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GAME AND FISH Hunting, Trapping, and Fishing: Make Certain Legislative Findings; Provide that the Department of Natural Resources Has the Authority and Duty to Encourage Hunting and Fishing; Provide that Hunting and Fishing is a Right; Provide that No Political Subdivision of the State Shall Regulate Hunting, Trapping, or Fishing by Local Ordinance; Provide Exceptions

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GAME AND FISH

Hunting, Trapping, and Fishing: Make Certain Legislative Findings; Provide that the Department of Natural Resources Has the Authority and Duty to Encourage Hunting and Fishing; Provide that Hunting and Fishing is a Right; Provide that No Political Subdivision of the State Shall Regulate Hunting, Trapping, or Fishing by Local Ordinance; Provide Exceptions

CODE SECTION:	O.C.G.A. § 27-1-3 (amended)
BILL NUMBER:	HB 301
ACT NUMBER:	172
GEORGIA LAWS:	2001 Ga. Laws 302
SUMMARY:	The Act makes hunting, trapping, and fishing a right. The Act also holds wildlife in trust by the State for the benefit of Georgia citizens. The Act further prohibits private ownership of wildlife without specific legislative exception. The Act also vests the Georgia Department of Natural Resources with the responsibility and authority to work with sportsmen and conservation groups for the purpose of encouraging participation in hunting and fishing to ensure that the opportunity to hunt and fish exists in perpetuity. The Act specifically provides that its provisions shall not infringe on private property owners' rights. The Act prohibits political subdivisions of the state from regulating hunting, trapping, or fishing by local ordinance, but does not prevent political subdivisions from controlling hunting, trapping, or fishing on lands owned or leased by the political subdivision or from reasonably regulating the discharge of firearms within the political subdivision's boundaries for the purposes of promoting public safety.
EFFECTIVE DATE:	July 1, 2001

History

Two factors led to HB 301's introduction.¹ The first was the existence of similar legislation in other states.² The second was input from constituents indicating that those constituents wanted to preserve their ability to hunt, trap and fish.³

*HB 301**Introduction*

On January 29, 2001, Representative Greg Morris of the 155th District introduced HB 301 on the House floor.⁴ The next day, the Speaker of the House referred HB 301 to the House Committee on Game, Fish and Parks.⁵ On February 7, 2001, the House Committee on Game, Fish and Parks favorably reported HB 301 as introduced.⁶ The House passed HB 301 without changes on February 21, 2001.⁷ The President of the Senate assigned HB 301 to the Senate Natural Resources Committee.⁸ That Committee substituted HB 301 and favorably reported the bill as substituted.⁹ On March 13, 2001, the Senate adopted the Committee substitute and passed HB 301.¹⁰ On March 15, 2001, the House agreed to HB 301 as substituted.¹¹ Governor Roy Barnes signed HB 301 into law on April 18, 2001.¹²

1. See Telephone Interview with Rep. Greg Morris, House District No. 155 (May 24, 2001) [hereinafter Morris Interview].

2. See *id.*

3. See *id.*; Telephone Interview with Lindsay Thomas, Editor, GA. OUTDOOR NEWS (May 29, 2001) [hereinafter Thomas Interview].

4. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

5. See *id.*

6. See *id.*; *Right to Hunt and Fish Passes House*, GA. OUTDOOR NEWS, Mar. 2001, at 78, 79 [hereinafter *Right to Hunt*].

7. See State of Georgia House of Representatives Voting Record, HB 301 (Feb. 21, 2001); State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001; *Right to Hunt*, *supra* note 6, at 78.

8. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

9. See *id.*

10. See Georgia Senate Voting Record, HB 301 (Mar. 13, 2001); State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

11. See Georgia Senate Voting Record, HB 301 (Mar. 13, 2001); State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

12. See 2001 Ga. Laws 302, § 2, at 304; see also *Barnes Signs Right to Hunt and Fish*, GA. OUTDOOR NEWS, May 2001, at 28.

