

House Bill 669

By: Representatives Bordeaux of the 151st and Martin of the 47th

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, Title 36 of the
3 Official Code of Georgia Annotated, relating to local government, and Code Section 40-6-6
4 of the Official Code of Georgia Annotated, relating to authorized emergency vehicles, so as
5 to provide for waiver of the immunity of local government entities for injury or damage
6 arising out of the negligent use of motor vehicles; to provide for definitions; to provide for
7 a minimum waiver amount; to provide for exceptions; to provide for value of claims; to
8 provide for venue; to provide for practices and procedures; to provide for notices; to provide
9 for limits; to amend related provisions of the Official Code of Georgia Annotated so as to
10 assure consistency; to provide for applicability; to repeal conflicting laws; and for other
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

14 Code Section 33-24-51 of the Official Code of Georgia Annotated, relating to purchase of
15 motor vehicle liability insurance by municipal corporations, is amended by striking
16 subsections (b) through (d) of said Code section and inserting in lieu thereof the following:
17 "(b) Whenever a municipal corporation, a county, or any other political subdivision of this
18 state shall purchase the insurance authorized by subsection (a) of this Code section to
19 provide liability coverage for the negligence of any duly authorized officer, agent, servant,
20 attorney, or employee in the performance of his or her official duties, its governmental
21 immunity shall be waived ~~to the extent of the amount of insurance so purchased~~ as
22 provided in Chapter 92 of Title 36. ~~Neither the municipal corporation, county, or political~~
23 ~~subdivision of this state nor the insuring company shall plead governmental immunity as~~
24 ~~a defense; and the municipal corporation, county, or political subdivision of this state or~~
25 ~~the insuring company may make only those defenses which could be made if the insured~~
26 ~~were a private person.~~

1 (c) The municipal corporation, county, or any other political subdivision of this state shall
 2 be liable for negligence as provided in this Code section only for damages suffered while
 3 the insurance is in force but in no case in an amount exceeding the limits ~~or the coverage~~
 4 ~~of the insurance policy~~ specified by Chapter 92 of Title 36.

5 (d) If the verdict rendered by the jury exceeds the limits ~~of the applicable insurance~~
 6 established by Chapter 92 of Title 36, the court shall reduce the amount of said judgment
 7 or award to a sum equal to the applicable limits ~~stated in the insurance policy~~ established
 8 by Chapter 92 of Title 36."

9 SECTION 2.

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

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

23 SECTION 3.

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

26 "CHAPTER 92

27 36-92-1.

28 As used in this chapter, the term:

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

32 (2) 'Covered' motor vehicle means:

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

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

2 (3) 'Local government entity' or 'local government entitie means counties and municipal
3 corporations of this state. Said terms shall also include a consolidated city-county
4 government and any public authority, commission, board, or similar agency which is
5 created by general or local Act of the General Assembly and which carries out its
6 functions wholly or partially within a county or municipality of the state or on a
7 multi-jurisdictional basis. The term shall also include any such agencies which are
8 created or activated by an appropriate ordinance or resolution of the governing body of
9 a county or municipal corporation acting individually or jointly with other counties,
10 municipalities, or consolidated city-county governments of the state. Said terms shall not
11 include local school systems.

12 (4) 'Local government entity officer or employee' means an employee of a local
13 government entity, an elected or appointed official of a county, municipal corporation,
14 or consolidated city-county government, a law enforcement officer, an agent of such local
15 government, or a person acting on behalf of or in the service of the local government
16 entity in any official capacity for compensation, other than an amount representing
17 reimbursement of actual expenses or per diem payments for travel or meetings. The term
18 shall not include an independent contractor doing business with a local government entity
19 nor an appointed member of a board, commission, or authority. The term shall not
20 include a private corporation, whether for profit or not for profit, nor any private firm,
21 business proprietorship, company, trust, partnership, association, or other such private
22 entity.

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

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

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

31 36-92-2.

32 (a) The immunity of local government entities for loss arising out of claims for the
33 negligent use of a covered motor vehicle is waived up to a minimum of \$500,000.00 per
34 person per occurrence, \$1,000,000.00 aggregate per occurrence, and \$250,000.00 aggregate
35 for property damage per occurrence. Such waiver may be increased to any amount if:

1 (1) The governing body by resolution or ordinance voluntarily adopts such higher
2 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 of the coverage
5 purchased; or

6 (3) The local government entity purchases commercial liability insurance in the amounts
7 purchased.

8 (b) Local government entities waive their sovereign immunity only to the extent and in the
9 manner provided in this chapter and only with respect to actions brought in the courts of
10 the State of Georgia. Such entities do not waive any immunity with respect to actions
11 brought in the courts of the United States.

12 36-92-3.

