

9-1-2002

## INSURANCE Kinds of Insurance; Limits of Risks: Mandate Limited Waiver of Sovereign Immunity for Local Governments for Losses Caused by Negligent Use of a Motor Vehicle; Allow Continued Immunity for Liabilities in Excess of Statutory Thresholds; Require Waiver of Immunity for Amounts Insured by Local Governments Beyond Statutory Thresholds

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### Recommended Citation

David Walker, *INSURANCE Kinds of Insurance; Limits of Risks: Mandate Limited Waiver of Sovereign Immunity for Local Governments for Losses Caused by Negligent Use of a Motor Vehicle; Allow Continued Immunity for Liabilities in Excess of Statutory Thresholds; Require Waiver of Immunity for Amounts Insured by Local Governments Beyond Statutory Thresholds*, 19 GA. ST. U. L. REV. (2002).  
Available at: <https://readingroom.law.gsu.edu/gsulr/vol19/iss1/12>

## INSURANCE

***Kinds of Insurance; Limits of Risks: Mandate Limited Waiver of Sovereign Immunity for Local Governments for Losses Caused by Negligent Use of a Motor Vehicle; Allow Continued Immunity for Liabilities in Excess of Statutory Thresholds; Require Waiver of Immunity for Amounts Insured by Local Governments Beyond Statutory Thresholds***

**CODE SECTIONS:** O.C.G.A. §§ 33-24-51 (amended), 36-33-1 (amended), 36-92-1, -5 (new), 40-6-6 (amended)

**BILL NUMBER:** HB 1128

**ACT NUMBER:** 763

**GEORGIA LAWS:** 2002 Ga. Laws 579

**SUMMARY:** The Act limits the sovereign immunity of local governments for injuries arising from the negligent use of a motor vehicle. The Act provides that, for accidents occurring between January 1, 2005 and December 31, 2006, the waiver will be \$100,000 per accident for claims involving personal injury or death to any one person, with an aggregate waiver of \$300,000 per accident for claims made by two or more people. The Act also waives immunity up to \$50,000 per occurrence for injuries or destruction of property occurring after January 1, 2005. The Act provides a schedule for increasing waiver amounts to \$250,000/\$450,000 for accidents occurring between January 1, 2007 and December 31, 2007. The Act provides that for all accidents occurring on or after January 1, 2008, the waiver amounts will be raised to \$500,000/\$700,000. The Act also provides that where local

governments are insured for amounts exceeding the statutory waiver amounts, their immunity will be waived to the extent of their excess coverage. The Act also provides that the waiver of immunity shall not apply to punitive or exemplary damages. Finally, the Act extends the immunity limits to accidents involving authorized emergency vehicles where the government employee is adjudged to have been the proximate cause of the claimant's injuries.

EFFECTIVE DATE: January 1, 2005<sup>1</sup>

### *History*

When Hazel Visnicki was struck from behind by an Atlanta city-owned dump truck, the impact caved in the back of her car and “thr[ew] her 11-month-old son, Brett, and his safety seat into the floor.”<sup>2</sup> After the accident, Ms. Visnicki reasonably “assumed Atlanta would cover the damages.”<sup>3</sup> Yet, despite the fact that her son suffered traumatic head injuries that crushed the bones around his left eye and damaged his brain, “Atlanta officials paid her just \$2,000 - \$1,000 each for their injuries, which have cost the family more than \$20,000.”<sup>4</sup>

In July 2001 Georgia Supreme Court case involving the invocation of immunity by a local government, the Court pleaded with the Assembly to force such entities to be responsible for injuries caused by the negligence of their employees.<sup>5</sup> In its opinion, the Court wrote that “due to the danger to the public caused by high speed chases and the choice of many local governments to forego purchasing of liability insurance, we urge the legislature to remove the city and

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1. O.C.G.A. § 36-92-5 (2002) (amended).

2. Duane D. Stanford, *From Injury to Insult: Mom Pushes Local Governments to be Liable for Harm to Citizens*, ATLANTA J. & CONST., Feb. 13, 2002, at E1.