House of Representatives

Representatives Greg Morris of the 155th District, Bob Lane of the 146th District, Bob Hanner of the 159th District, Terry Coleman of the 142nd District, Thomas Buck of the 135th District and Thomas Murphy of the 18th District sponsored HB 301.¹³ On January 29, 2001, Representative Morris introduced HB 301 on the House floor.¹⁴ The following day, the House Clerk read HB 301 and the Speaker of the House subsequently referred the bill to the House Committee on Game, Fish and Parks.¹⁵ On February 7, 2001, the House Committee on Game, Fish and Parks favorably reported HB 301 as introduced.¹⁶

On February 21, 2001, HB 301 was discussed on the floor of the House.¹⁷ Representative Greg Morris rose to speak for the bill.¹⁸ He referred to HB 301 as the "Wildlife Heritage and Protection Act" and stated that HB 301 recognized hunting's heritage in Georgia and the economic benefits hunting and fishing provide for Georgia.¹⁹ Representative Morris also stated that HB 301 makes hunting and fishing a right instead of a privilege.²⁰ The Speaker of the House then put HB 301 to a vote and the House passed the bill by a vote of 144 to 10.²¹

Senate

On February 22, 2001, the Secretary of the Senate read HB 301.²² The President then referred HB 301 to the Senate Natural Resources Committee.²³

13. See HB 301, as introduced, 2001 Ga. Gen. Assem.

14. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

15. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

16. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

17. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001; Audio Recording of House Proceedings, Feb. 21, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio I].

18. See House Audio I, *supra* note 17 (remarks by Rep. Greg Morris).

19. See *id.*

20. See *id.*

21. See Georgia House of Representatives Voting Record, HB 301 (Feb. 21, 2001); State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001; House Audio I, *supra* note 17 (vote); see also Scott Bernarde, *Outdoors Notebook: Season Begins With Turkeys Plentiful, Older*, ATLANTA J. CONST., Mar. 18, 2001, at 19E; Rhonda Cook et al., *Georgia Legislature 2001*, ATLANTA J. CONST., Feb. 23, 2001, at 4C; *Legislature Approves House Bill 301*, GA. OUTDOOR NEWS, Apr. 2001, at 42. A total of twenty-six representatives did not vote. See Georgia House of Representatives Voting Record, HB 301 (Feb. 21, 2001). Two of those representatives were excused for the day. See *id.*

22. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

23. See *id.*

Senate Natural Resources Committee

The Senate Natural Resources Committee substituted HB 301.²⁴ The Committee substitute inserted language which provided for two exceptions to the general rule that political subdivisions could not control hunting, trapping, or fishing by local ordinance.²⁵ The first exception provided that the bill would not prevent political subdivisions of the state from controlling hunting, trapping, or fishing on lands that those political subdivisions own or lease.²⁶ The second exception provided that the bill would not prohibit political subdivisions of the state from enacting ordinances which reasonably limit or prohibit the discharge of firearms within the bounds of the political subdivision for the purposes of promoting public safety.²⁷ The Senate Natural Resources Committee favorably reported the bill as substituted on March 6, 2001.²⁸

Senate Passage of HB 301

On March 13, 2001, HB 301 was discussed on the Senate floor.²⁹ Senator Hugh Gillis of the 20th District rose and spoke for HB 301.³⁰ Senator Gillis described substituted HB 301 as giving the State of Georgia, rather than political subdivisions thereof, the right and the duty to make and enforce rules and regulations regarding hunting and fishing.³¹ Senator Seth Harp of the 16th District then took the well and queried as to whether HB 301 would preempt incorporated county governments' ability to regulate the discharge of firearms within the city limits.³² Senator Gillis replied that it would not.³³ The President then put the Committee substitute to a vote.³⁴ The Senate voted 45 to 0 to adopt the

24. Compare HB 301, as introduced, 2001 Ga. Gen. Assem., with HB 301 (SCS) 2001 Ga. Gen. Assem. The Association of County Commissioners of Georgia and the Georgia Municipal Association requested minor changes in the bill's wording. See *Legislature Approves HB 301*, at <http://www.gon.com/legisap01.htm> (last visited May 27, 2001).

