

House Bill 1128

By: Representatives Bordeaux of the 151st, Davis of the 60th, Hammontree of the 4th, Benfield of the 67th, Massey of the 86th and Orrock of the 56th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 33-7-11 of the Official Code of Georgia Annotated, relating to
2 uninsured motorist coverage under motor vehicle liability policies, Code Section 33-24-51
3 of the Official Code of Georgia Annotated, relating to purchase of motor vehicle liability
4 insurance by municipal corporations, Code Section 36-33-1 of the Official Code of Georgia
5 Annotated, relating to local government, and Code Section 40-6-6 of the Official Code of
6 Georgia Annotated, relating to authorized emergency vehicles, so as to provide for waiver
7 of the immunity of local government entities for injury or damage arising out of the negligent
8 use of motor vehicles; to provide for definitions; to provide for a maximum waiver amount;
9 to provide for exceptions; to amend related provisions of the Official Code of Georgia
10 Annotated so as to assure consistency; to provide for applicability; to repeal conflicting laws;
11 and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 Code Section 33-7-11 of the Official Code of Georgia Annotated, relating to uninsured
15 motorist coverage under motor vehicle liability policies, is amended by adding a new
16 paragraph (5) in subsection (a) to read as follows:

17 "(5) A motor vehicle, as defined in Code Section 36-92-1, owned, leased, or rented by
18 a local government entity, as defined in Code Section 36-92-1, or by any duly authorized
19 officer, agent, servant, attorney, or employee of a local government entity in the
20 performance of his or her official duties shall be deemed to be an uninsured motor vehicle
21 up to the limits of uninsured motorist protection available to a claimant by any policy of
22 insurance for purposes of this Code section. The waiver of immunity of a local
23 government entity of this state pursuant to Code Section 33-24-51, Chapter 92 of Title
24 36, or Code Section 40-6-6 shall not affect the local governmental entity's 'legal liability'
25 as the term is used in this Code section, and shall not be asserted or pleaded by the
26 insurance carrier to deny or bar any claim of an insured so as to defeat payment for

1 damages suffered by an insured. The available limits of uninsured motorist protection
 2 afforded to a claimant by any policy of insurance shall operate to reduce the amount due
 3 a claimant resulting from any waiver of immunity of a local government entity pursuant
 4 to Code Section 33-24-51, Chapter 92 of Title 36, or Code Section 40-6-6, and shall be
 5 payable first toward any settlement or judgment. Notwithstanding the foregoing, a local
 6 government entity may in its discretion settle a claim or satisfy a judgment when an
 7 insurance carrier whose policy provides uninsured motorist benefits chooses to defend
 8 a claim at trial or on appeal of a judgment; but once a final appealed judgment is entered
 9 in favor of the claimant, the insurance carrier shall pay any available limits. An
 10 uninsured motorist carrier making payment of a claim or judgment in favor of an insured
 11 pursuant to this subparagraph shall be barred from pursuing any claim for subrogation
 12 against the local government entity. Should the insurance company or companies choose
 13 to defend any action brought against a local government entity, it shall defend in its own
 14 name or in the name of any other alleged uninsured or underinsured motorist and not in
 15 the name of the local government entity."

16 SECTION 2.

17 Code Section 33-24-51 of the Official Code of Georgia Annotated, relating to purchase of
 18 motor vehicle liability insurance by municipal corporations, is amended by striking
 19 subsections (b) through (d) of said Code section and inserting in lieu thereof the following:

20 "(b) The sovereign immunity of local government entities for loss arising out of claims for
 21 the negligent use of a covered motor vehicle is waived as provided in Code Section
 22 36-92-2. Whenever a municipal corporation, a county, or any other political subdivision
 23 of this state shall purchase the insurance authorized by subsection (a) of this Code section
 24 to provide liability coverage for the negligence of any duly authorized officer, agent,
 25 servant, attorney, or employee in the performance of his or her official duties in an amount
 26 greater than the amount of immunity waived as in Code Section 36-92-2, its governmental
 27 immunity shall be waived to the extent of the amount of insurance so purchased. Neither
 28 the municipal corporation, county, or political subdivision of this state nor the insuring
 29 company shall plead governmental immunity as a defense; and the municipal corporation,
 30 county, or political subdivision of this state or the insuring company may make only those
 31 defenses which could be made if the insured were a private person.

32 (c) The municipal corporation, county, or any other political subdivision of this state shall
 33 be liable for ~~negligence as provided in this Code section only for damages suffered while~~
 34 ~~the insurance is in force but in no case in an amount exceeding~~ damages in excess of the
 35 amount of immunity waived as provided in Code Section 36-92-2 which are sustained only

1 while the insurance is in force and only to the extent of the limits or the coverage of the
 2 insurance policy.

3 (d) If ~~a~~ the verdict rendered by the jury exceeds the limits of the applicable insurance, the
 4 court shall reduce the amount of said judgment or award to a sum equal to the applicable
 5 limits stated in the insurance policy but not less than the amount of immunity waived as
 6 provided in Code Section 36-92-2."

7 SECTION 3.

8 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 9 by striking subsection (a) of Code Section 36-33-1, relating to immunity of municipal
 10 corporations, in its entirety and inserting in lieu thereof the following:

11 "(a) Pursuant to Article IX, Section II, Paragraph IX of the Constitution of the State of
 12 Georgia, the General Assembly, except as provided in this Code section and in Chapter 92
 13 of this title, declares it is the public policy of the State of Georgia that there is no waiver
 14 of the sovereign immunity of municipal corporations of the state and such municipal
 15 corporations shall be immune from liability for damages. A municipal corporation shall not
 16 waive its immunity by the purchase of liability insurance, except as provided in Code
 17 ~~Section~~ Sections 33-24-51 or 36-92-2, or unless the policy of insurance issued covers an
 18 occurrence for which the defense of sovereign immunity is available, and then only to the
 19 extent of the limits of such insurance policy. This subsection shall not be construed to
 20 affect any litigation pending on July 1, 1986."