3. *Id.*

4. *Id.*

5. See *Cameron v. Lang*, 274 Ga. 122 (2001).

county's discretion and require them to procure liability insurance for the operation of their vehicles."<sup>6</sup> Such stories and beseechings were the impetus for personal injury lawyer and House Judiciary Chairman Tom Bordeaux's introduction of HB 1128. Under his proposed bill, local governments would be limited in their abilities to use sovereign immunity as a shield from paying certain damages caused by the negligent use of city or county owned vehicles.<sup>7</sup>

Under the old law, local governments could voluntarily waive immunity by purchasing insurance coverage.<sup>8</sup> However, immunity was only waived "to the extent of the amount of insurance so purchased."<sup>9</sup> Thus, although most smaller local governments purchased adequate coverage, many larger cities such as Atlanta, which had limited its liability to \$1,000 per person, and Macon, where limits capped damages at \$10,000, chose to limit their liability to de minimis amounts.<sup>10</sup> Consequently, in those municipalities that chose to use the shield of sovereign immunity, when citizens such as Ms. Visnicki petitioned their local officials for relief, the government's response amounted to a virtual proclamation that "the king could do no wrong."<sup>11</sup>

Although the doctrine of sovereign immunity may seem counter-intuitive, it has resisted change in the past.<sup>12</sup> Opponents of Rep. Bordeaux's proposal contended that it would be a "windfall for trial attorneys who [would] look to sue cities and counties for every penny."<sup>13</sup> In addition, many expressed concerns that increased liability for local governments would translate into increased taxes for their citizens. That concern was articulated by Judiciary Committee member Rep. Robert Reichert, who noted that although Bordeaux's proposal was "fair", it "could cost the city of Macon

6. *Id.* at 129.

7. *See id.*

8. O.C.G.A. § 33-24-51(b) (2002).

9. *Id.*

10. *See* Stanford, *supra* note 2 at E1; Charles E. Richardson, *Cities' Immunity Needs Change*, MACON TELEGRAPH, Feb. 12, 2002, at 6.

11. Stanford, *supra* note 2 at E1 (noting that the doctrine of sovereign immunity "was a carryover from English common law" under which the King was above reproach).

12. Andy Peters, *Governments' Suit Immunity May Soon End: Proposed Legislation Would Allow Counties, Cities to be Sued for Auto Accidents Caused by Government Vehicles*, MACON TELEGRAPH, Feb. 10, 2002, at 1.

13. *Id.*

around \$850,000”, thus prompting the rhetorical question: “Where are they going to get that money?”<sup>14</sup>

In addition, many opponents expressed concern that because of the high costs of insurance, some cities would not be able to find affordable means of protection against liability.<sup>15</sup> This concern was echoed by Rep. John Wiles, who feared that if such entities did not have adequate funds to satisfy a judgment brought under Rep. Bordeaux’s bill, claimants would be allowed to enforce the judgment by executing claims against everything from city works funds to fire trucks.<sup>16</sup> Thus it was against this backdrop that Rep. Bordeaux took his bill to the floor.<sup>17</sup>

### *HB 1128*

Representatives Tom Bordeaux, J. Max Davis, Allen Hammontree, Stephanie Benefield, Warren Massey, and Nan Orrock of the 151st, 60th, 4th, 67th, 86th, and 56th Districts, respectively, sponsored HB 1128.<sup>18</sup> Representative Bordeaux introduced the bill on the House floor on January 29, 2002.<sup>19</sup> The House assigned the bill to its Judiciary Committee, which favorably reported the bill as substituted on February 1, 2002.<sup>20</sup> The House adopted the Committee substitute with floor amendments, and passed the bill on February 26, 2002.<sup>21</sup>

On February 27, 2002 the Senate assigned HB 1128 to its Insurance and Labor Committee, which created its own substitute and favorably reported the bill on March 26, 2002.<sup>22</sup> The Senate adopted the Committee’s substitute with amendments and passed the bill on April 3, 2002.<sup>23</sup> The bill returned to the House on April 9, 2002 and the House agreed to adopt the Senate amendments.<sup>24</sup> The General

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14. *Id.*

15. *See* Audio Recording of House Proceedings, February 26, 2002 (remarks by Rep. J. Wiles), at <http://www.state.ga.us/services/leg/audio/2002/archive.html> [hereinafter House Audio].