25. Compare HB 301, as introduced, 2001 Ga. Gen. Assem., with HB 301 (SCS) 2001 Ga. Gen. Assem.

26. Compare HB 301, as introduced, 2001 Ga. Gen. Assem., with HB 301 (SCS) 2001 Ga. Gen. Assem.

27. Compare HB 301, as introduced, 2001 Ga. Gen. Assem., with HB 301 (SCS) 2001 Ga. Gen. Assem.

28. See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001.

29. See *id.*; Audio Recording of Senate Proceedings, Mar. 13, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio].

30. See Senate Audio, *supra* note 29 (remarks by Sen. Hugh Gillis). Senator Gillis is the chairman of the Senate Natural Resources Committee. See Biographical Sketch of Senator Hugh Gillis, at http://www.legis.state.ga.us/l.egis/2001_02/senate/gass20.htm (last visited May 27, 2001).

31. See Senate Audio, *supra* note 29 (remarks by Sen. Hugh Gillis).

32. See *id.* (remarks by Sen. Seth Harp).

33. See *id.* (remarks by Sen. Hugh Gillis).

34. See *id.*

Committee substitute.³⁵ The president then put the bill as substituted to a vote.³⁶ The Senate passed HB 301 as substituted by a vote of 45 to 6.³⁷

Return to the House

House Bill 301 returned to the House on March 15, 2001.³⁸ Representative Morris urged the adoption of HB 301 as substituted.³⁹ He stated that the Committee substitute added some “clarifying language” in two areas.⁴⁰ The first area was that of property rights.⁴¹ Representative Morris stated that the Committee substitute clarified the point that HB 301 would not diminish the property rights of private property owners.⁴² The second area was that of health and safety regulations regarding firearms.⁴³ Representative Morris stated that nothing in HB 301 would prevent municipalities from enacting ordinances regulating the discharge of firearms within the municipality’s boundaries for safety purposes.⁴⁴ The House subsequently voted 158 to 2 to agree to the Senate’s version.⁴⁵

The Act

The Act amends Code section 27-1-3 by striking the former Code section in its entirety and substituting the Act’s text.⁴⁶ Section 1 of the Act adds nine subsections.⁴⁷

35. *See id.*

36. *See id.*

37. *See Georgia Senate Voting Record, HB 301 (Mar. 13, 2001); State of Georgia Final Composite Status Sheet, Mar. 21, 2001; Senate Audio, supra note 29 (vote). Six senators were excused from voting. See Georgia Senate Voting Record, HB 301 (Mar. 13, 2001).*

38. *See State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001; Audio Recording of House Proceedings, Mar. 15, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio II].*

39. *See House Audio II (remarks by Rep. Greg Morris), supra note 38.*

40. *See id.*

41. *See id.*

42. *See id.* Representative Morris also stated that local governments would be treated like private property owners. *See id.*

43. *See id.*

44. *See id.*

45. *See Georgia House of Representatives Voting Record, HB 301 (Mar. 15, 2001); State of Georgia Final Composite Status Sheet, HB 301, Mar. 21, 2001; House Audio II, supra note 38 (vote on Senate substitute). A total of twenty representatives did not vote on the adoption of the Senate’s substitute to HB 301. See Georgia House of Representatives Voting Record, HB 301 (Mar. 15, 2001). Three of those non-voting representatives had been excused for the day. See id.*

46. *Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3 (1997)), with O.C.G.A. § 27-1-3(a) (2001).*

47. *See 2001 Ga. Laws 302, § 1, at 302-04.*

Section 27-1-3(a)

Section 27-1-3(a) declares that citizens of the State of Georgia have a fundamental right to hunt, trap, and fish.⁴⁸ It also makes certain legislative findings to the effect that hunting, trapping, and fishing are “a valued part of the cultural heritage of the State of Georgia” and that hunting, trapping, and fishing play an essential role in Georgia’s economy and in the “biological management of certain natural communities within [the] state.”⁴⁹

Section 27-1-3(b)

Section 27-1-3(b) provides that the State of Georgia holds wildlife in trust for the benefit of its citizens.⁵⁰ Thus, Georgia has ownership of, jurisdiction and control over all wildlife within the State’s borders.⁵¹ As such, the Georgia Department of Natural Resources has regulatory and managerial control over all wildlife within Georgia.⁵²

Section 27-1-3(c)

