

House Bill 1128 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Bordeaux of the 151<sup>st</sup>, Davis of the 60<sup>th</sup>, Hammontree of the 4<sup>th</sup>, Benfield of the 67<sup>th</sup>, Massey of the 86<sup>th</sup> and others

A BILL TO BE ENTITLED  
AN ACT

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

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**  
12 Code Section 33-24-51 of the Official Code of Georgia Annotated, relating to purchase of  
13 motor vehicle liability insurance by municipal corporations, is amended by striking  
14 subsections (b) through (d) of said Code section and inserting in lieu thereof the following:  
15 "(b) The sovereign immunity of local government entities for loss arising out of claims for  
16 the negligent use of a covered motor vehicle is waived as provided in Code Section  
17 36-92-2. Whenever a municipal corporation, a county, or any other political subdivision  
18 of this state shall purchase the insurance authorized by subsection (a) of this Code section  
19 to provide liability coverage for the negligence of any duly authorized officer, agent,  
20 servant, attorney, or employee in the performance of his or her official duties in an amount  
21 greater than the amount of immunity waived as in Code Section 36-92-2, its governmental  
22 immunity shall be waived to the extent of the amount of insurance so purchased. Neither  
23 the municipal corporation, county, or political subdivision of this state nor the insuring  
24 company shall plead governmental immunity as a defense; and the municipal corporation,

1 county, or political subdivision of this state or the insuring company may make only those  
2 defenses which could be made if the insured were a private person.

3 (c) The municipal corporation, county, or any other political subdivision of this state shall  
4 be liable for ~~negligence as provided in this Code section only for damages suffered while~~  
5 ~~the insurance is in force but in no case in an amount exceeding~~ damages in excess of the  
6 amount of immunity waived as provided in Code Section 36-92-2 which are sustained only  
7 while the insurance is in force and only to the extent of the limits or the coverage of the  
8 insurance policy.

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

### 13 SECTION 2.

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

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

### 27 SECTION 3.

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

#### 30 "CHAPTER 92

31 36-92-1.

32 As used in this chapter, the term:

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

4 (2) 'Covered' motor vehicle means:

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

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

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

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

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

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

17 36-92-2.

18 (a) Effective on January 1, 2005, and until December 31, 2005, the sovereign immunity of  
19 local government entities for a loss arising out of claims for the negligent use of a covered  
20 motor vehicle is waived for a loss involving bodily injury or death to the extent of  
21 \$50,000.00 for one person in any one occurrence, \$150,000.00 involving a loss with two  
22 or more persons in any one occurrence, and to the extent of \$50,000.00 for a loss involving  
23 injury to or destruction of property per occurrence. Effective on January 1, 2006, and until  
24 December 31, 2007, the sovereign immunity of local government entities for a loss arising  
25 out of claims for the negligent use of a covered motor vehicle is waived for a loss involving  
26 bodily injury or death to the extent of \$50,000.00 for one person in any one occurrence,  
27 \$400,000.00 involving a loss with two or more persons in any one occurrence, and to the  
28 extent of \$50,000.00 for a loss involving injury to or destruction of property per  
29 occurrence. Effective on and after January 1, 2008, the sovereign immunity of local  
30 government entities for a loss arising out of claims for the negligent use of a covered motor  
31 vehicle is waived for a loss involving bodily injury or death to the extent of \$500,000.00  
32 for one person in any one occurrence, \$500,000.00 per occurrence involving a loss with  
33 two or more persons in any one occurrence, and to the extent of \$250,000.00 for a loss  
34 involving injury to or destruction of property per occurrence. Such waiver shall be  
35 increased to the extent that:

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

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

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

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

11 36-92-3.

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

19 (b) A person bringing an action against a local government entity under the provisions of  
20 this chapter must name as a party defendant only the local government entity for which the  
21 officer, agent, servant, attorney, or employee was acting and shall not name the officer,  
22 agent, servant, attorney, or employee individually. In the event that the officer, agent,  
23 servant, attorney, or employee is individually named for an act for which the local  
24 government entity is liable under this chapter, the local government entity for which the  
25 officer, agent, servant, attorney, or employee was acting must be substituted as the party  
26 defendant.

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

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

34 36-92-4.

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

3 **SECTION 4.**

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

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

8 (2) When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing  
9 suspect in another vehicle and the fleeing suspect damages any property or injures or kills  
10 any person during the pursuit, the law enforcement officer's pursuit shall not be the  
11 proximate cause or a contributing proximate cause of the damage, injury, or death caused  
12 by the fleeing suspect unless the law enforcement officer acted with reckless disregard  
13 for proper law enforcement procedures in the officer's decision to initiate or continue the  
14 pursuit. Where such reckless disregard exists, the pursuit may be found to constitute a  
15 proximate cause of the damage, injury, or death caused by the fleeing suspect, but the  
16 existence of such reckless disregard shall not in and of itself establish causation.

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

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

23 **SECTION 5.**

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