16. *See id.*

17. *See id.*

18. HB 1128, as introduced, 2002 Ga. Gen. Assem.

19. State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

20. *See id.*

21. Georgia House of Representatives Voting Record, HB 1128 (Feb. 26, 2002); State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

22. State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

23. Georgia Senate Voting Record, HB 1128 (Apr. 3, 2002); State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

24. State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

Assembly forwarded the bill to Governor Roy Barnes, who signed HB 1128 on May 9, 2002.<sup>25</sup>

*Consideration by the House Judiciary Committee*

After introduction, the House assigned the bill to its House Judiciary Committee, which was chaired by Rep. Bordeaux.<sup>26</sup> The House Judiciary Committee favorably reported the bill, as substituted, on February 1, 2002.<sup>27</sup> As introduced, the bill would have amended Code section 33-7-11 by adding an additional requirement mandating that, in the event of an automobile accident involving a city owned vehicle, such vehicle would be deemed an uninsured motor vehicle up to the limits allowed by the claimant's insurance policy.<sup>28</sup> In accordance with the proposed amendment, any amounts available to a claimant under the provisions of Code section 33-7-11 would reduce the amount that was available to the claimant under the waiver of immunity.<sup>29</sup> The Committee substitute struck this provision entirely because of concerns that insurance companies would be unnecessarily burdened with damages caused by, and more properly allocable to, local governments.<sup>30</sup>

*Consideration by the House*

The House passed HB 1128, as substituted with floor amendments, on February 26, 2002.<sup>31</sup> The floor amendments specified that the bill's provisions would apply to actionable events occurring on or after January 1, 2005.<sup>32</sup>

The floor amendments also lessened the original liabilities created by the waiver limitations.<sup>33</sup> The floor amendments decreased

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25. 2002 Ga. Laws 579, § 6, at 584.

26. See State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002; Peters, *supra* note 12 at 1.

27. See State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

28. See HB 1128, as introduced, 2002 Ga. Gen. Assem.

29. See HB 1128, as introduced, 2002 Ga. Gen. Assem.

30. Compare HB 1128, as introduced, 2002 Ga. Gen. Assem., with HB 1128 (HCS) 2002 Ga. Gen. Assem.

31. See Georgia House Voting Record, HB 1128 (Apr. 12, 2002); State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

32. Compare HB 1128, as introduced, 2002 Ga. Gen. Assem., with HB 1128 (HCSFA) 2002 Ga. Gen. Assem.

33. *Id.*

local governments' potential liability for accidents involving city-owned vehicles from \$500,000 per person per accident, with a maximum aggregate of \$1 million per accident for multiple individuals, to \$50,000 per person per accident with a maximum aggregate of \$150,000 per accident for multiple individuals.<sup>34</sup> The floor amendments also decreased local governments' potential liability for damage to property caused by city-owned vehicles from \$250,000 to \$50,000 per accident.<sup>35</sup>

In addition, the floor amendments instituted a graduated schedule for increasing local governments' potential liabilities.<sup>36</sup> Under the floor amendments, the maximum aggregate liability for a single accident involving multiple individuals between January 1, 2006 and December 31, 2007 would increase from \$150,000 to \$400,000. Similarly, for all accidents occurring after January 1, 2008, the floor amendments mandated that immunity would be waived up to \$500,000 per accident for a single personal injury, with a maximum aggregate liability of \$500,000 for single accidents involving multiple individuals.<sup>37</sup> The floor amendments also required that for accidents occurring after January 1, 2008, the maximum potential liability for injuries to property caused by city-owned vehicles would increase from \$50,000 to \$250,000.<sup>38</sup>