Section 27-1-3(c) provides that the Georgia Department of Natural Resources has both the “authority and the responsibility” to work with sportsmen, conservation groups, and others “to encourage participation in hunting and fishing at a level to ensure continuation of such activities in perpetuity and no net loss of hunting and fishing opportunity on state owned lands.”⁵³ The section further authorizes the Georgia Department of Natural Resources to “promote and encourage hunting, fishing, and other wildlife associated recreation on state managed wildlife areas, public fishing areas, federally owned or managed forests, and other suitable public and private lands” within Georgia.⁵⁴

48. Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3 (1997)), with O.C.G.A. § 27-1-3(a) (2001).

49. O.C.G.A. § 27-1-3(a) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3 (1997)), with O.C.G.A. § 27-1-3(a) (2001).

50. See O.C.G.A. § 27-1-3(b) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(a) (1997)), with O.C.G.A. § 27-1-3(b) (2001).

51. See O.C.G.A. § 27-1-3(b) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(a) (1997)), with O.C.G.A. § 27-1-3(b) (2001).

52. See O.C.G.A. § 27-1-3(b) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(a) (1997)), with O.C.G.A. § 27-1-3(b) (2001).

53. O.C.G.A. § 27-1-3(c) (2001). Compare 1992 Ga. Laws 2391, § 1, at 2391-92 (formerly found at O.C.G.A. § 27-1-3 (1995)), with O.C.G.A. § 27-1-3(c) (2001).

54. O.C.G.A. § 27-1-3(c) (2001). Compare 1992 Ga. Laws 2391, § 1, at 2391-92 (formerly found at O.C.G.A. § 27-1-3 (1995)), with O.C.G.A. § 27-1-3(c) (2001).

Section 27-1-3(d)

Section 27-1-3(d) declares that possessing and transporting wildlife are fundamental rights “to be exercised only in accordance with the laws governing such right[s].”⁵⁵ It provides that every person exercising his right to possess or transport wildlife does so subject to Georgia’s authority to regulate hunting, trapping, and fishing “for the public good and general welfare.”⁵⁶ Section 27-1-3(d) makes it unlawful for a person exercising his or her right to hunt, trap, fish, or possess or transport wildlife, to refuse any duly authorized person the right to inspect any wildlife in the person’s possession for the purpose of assessing compliance with relevant laws.⁵⁷ Section 27-1-3(d) further provides that any person exercising a right granted under Code section 27-1-3 risks seizure of any wildlife in his possession taken or held in violation of a law or regulation relating to wildlife.⁵⁸ Finally, section 27-1-3(d) provides that nothing within the section “shall be construed to reduce, infringe upon, or diminish the rights of private property owners as otherwise provided by general law.”⁵⁹

Section 27-1-3(e), (f), and (g)

Subsection (e) provides that no person may hunt, trap, or fish except during open season for the particular type of wildlife for which the person is hunting, trapping, or fishing.⁶⁰ Subsection (f) makes it unlawful to hunt, trap, or fish when out of compliance with the bag, creel, size, and possession limits set elsewhere unless otherwise specifically excepted by law.⁶¹ Subsection (g) makes it illegal for a person to hunt, trap, or fish for any species of game when that person has reached the daily or seasonal bag or creel limit for the particular species.⁶²

55. O.C.G.A. § 27-1-3(d) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(b) (1997)), with O.C.G.A. § 27-1-3(d) (2001).

56. O.C.G.A. § 27-1-3(d) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(b) (1997)), with O.C.G.A. § 27-1-3(d) (2001).

57. See O.C.G.A. § 27-1-3(d) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(b) (1997)), with O.C.G.A. § 27-1-3(d) (2001).

58. See O.C.G.A. § 27-1-3(d) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(b) (1997)), with O.C.G.A. § 27-1-3(d) (2001).

59. O.C.G.A. § 27-1-3(d) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(b) (1997)), with O.C.G.A. § 27-1-3(d) (2001).

60. See O.C.G.A. § 27-1-3(e) (2001). Compare 1978 Ga. Laws 816, § 14, at 824 (formerly found at O.C.G.A. § 27-1-3(e) (1997)), with O.C.G.A. § 27-1-3(e) (2001).