21 SECTION 4.

22 Said title is further amended by adding at the end thereof a new Chapter 92 to read as
 23 follows:

24 "CHAPTER 92

25 36-92-1.

26 As used in this chapter, the term:

27 (1) 'Claim' means any demand against a local government entity for money for a loss
 28 caused by negligence of a local government entity officer or employee using a covered
 29 motor vehicle while carrying out his or her official duties or employment.

30 (2) 'Covered' motor vehicle means:

31 (A) Any motor vehicle owned by the local government entity; and

32 (B) Any motor vehicle leased or rented by the local government entity.

33 (3) 'Local government entity' means any county, municipal corporation, or consolidated
 34 city-county government of this state. Such term shall not include a local school system.

1 (4) 'Loss' means personal injury, disease, death, damage to tangible property, including
 2 lost wages and economic loss to the person who suffered the injury, disease, or death;
 3 pain and suffering; mental anguish; loss of consortium; and any other element of actual
 4 damages recoverable in actions for negligence.

5 (5) 'Motor vehicle' means any automobile, bus, motorcycle, truck, trailer, or semitrailer,
 6 including its equipment, and any other equipment permanently attached thereto, designed
 7 or licensed for use on the public streets, roads, and highways of the state.

8 (6) 'Occurrence' means an accident involving a covered motor vehicle.

9 36-92-2.

10 (a) The sovereign immunity of local government entities for a loss arising out of claims
 11 for the negligent use of a covered motor vehicle is waived for a loss involving bodily injury
 12 or death to the extent of \$500,000.00 for one person in any one occurrence, \$1 million
 13 involving a loss with two or more persons in any one occurrence, and to the extent of
 14 \$250,000.00 for a loss involving injury to or destruction of property per occurrence. Such
 15 waiver shall be increased to the extent that:

16 (1) The governing body of the local governmental entity by resolution or ordinance
 17 voluntarily adopts a higher waiver;

18 (2) The local government entity becomes a member of an interlocal risk management
 19 agency created pursuant to Chapter 85 of this title to the extent that coverage obtained
 20 exceeds the amount of the waiver set forth in this Code section; or

21 (3) The local government entity purchases commercial liability insurance in an amount
 22 in excess of the waiver set forth in this Code section.

23 (b) The waiver of immunity by a local government entity as provided by subsection (a)
 24 of this Code section shall be subject to the provisions of Code Section 33-7-11 when a
 25 claimant has uninsured motorist protection available pursuant to any policy of insurance.

26 36-92-3.

27 (a) Any officer, agent, servant, attorney, or employee of a local government entity who
 28 commits a tort involving the use of a covered motor vehicle while in the performance of
 29 his or her official duties is not subject to lawsuit or liability therefor. Nothing in this
 30 chapter, however, shall be construed to give the officer, agent, servant, attorney, or
 31 employee immunity from suit and liability if it is proved that the officer's, agent's,
 32 servant's, attorney's, or employee's conduct was not within the performance of his or her
 33 official duties.

34 (b) A person bringing an action against a local government entity under the provisions of
 35 this chapter must name as a party defendant only the local government entity for which the

1 officer, agent, servant, attorney, or employee was acting and shall not name the officer,
 2 agent, servant, attorney, or employee individually. In the event that the officer, agent,
 3 servant, attorney, or employee is individually named for an act for which the local
 4 government entity is liable under this chapter, the local government entity for which the
 5 officer, agent, servant, attorney, or employee was acting must be substituted as the party
 6 defendant.

7 (c) A settlement or judgment in an action or settlement on a claim brought pursuant to this
 8 chapter constitutes a complete bar to any further action by the claimant against a local
 9 government entity officer, agent, servant, attorney, employee, or the local government
 10 entity by reason of the same occurrence.

11 (d) This chapter shall not waive the workers' compensation exclusive remedy when local
 12 government entity officers, agents, servants, attorneys, or employees are injured on the
 13 job.

14 36-92-4.

15 This chapter shall apply to all claims and causes of actions arising out of events occurring
 16 on or after January 1, 2004."

17 **SECTION 5.**

18 Code Section 40-6-6, relating to authorized emergency vehicles, is amended by striking
 19 subsection (d) of said Code section in its entirety and inserting in lieu thereof the following:

20 "(d)(1) The foregoing provisions shall not relieve the driver of an authorized emergency
 21 vehicle from the duty to drive with due regard for the safety of all persons.

22 (2) When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing
 23 suspect in another vehicle and the fleeing suspect damages any property or injures or kills
 24 any person during the pursuit, the law enforcement officer's pursuit shall not be the
 25 proximate cause or a contributing proximate cause of the damage, injury, or death caused
 26 by the fleeing suspect unless the law enforcement officer acted with reckless disregard
 27 for proper law enforcement procedures in the officer's decision to initiate or continue the
 28 pursuit. Where such reckless disregard exists, the pursuit may be found to constitute a
 29 proximate cause of the damage, injury, or death caused by the fleeing suspect, but the
 30 existence of such reckless disregard shall not in and of itself establish causation.

31 (3) The provisions of this subsection shall apply only to issues of causation and duty and
 32 shall not affect the existence or absence of immunity which shall be determined as
 33 otherwise provided by law.

1 (4) Claims arising out of this subsection which are brought against local government
2 entities, their officers, agents, servants, attorneys, and employees shall be governed by
3 Chapter 92 of Title 36."

4 **SECTION 6.**

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