

House Bill 1128 (AS PASSED HOUSE AND SENATE)

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 provide for interest; to  
8 provide for jurisdiction of actions; to provide rules of evidence relating to cases arising from  
9 a lawsuit involving a local government entity; to provide regulation of settlement of actions  
10 against local government entities; to exclude punitive and exemplary damages; to provide  
11 for rules of disclosure of documents; to provide for recovery against local governments; to  
12 amend related provisions of the Official Code of Georgia Annotated so as to assure  
13 consistency; to provide for effective dates; to provide for applicability; to repeal conflicting  
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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 a loss arising out of claims  
21 for 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

1 the municipal corporation, county, or political subdivision of this state nor the insuring  
 2 company shall plead governmental immunity as a defense; and the municipal corporation,  
 3 county, or political subdivision of this state or the insuring company may make only those  
 4 defenses which could be made if the insured were a private person.

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

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

## 15 SECTION 2.

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

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

## 29 SECTION 3.

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

## "CHAPTER 92

36-92-1.

As used in this chapter, the term:

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

(2) 'Covered' motor vehicle means:

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

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

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

(4) 'Local government officer or employee' means an officer, agent, servant, attorney, or employee of a local government entity.

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

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

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

36-92-2.

(a) The sovereign immunity of local government entities for a loss arising out of claims for the negligent use of a covered motor vehicle is waived up to the following limits:

(1) \$100,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of \$300,000.00 because of bodily injury or death of two or more persons in any one occurrence, and \$50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2005 and until December 31, 2006;

(2) \$250,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of \$450,000.00 because of bodily injury or death of two or more persons in any one occurrence, and \$50,000.00 because of injury to or destruction of property in any one occurrence, for incidents occurring on or after January 1, 2007 and until December 31, 2007; and

(3) \$500,000.00 because of bodily injury or death of any one person in any one occurrence, an aggregate amount of \$700,000.00 because of bodily injury or death of two

1 or more persons in any one occurrence, and \$50,000.00 because of injury to or  
2 destruction of property in any one occurrence, for incidents occurring on or after January  
3 1, 2008.

4 (b) The sovereign immunity of local government entities for a loss arising out of claims for  
5 the negligent use of a covered motor vehicle is waived only to the extent and in the manner  
6 provided in this chapter and only with respect to actions brought in the courts of this state.  
7 This chapter shall not be construed to affect any claim or cause of action otherwise  
8 permitted by law and for which the defense of sovereign immunity is not available.

9 (c) Local government entities shall have no liability for losses resulting from conduct on  
10 any part of local government officers or employees which was not within the scope of their  
11 official duties or employment.

12 (d) The waiver provided by this chapter shall be increased to the extent that:

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

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

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

20 (e) Interest prior to judgment may be recovered pursuant to the 'Unliquidated Damages  
21 Interest Act' as provided for in Code Section 51-12-14; however, any recovery of interest  
22 prior to judgment shall be included within the applicable aggregate amount per occurrence  
23 as set forth in this Code section.

24  
25 36-92-3.

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

32 (b) A person bringing an action against a local government entity under the provisions of  
33 this chapter shall name as a party defendant the local government entity for which the  
34 officer or employee was acting and shall not name the local government officer or  
35 employee individually. In the event that the local government officer or employee is  
36 individually named for an act for which the local government entity is liable under this

1 chapter, the local government entity for which the local government officer or employee  
2 was acting shall be substituted as the party defendant.

3 (c) For the purpose of presenting evidence at the trial of a case brought under the waiver  
4 provisions of this chapter, a plaintiff calling as a witness the present or former local  
5 government officer or employee whose alleged tort forms the basis of the claim against the  
6 local government entity defendant shall be allowed to subject such witness to  
7 cross-examination.

8 (d) Subject to the provisions contained in Code Sections 51-1-32 through 51-1-34 a  
9 settlement or judgment in an action or settlement on a claim brought pursuant to this  
10 chapter constitutes a complete bar to any further action by the claimant against a local  
11 government officer or employee, or the local government entity by reason of the same  
12 occurrence.

