses a monument or that takes or
79 removes a privately owned monument shall be liable for treble the amount of the full cost
80 of repair or replacement of such monument and may be subject to exemplary damages.
81 In addition to treble the cost of repair or replacement and possible exemplary damages,
82 such person, firm, corporation, officer, agency, or other entity shall also be liable for the
83 attorney's fees and court costs expended by the claimant under this Code section in any
84 action or proceeding required to establish liability and collect amounts owed. This
85 paragraph shall not apply to an a private owner of real property storing regarding such
86 owner's privately owned monuments.

87 (7) Nothing in this Code section shall prevent an agency from relocating a monument
88 when relocation is necessary for the construction, expansion, or alteration of edifices,
89 buildings, roads, streets, highways, or other transportation construction projects. Any
90 monument relocated for such purposes shall be relocated to a site of similar prominence,
91 honor, visibility, and access within the same county or municipality in which the
92 monument was originally located. A monument shall not be relocated to a museum,
93 cemetery, or mausoleum unless it was originally placed at such location.

94 (8) In all cases when there has been an alleged violation of this Code section, the
95 Attorney General or the district attorney of the circuit in which the monument was

96 located may represent the interests of the monument owner, the interests of others with
97 interest in the monument, and the interests of this state as parens patriae in all legal
98 matters pertaining to the enforcement of this Code section. The Attorney General or the
99 district attorney may bring actions, and, insofar as an action of this nature may be deemed
100 an action against the state and its agencies, the state expressly gives its consent thereto.

101 (9) Conduct prohibited by this Code section shall be enjoined by the appropriate superior
102 court upon proper application.

103 (10) No claimant shall be required to show a particularized or personal concrete injury
104 to make a claim for damages.

105 (11) In the event that an agency desires to remove a monument from public display or
106 relocate such monument, the agency shall give 90 days' public notice in the legal organ
107 of the county in which such monument is located of such intent and, if the agency desires
108 to remove the monument from public display, shall solicit in such public notice any third
109 party that would be interested in receiving such monument for public display. No action
110 with regard to removing or relocating such monument shall be taken by the agency until
111 the expiration of the 90 day period, provided that such period shall be tolled during the
112 pendency of any litigation requesting an injunction to prevent such agency from
113 removing such monument from public display or relocating such monument or requesting
114 other sanctions under this Code section until a decision on the merits of such litigation
115 is final. At the conclusion of the 90 day period, the agency shall either safely store and
116 maintain such monument or, if a third party so requests, transfer the monument to such
117 third party, provided that such third party agrees to publicly display the monument at
118 either a location owned by such third party or a location owned by a public agency that
119 such third party has permission to use for such display. In the event that multiple third
120 parties are interested in receiving such monument for public display, preference shall be
121 given to the third party that is willing to publicly display such monument in a location

122 within the jurisdiction where the monument is located. The agency shall be responsible
123 for all costs of moving and placing the monument in a new location.

124 (c) Any other provision of law notwithstanding, the memorial to the heroes of the
125 Confederate States of America graven upon the face of Stone Mountain shall never be
126 altered, removed, concealed, or obscured in any fashion and shall be preserved and
127 protected for all time as a tribute to the bravery and heroism of the citizens of this state who
128 suffered and died in their cause.

129 (d) Nothing in this Code section shall be construed so as to interfere with the rights of any
130 private monument owner. For the purposes of protection pursuant to this Code section, any
131 monument found to be privately owned shall be treated as publicly owned. No transfer of
132 title of such a monument is conveyed by this Code section.

133 (e) Upon the effective date of a specific appropriation of funds for purposes of this
134 subsection as expressed in a line item making specific reference to the full funding of this
135 subsection in an appropriations Act enacted by the General Assembly, the Department of
136 Community Affairs shall establish a registry of all monuments in this state located on
137 public property. Such registry shall contain, at a minimum, a description of each
138 monument, the location of such monument, and a statement as to whether the monument
139 itself is privately or publicly owned and the name of the owner. This shall include
140 monuments that are in storage as well as monuments on public display. Not later than
141 December 31 of the year in which this subsection becomes effective, each agency shall
142 send to the Department of Community Affairs a comprehensive list of all monuments
143 within the jurisdiction of such agency containing the information set forth in this Code
144 section. Thereafter, any time a monument is relocated to a place that is different from the
145 location on the monument registry maintained by the Department of Community Affairs
146 the agency within whose jurisdiction such monument is located shall immediately notify
147 the Department of Community Affairs of the new location of the monument."

148

SECTION 2.

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