

House Bill 238

By: Representatives Hutchinson of the 107th, Mitchell of the 88th, Scott of the 76th, Schofield of the 60th, Kennard of the 102nd, 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 related matters; to provide for an effective date; to repeal conflicting laws; and for other
5 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 subsection (b) of Code Section 50-3-1, relating
10 to description of state flag, militia to carry flag, defacing public monuments, and relocation
11 of monuments, 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, or other entity to mutilate,~~
29 ~~deface, defile, or abuse contemptuously any publicly owned monument, plaque, marker,~~
30 ~~or memorial which is dedicated to, honors, or recounts the military service of any past or~~
31 ~~present military personnel of this state, the United States of America or the several states~~
32 ~~thereof, or the Confederate States of America or the several states thereof; and no officer,~~
33 ~~body, or representative of state or local government or any department, agency, authority,~~
34 ~~or instrumentality thereof located, erected, constructed, created, or maintained on real~~
35 ~~property owned by an agency or the State of Georgia. No officer or agency shall remove~~
36 ~~or conceal from display any such monument, plaque, marker, or memorial for the purpose~~
37 ~~of preventing the visible display of the same. A violation of this paragraph shall~~
38 ~~constitute a misdemeanor.~~

39 ~~(3)~~(2) No publicly owned monument or memorial erected, constructed, created, or
40 ~~maintained on the public property of this state or its agencies, departments, authorities,~~
41 ~~or instrumentalities or on real property owned by an agency or the State of Georgia in~~
42 ~~honor of the military service of any past or present military personnel of this state, the~~

43 United States of America or the several states thereof, or the Confederate States of
44 America or the several states thereof shall be relocated, removed, concealed, obscured,
45 or altered in any fashion ~~by any officer or agency~~; provided, however, that appropriate
46 measures for the preservation, protection, and interpretation of such ~~monument~~
47 monuments or ~~memorial~~ memorials shall not be prohibited.

48 ~~(4)(3) Any person or entity that damages, destroys, or loses a monument or that takes or~~
49 ~~removes a monument without replacing it shall be liable for treble the amount of the full~~
50 ~~cost of repair or replacement of such monument and may be subject to exemplary~~
51 ~~damages unless such person or entity was authorized to take such action by the public~~
52 ~~entity owning such monument. In addition to treble the cost of repair or replacement and~~
53 ~~possible exemplary damages, the person or entity shall also be liable for the attorney's~~
54 ~~fees and court costs expended by the public entity owner of the monument or person,~~
55 ~~group, or legal entity in any action or proceeding required to establish liability and collect~~
56 ~~amounts owed. Should a public entity owner of the monument or person, group, or other~~
57 ~~legal entity prevail in any action under this Code section, such prevailing party shall~~
58 ~~timely pay for the cost of or repair or placement of the monument upon moneys being~~
59 ~~collected from the party damaging, destroying, or losing such monument~~ Conduct
60 prohibited by paragraphs (1) and (2) of this subsection shall be enjoined by the
61 appropriate superior court upon proper application therefor.

62 ~~(5) A public entity owning a monument or any person, group, or legal entity shall have~~
63 ~~a right to bring a cause of action for any conduct prohibited by this Code section for~~
64 ~~damages as permitted by this Code section. Such action shall be brought in the superior~~
65 ~~court of the county in which the monument was located.~~

66 ~~(6)(4) Except as provided in this paragraph, it~~ It shall be unlawful for any person, firm,
67 corporation, or other entity acting without authority to mutilate, deface, defile, abuse
68 contemptuously, relocate, remove, conceal, or obscure any privately owned monument,
69 plaque, marker, or memorial which is dedicated to, honors, or recounts the military

70 service of any past or present military personnel of this state, the United States of
71 America or the several states thereof, or the Confederate States of America or the several
72 states thereof located on privately owned property. Any person or entity that who suffers
73 injury or damages as a result of a violation of this paragraph may bring an action
74 individually or in a representative capacity against the person or persons committing such
75 violations to seek injunctive relief and to recover general and exemplary damages
76 sustained as a result of such person's or persons' unlawful actions. ~~This paragraph shall~~
77 ~~not apply to an owner of real property storing privately owned monuments.~~
78 ~~(7) Nothing in this Code section shall prevent an agency from relocating a monument~~
79 ~~when relocation is necessary for the construction, expansion, or alteration of edifices,~~
80 ~~buildings, roads, streets, highways, or other transportation construction projects. Any~~
81 ~~monument relocated for such purposes shall be relocated to a site of similar prominence,~~
82 ~~honor, visibility, and access within the same county or municipality in which the~~
83 ~~monument was originally located. A monument shall not be relocated to a museum,~~
84 ~~cemetery, or mausoleum unless it was originally placed at such location."~~

85 **SECTION 2.**

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

88 **SECTION 3.**

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