13 (e) This chapter shall not waive the workers' compensation exclusive remedy when local  
14 government officers or employees are injured on the job.

15 36-92-4.

16 (a) Local government entities may provide for the payment of claims, settlements and  
17 judgments, and their associated costs through any method including, but not limited to,  
18 self-insurance, use of a fund within the local government's budget for the payment of  
19 claims, the purchase of liability insurance, participation in an interlocal risk management  
20 agency organized pursuant to Chapter 85 of Title 36, or a combination thereof.

21 (b) No award for damages under this chapter shall include punitive or exemplary damages.

22 (c) Notwithstanding any law to the contrary, any document or information which pertains  
23 to the requesting or giving of legal advice or the disclosure of reports or evaluations of  
24 persons, including adjusters, assigned to evaluate and adjust claims concerning or  
25 pertaining to pending or potential litigation, settlement, claims, administrative proceedings,  
26 or other judicial actions brought or to be brought by or against a local government entity  
27 under this chapter shall be considered privileged and confidential and shall not be subject  
28 to disclosure until final disposition of a claim. Notwithstanding the provisions of this  
29 subsection, upon filing a lawsuit pursuant to this chapter, Chapter 11 of Title 9 and any  
30 other law applicable to cases in litigation shall apply.

31 (d) Nothing in this chapter shall be construed to authorize an execution or levy against any  
32 local government entity's property or funds. Execution or levy against a local government  
33 entity's property or funds is expressly prohibited. However, nothing in this Code section  
34 shall bar the pursuit of any other remedies that exist to enforce a judgment under state law.

35 (e) Where policies of insurance or contracts of indemnity have not been purchased or  
36 entered into by a local government entity for the purposes of paying claims and judgments

1 under this chapter, the fiscal year aggregate liability of any local government entity under  
 2 this chapter shall not exceed any self-insurance or other reserve or fund established to pay  
 3 claims arising out of this chapter. Where policies of insurance or contracts of indemnity  
 4 have been purchased or entered into and the local government entity also self-insures or  
 5 establishes another reserve or fund to pay claims arising out of this chapter, the fiscal year  
 6 aggregate liability of any local government entity under this chapter shall not exceed such  
 7 entity's policies of insurance or contracts of indemnity and the amount of any  
 8 self-insurance or other reserve or fund established to pay claims arising out of this chapter.  
 9 Any judgment obtained in excess of this limitation on annual aggregate liability shall not  
 10 be void. Such excess judgments shall be paid by the local government entity no later than  
 11 six months from the end of the local government entity's fiscal year in which the final  
 12 judgment was entered. If there are multiple judgments, the judgments shall be paid in the  
 13 order in which each final judgment was entered by the court following any appeals.

14 (f) The existence or amount of the waiver of immunity specified in Code Section 36-92-2  
 15 shall not be disclosed or suggested to the jury.

16 (g) As a condition of the waiver of sovereign immunity authorized by this chapter, all tort  
 17 actions filed against a local government entity under this chapter, including any action filed  
 18 against a local government entity as a joint tortfeasor, shall be brought in the state or  
 19 superior court of the county wherein the local government entity resides.

20 36-92-5.

21 This chapter shall apply to all claims and causes of actions arising out of events occurring  
 22 on or after January 1, 2005."

#### 23 SECTION 4.

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

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

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

1 proximate cause of the damage, injury, or death caused by the fleeing suspect, but the  
2 existence of such reckless disregard shall not in and of itself establish causation.

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

6 (4) Claims arising out of this subsection which are brought against local government  
7 entities, their officers, agents, servants, attorneys, and employees shall be subject to the  
8 procedures and limitations contained in Chapter 92 of Title 36."

9 **SECTION 5.**

10 This Act shall become effective on January 1, 2005.

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12 **SECTION 6.**

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