### *Consideration By The Senate Insurance and Labor Committee*

After the bill was introduced in the Senate, it was assigned to its Insurance and Labor Committee.<sup>39</sup> The Insurance and Labor Committee reported favorably on the bill, as substituted, on March 26, 2002.<sup>40</sup> The Senate Committee added an amendment which defined a "local government officer or employee" as an officer, agent, servant, attorney, or employee of a local government entity."<sup>41</sup> The Senate Committee also added an amendment, providing that for

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34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Compare* HB 1128, as introduced, 2002 Ga. Gen. Assem., *with* HB 1128 (HCSFA) 2002 Ga. Gen. Assem.

39. State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

40. *Id.*

41. *Compare* HB 1128 (HCSFA), 2002 Ga. Gen. Assem., *with* HB 1128 (SCS), 2002 Ga. Gen. Assem.

accidents occurring between January 1, 2005 and December 31, 2006, the sovereign immunity for local governments for incidents involving the negligent operation of an automobile would be waived for amounts up to \$100,000 per accident for any one individual suffering personal injury or death, with an aggregate waiver of \$300,000 per accident for claims made by multiple individuals.<sup>42</sup> Another Senate Committee amendment provided that, for accidents occurring between January 1, 2007 and December 31, 2007, the sovereign immunity for local governments for incidents involving the negligent operation of an automobile would be waived for amounts up to \$250,000 per accident for any one individual suffering personal injury or death with an aggregate waiver of \$450,000 per accident for claims made by multiple individuals.<sup>43</sup> The Senate Committee also amended the bill to provide that for any accident occurring after January 1, 2008, the sovereign immunity for local governments for incidents involving the negligent operation of an automobile would be waived for amounts up to \$500,000 per accident for any one individual suffering personal injury or death with an aggregate waiver of \$700,000 per accident for claims made by multiple individuals.<sup>44</sup> The Committee also amended the bill such that, for accidents occurring after January 1, 2008, local governments' sovereign immunity for damage or loss of property due to the negligent operation of an automobile would be waived for amounts up to \$50,000.<sup>45</sup>

In addition to amending the waiver amounts, the Senate Committee added an amendment, which required that local governments' sovereign immunity involving negligent operation of an automobile could only be waived as allowed by the bill itself and only when the claim was filed in a Georgia court.<sup>46</sup> The Senate Committee amendment also stipulated that the bill did not affect any claim to which the defense of sovereign immunity was not available.<sup>47</sup> Similarly, another Committee amendment ordered that

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42. Compare HB 1128 (HCSFA), 2002 Ga. Gen. Assem., with HB 1128 (SCS), 2002 Ga. Gen. Assem.

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. Compare HB 1128 (HCSFA), 2002 Ga. Gen. Assem., with HB 1128 (SCS), 2002 Ga. Gen. Assem.



the bill would not apply to claims resulting from conduct that was outside the scope of a local government employee's duty.<sup>48</sup>

The Senate Committee struck a provision of the bill, which would have lowered the waiver amounts for incidents where a claimant's insurance policy included uninsured motorist protection in proportion to the amounts covered by the policy.<sup>49</sup> Another Senate Committee amendment provided that where interest was paid prior to judgment under the "Unliquidated Damages Interest Act", such payments would be included as part of the aggregate waiver amount.<sup>50</sup>

The Senate Committee also added an amendment to provide that if, in the event of a trial, a claimant called as a witness the local government employee whose conduct formed the basis of the claim, the defendant would be allowed to cross-examine the employee.<sup>51</sup> The Committee also amended the bill such that if the provisions of Code sections 51-1-32 and 51-1-34 were met, settlements or judgments brought pursuant to the bill would bar future claims for recovery.<sup>52</sup>

Another amendment by the Senate Committee allowed local governments to use any means available to provide for the payment of claims, and explicitly excluded punitive and exemplary damages from being included under the bill's immunity waiver provisions.<sup>53</sup> The Committee's amendments also provided that, in the absence of contrary laws, all documents or other information relating to legal advice concerning a claim or potential claim brought under the bill would be privileged and confidential until the final disposition of the claim.<sup>54</sup> Another Senate Committee amendment allowed claimants to pursue payment of adjudicated claims by all means allowable by law, except that claimant's could not execute a levy against a local government's property or funds.<sup>55</sup>

The Senate Committee's amendments further provided that if at the end of a fiscal year a local government's liabilities under the bill

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48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Compare HB 1128 (HCSFA), 2002 Ga. Gen. Assem., with HB 1128 (SCS), 2002 Ga. Gen. Assem.