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

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 or employee was acting and shall not name the officer or employee individually.
22 In the event that the officer or employee is individually named for an act for which the
23 local government entity is liable under this chapter, the local government entity for which
24 the officer or employee was acting must be substituted as the party defendant.

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

29 (d) This chapter shall not waive the workers' compensation exclusive remedy when local
30 government entity officers or employees are injured on the job.

31 36-92-4.

32 All tort actions brought against a local government entity under this chapter shall be
33 brought in the state or superior court of the county wherein the local government entity
34 against which the claim is brought is located.

1 36-92-5.

2 The trial of an action against a local government entity brought under this chapter shall be
3 conducted by a judge with a jury; provided, however, the parties may agree that the same
4 may be tried by a judge without a jury.

5 36-92-6.

6 No award for damages under this chapter shall include punitive or exemplary damages or
7 interest prior to judgment.

8 36-92-7.

9 In any claim, action, or proceeding brought under this chapter, the signature of an attorney
10 or party constitutes a certificate by him or her that he or she has read the pleading, motion,
11 or other paper; that to the best of his or her knowledge, information, and belief formed after
12 reasonable inquiry it is well grounded in fact and is warranted by existing law or a good
13 faith argument for the extension, modification, or reversal of existing law; and that it is not
14 interposed for any improper purpose, such as to harass or to cause unnecessary delay or
15 needless increase in the cost of litigation. If a pleading, motion, or other paper is not
16 signed, it shall be stricken unless it is signed promptly after the omission is called to the
17 attention of the pleader or movant. If a pleading, motion, or other paper is signed in
18 violation of this Code section, the court, upon motion or upon its own initiative, shall
19 impose upon the person who signed it, a represented party, or both, an appropriate sanction,
20 which may include an order to pay to the other party or parties the amount of the
21 reasonable expenses incurred because of the filing of the pleading, motion, or paper,
22 including reasonable attorneys' fees.

23 36-92-8.

24 Nothing in this chapter shall be construed to authorize an execution or levy against any
25 local government entity's property or funds. Execution or levy against a local government
26 entity's property or funds is expressly prohibited.

27 36-92-9.

28 In no event shall recovery against a local government entity be proper unless the fact finder
29 determines that the negligence of the officer or employee operating the covered motor
30 vehicle was the dominant cause of the injury or damage. In making an award against a
31 local government entity pursuant to this chapter, the fact finder shall apportion the
32 negligence which led to the injury or damage between the local government entity and any

1 other parties, including the claimant, involved in the occurrence. Subject to the limits of
 2 Code Section 36-92-2, an award of damages against a local government entity cannot
 3 exceed the percentage of negligence determined to be applicable to the local government
 4 entity on behalf of which the covered motor vehicle is being operated, multiplied by the
 5 amount of total loss suffered by the claimant found by the jury.

6 36-92-10.

7 (a) No person, firm, or corporation having a claim for money damages against any local
 8 government entity pursuant to this chapter shall bring any action against a municipal
 9 corporation for such injuries without first giving notice as provided in subsection (b) of this
 10 Code section.

11 (b) Within six months of the occurrence upon which a claim against the local government
 12 entity is predicated, the person having the claim shall present the claim in writing to the
 13 governing authority of the local government entity for adjustment setting the time, place,
 14 and extent of injury, as nearly as practicable, and the negligence which caused the injury.
 15 No action shall be entertained by the courts against the local government entity until the
 16 cause of action therein has been first presented to the governing authority for adjustment.

17 (c) Upon presentation of such claim, the governing authority shall consider and act upon
 18 the claim within 30 days from the presentation; and the action of the governing authority,
 19 unless it results in the settlement thereof, shall in no sense be a bar to an action therefor in
 20 the courts.

21 (d) The running of the statute of limitations shall be suspended during the time that the
 22 demand for payment is pending before such governing authority without any action on their
 23 part.

24 36-92-11.

25 This chapter shall apply to all claims and causes of actions arising out of events occurring
 26 on or after January 1, 2002."

27 **SECTION 4.**

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

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

32 (2) When a law enforcement officer in a law enforcement vehicle is pursuing a fleeing
 33 suspect in another vehicle and the fleeing suspect damages any property or injures or kills
 34 any person during the pursuit, the law enforcement officer's pursuit shall not be the

1 proximate cause or a contributing proximate cause of the damage, injury, or death caused
2 by the fleeing suspect unless the law enforcement officer acted with reckless disregard
3 for proper law enforcement procedures in the officer's decision to initiate or continue the
4 pursuit. Where such reckless disregard exists, the pursuit may be found to constitute a
5 proximate cause of the damage, injury, or death caused by the fleeing suspect, but the
6 existence of such reckless disregard shall not in and of itself establish causation.

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

10 (4) Claims arising out of this subsection which are brought against local government
11 entities, their officers, and employees shall be governed by Chapter 92 of Title 36."

12 **SECTION 5.**

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