61. See O.C.G.A. § 27-1-3(f) (2001). Compare 1978 Ga. Laws 816, § 13, at 824 (formerly found at O.C.G.A. § 27-1-3(d) (1997)), with O.C.G.A. § 27-1-3(f) (2001).

62. See O.C.G.A. § 27-1-3(g) (2001). Compare 1977 Ga. Laws 396, § 1, at 416-17 (formerly found at

Section 27-1-3(h)

Section 27-1-3(h) outlines that unless otherwise provided, the Board of Natural Resources holds all power to regulate hunting, trapping, and fishing in Georgia.⁶³ It further provides that no political subdivision of the state may regulate hunting, trapping, or fishing by local ordinance subject to two exceptions.⁶⁴ The first exception is that local governments may exercise management rights over property they own or lease.⁶⁵ The second exception is that the Act shall not prohibit political subdivisions of the state from limiting or restricting the discharge of firearms within the political subdivision's boundaries for the purposes of protecting public safety.⁶⁶

Section 27-1-3(i)

Section 27-1-3(i) makes taking wildlife in violation of Title 27 a crime of theft by taking.⁶⁷ It also makes hunting, trapping, or fishing in violation of Title 27 a criminal attempt.⁶⁸ It further provides that any violation of Code section 27-1-3 is a misdemeanor.⁶⁹

Section 27-1-3(j)

Section 27-1-3(j) provides that if a person is convicted of violating Title 27 with a willful or reckless disregard for wildlife, the court has the discretion to suspend the violator's right to hunt, trap, or fish as well as the violator's right to possess or transport wildlife within Georgia for a period of up to five years.⁷⁰ Additionally, if a person's right to hunt, trap, fish, possess, or transport wildlife has been suspended, and then that

O.C.G.A. § 27-1-3(e) (1997)), with O.C.G.A. § 27-1-3(g) (2001).

63. See O.C.G.A. § 27-1-3(h) (2001). Compare 1997 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(e) (1997)), with O.C.G.A. § 27-1-3(h) (2001).

64. See O.C.G.A. § 27-1-3(h) (2001). Compare 1997 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(e) (1997)), with O.C.G.A. § 27-1-3(h) (2001).

65. See O.C.G.A. § 27-1-3(h) (2001). Compare 1997 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(e) (1997)), with O.C.G.A. § 27-1-3(h) (2001).

66. See O.C.G.A. § 27-1-3(h) (2001). Compare 1997 Ga. Laws 396, § 1, at 416-17 (formerly found at O.C.G.A. § 27-1-3(e) (1997)), with O.C.G.A. § 27-1-3(h) (2001).

67. See O.C.G.A. § 27-1-3(i) (2001). Compare 1978 Ga. Laws 816, § 14, at 14 (formerly found at O.C.G.A. § 27-1-3(f) (1997)), with O.C.G.A. § 27-1-3(i) (2001).

68. See O.C.G.A. § 27-1-3(i) (2001). Compare 1978 Ga. Laws 816, § 14, at 14 (formerly found at O.C.G.A. § 27-1-3(f) (1997)), with O.C.G.A. § 27-1-3(i) (2001).

69. See O.C.G.A. § 27-1-3(i) (2001). Compare 1978 Ga. Laws 816, § 14, at 14 (formerly found at O.C.G.A. § 27-1-3(f) (1997)), with O.C.G.A. § 27-1-3(i) (2001).

70. See O.C.G.A. § 27-1-3(j) (2001). Compare 1992 Ga. Laws 2391, § 1, at 2391-92 (formerly found at O.C.G.A. § 27-1-3(g) (1997)), with O.C.G.A. § 27-1-3(j) (2001).

person engages in those activities, that person is guilty of an aggravated misdemeanor and will be subject to punishment in the form of a fine between \$1500 and \$5000, up to twelve months' imprisonment, or both.⁷¹

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71. See O.C.G.A. § 27-1-3(j) (2001). Compare 1992 Ga. Laws 2391, § 1, at 2391-92 (formerly found at O.C.G.A. § 27-1-3(g) (1997)), with O.C.G.A. § 27-1-3(j) (2001).