54. *Id.*

55. *Id.*

exceeded either its third-party insurance contracts, self-insurance, or both, it would not be required to pay amounts in excess of the extent to which it was insured.<sup>56</sup> However, the amendment also provided that excess liabilities would not be considered void; rather, it required that they be paid within six months of the fiscal year within which they were incurred.<sup>57</sup> Furthermore, the Senate Committee added an amendment that provided the bill would apply to all accidents occurring on or after January 1, 2005.<sup>58</sup> The Senate Committee's final amendment mandated that neither the existence nor amount of the waiver, which the bill provides, could be disclosed to a jury.<sup>59</sup>

### *Consideration by the Senate*

The Senate passed HB 1128, as substituted with floor amendments on April 3, 2002.<sup>60</sup> The Senate floor amendment provided that the provisions of the bill would only apply to claims brought in either the state or superior court of the county wherein the defendant resided.<sup>61</sup>

### *The Act*

#### *Code Section 33-24-51*

The Act amends Code section 33-24-51 by partially waiving the sovereign immunity of local governments for injuries caused by the negligent operation of motor vehicles by their agents or employees.<sup>62</sup> The Act also amends Code section 33-24-51 by providing that where a local government is covered by liability insurance in an amount greater than the amounts of immunity statutorily waived under Code section 36-92-2, then the local governments' immunity will be waived to the extent of its additional coverage.<sup>63</sup> The Act also

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56. *Id.*

57. *Id.*

58. Compare HB 1128 (HCSFA), 2002 Ga. Gen. Assem., with HB 1128 (SCS), 2002 Ga. Gen. Assem.

59. *Id.*

60. See State of Georgia Final Composite Status Sheet, HB 1128, Apr. 12, 2002.

61. Compare HB 1128 (HCSFA), 2002 Ga. Gen. Assem., with HB 1128 (SCS), 2002 Ga. Gen. Assem.

62. Compare 1960 Ga. Laws 289, § 56-2437, at 673 (formerly found at O.C.G.A. § 33-24-51 (2001)), with O.C.G.A. § 33-24-51(b) (2002).

63. *Id.*

amends Code section 33-24-51 by specifying that a local government will only be liable for damages in excess of the statutory waiver if it possesses applicable insurance coverage that is in excess of the waived amount.<sup>64</sup> Finally, the Act amends Code section 33-24-51 by providing that where a verdict is rendered, which exceeds the statutorily waived amount or the amount of excess insurance coverage, the court shall reduce the judgment to equal the amount that is covered by insurance, but not to an amount less than the statutorily waived amount.<sup>65</sup>

### *Code Section 36-33-1*

The Act amends Code section 36-33-1 by providing that except as provided by Code section 36-33-1 and Chapter 92 of Title 36, there is no waiver of immunity for local government entities.<sup>66</sup> The Act also amends Code section 36-33-1 to provide that where a local governmental entity purchases insurance, its sovereign immunity is not waived except as required by Code section 33-24-51 or Code section 36-92-2.<sup>67</sup>

### *Code Section 36-92-1*

The Act creates a new Code section, entitled 36-92-1, which defines the terms to be used within chapter 92.<sup>68</sup> Code section 36-92-1 defines a “claim” as any demand against a local government entity for injuries or losses arising from the negligent operation of a covered motor vehicle by an officer or employee who was acting within the scope of his official duties or employment.<sup>69</sup> The new section defines a “covered motor vehicle” as any motor vehicle that is owned or leased by a local government entity and defines “local government entity” as any “county or municipal corporation or consolidated city-county government” except for a school system.<sup>70</sup> The new section

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64. *Id.*

65. *Id.*

66. *Id.*

67. Compare 1986 Ga. Laws 1312, § 1 (formerly found at O.C.G.A. § 36-33-1 (2001)) with O.C.G.A. § 36-33-1(a) (2002).

68. O.C.G.A. § 36-92-1 (2002).

69. O.C.G.A. § 36-92-1 (2002).

70. *Id.*

includes all “officers, agents, servants, attorneys, and employees of a local government entity” as “local government officers or employees.”<sup>71</sup>

The new section also defines “loss” as any personal injury or damage to tangible property, and any type of actual damages that are included therein.<sup>72</sup> Section 36-92-1 defines a motor vehicle as any type of automated vehicle designed and licensed for use on public streets and roads, including any “equipment permanently attached thereto.”<sup>73</sup> Finally, the section defines “occurrence” as any “accident involving a covered motor vehicle.”<sup>74</sup>

### *Code Section 36-92-2*

The Act creates a new addition to Title 36, which is Code section 36-92-2.<sup>75</sup> This section creates limits on the waiver of sovereign immunity for accidents caused by the negligent use of a covered motor vehicle.<sup>76</sup> Under Code section 36-92-2, between the dates of January 1, 2005 and December 31, 2006 immunity will be waived up to \$100,000 per occurrence for personal injuries to any one person, with an aggregate waiver of \$300,000 per occurrence for injuries to multiple persons.<sup>77</sup> The section also provides that after January 1, 2005, immunity will be waived up to \$50,000 per occurrence for loss or destruction of tangible property caused by negligent use of a government operated vehicle.<sup>78</sup>

In addition, for accidents occurring between the dates of January 1, 2007 and December 31, 2007, Code Section 36-92-2 waives local governments’ immunity will be waived up to \$250,000 per occurrence for personal injuries to any one person, with an aggregate waiver of \$450,000 per occurrence for injuries to multiple persons.<sup>79</sup> The section goes on to provide that after January 1, 2008, a local government’s immunity will be waived up to \$500,000 per

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71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. O.C.G.A. § 36-92-2(a) (2002).

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

occurrence for personal injuries to any one person, with an aggregate waiver of \$700,000 per occurrence for injuries to multiple persons.<sup>80</sup>

Code section 36-92-2 explicitly states that the sovereign immunity of a local government for incidents involving the negligent operation of covered automobiles will only be waived if the conditions of the accident meet the requirements set out in chapter 92.<sup>81</sup> The section further provides that the statutory waiver will only apply to cases brought within the courts of Georgia, but that its provisions do not limit any claims to which the defense of sovereign immunity is not applicable.<sup>82</sup> Additionally, the statute exempts local governments from liability caused by employees who were acting outside the scope of their employment.<sup>83</sup>

Code section 36-92-2 also provides that the Chapter 92 waiver may be increased by a local government that adopts an ordinance or resolution voluntarily accepting a higher waiver.<sup>84</sup> The section also provides for an increase in the waiver if a local government joins an interlocal risk management agency, which results in coverage in excess of the amount of the waiver.<sup>85</sup> Finally, under Code section 36-92-2 a local government will be subject to a higher waiver of immunity if it purchases commercial liability insurance for an amount that is greater than the waiver provided for by the section.<sup>86</sup>

### *Code Section 36-92-3*

The Act creates Code section 36-92-3.<sup>87</sup> This section provides that if a government employee commits a tort while acting within the scope of his employment, that employee is exempted from individual liability.<sup>88</sup> Code section 36-92-3 also requires that a person who brings an action against a local government under the provisions of chapter 92 of Title 36 must name the local government entity, and not the employee who caused the accident, as the party defendant.<sup>89</sup>

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80. *Id.*

81. *See* O.C.G.A. § 36-92-2(b) (2002).

82. *Id.*

83. O.C.G.A. § 36-92-2(c) (2002).

84. *Id.*

85. O.C.G.A. § 36-92-2(d)(2) (2002).

86. O.C.G.A. § 36-92-2(d)(3) (2002).

87. O.C.G.A. § 36-92-3(a) (2002).

88. *Id.*

89. *Id.*

Moreover, where an employee of a local government is named as a defendant, Code section 39-92-3 requires that the local government entity be substituted as the party defendant.<sup>90</sup> However, the section also provides that in a trial, which is brought under the waiver provisions of chapter 92 of Title 36, a plaintiff may call the employee whose actions are the basis of the litigation as a witness.<sup>91</sup> But, where such an employee is called as a witness for the claimant, the Act allows the local government entity to cross-examine that employee.<sup>92</sup>

Section 36-92-3 also provides that where a settlement or judgment is entered in an action brought pursuant to chapter 92 of Title 36, it will function to bar any future claims against either the local government or the local government employee that arise from the same occurrence.<sup>93</sup> Also, section 36-92-3 explicitly states that chapter 92 of Title 36 does not change the rule that worker's compensation is a government employee's exclusive remedy when he or she is hurt on the job.<sup>94</sup>

#### *Code Section 36-92-4*

The Act creates Code section 36-92-4, which allows local governments to use any method they choose for paying claims brought pursuant to chapter 92 of Title 36.<sup>95</sup> Section 36-92-4 also prohibits punitive and exemplary damages from being awarded under Code section 36-92-2.<sup>96</sup> It further provides that, in the absence of any contrary laws, all documents and information relating to legal advice that pertains to a claim or potential claim brought under chapter 92 of Title 36 are considered private and confidential and protected until the final disposition of the claim.<sup>97</sup>

Under the Act, Code section 36-92-4 expressly prohibits the attachment of a local government's property or funds pursuant to a claim, however it allows claimants to pursue any other legal remedies

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90. O.C.G.A. § 36-92-3(b) (2002).

91. O.C.G.A. § 36-92-3(c) (2002).

92. *Id.*

93. O.C.G.A. § 36-92-3(d) (2002).

94. O.C.G.A. § 36-92-3(e) (2002).

95. O.C.G.A. § 36-92-4(a) (2002).

96. O.C.G.A. § 36-92-3(b) (2002).

97. O.C.G.A. § 36-92-4(c) (2002).

to enforce a judgment.<sup>98</sup> The Act goes on to specify that where a local government fails to enter into an insurance, indemnity or other agreement to cover its liabilities arising out of chapter 92 of Title 36, the aggregate liability of any one of its fiscal years will not exceed any self-insurance or other funds set aside for that year to cover such liabilities.<sup>99</sup> Likewise, where local governments have entered into agreements to cover liabilities arising out of chapter 92 of Title 36 and have also set aside additional funds for self-insurance purposes, the aggregate of such liabilities for any one of its fiscal years cannot exceed the amounts of their third-party-supplied protection and self insurance combined.<sup>100</sup>

However, the Act also specifies that any judgment in excess of the annual aggregate will not be void, but rather it must be paid within six months of the final day of the fiscal year within which it was entered.<sup>101</sup> The Act also prohibits any party from informing juries of the amount of the available waiver specified under Code section 36-92-2.<sup>102</sup> Additionally, the Act requires that in order for the waiver of immunity under chapter 92 of Title 36 to be applicable, all tort actions involving a local government entity as a defendant must be brought in the county wherein the local government entity is found.<sup>103</sup>

#### *Code Section 36-62-5*

The Act creates Code section 36-92-5.<sup>104</sup> That section specifies that the provisions of chapter 92 of Title 36 shall only apply to incidents occurring on or after January 1, 2005.<sup>105</sup>

#### *Code Section 40-6-6*

The Act amends Code section 40-6-6 to provide that claims brought under that section, which provides for accidents involving

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98. O.C.G.A. § 36-92-4(d) (2002).

99. O.C.G.A. § 36-92-4(e) (2002).

100. *Id.*

101. *Id.*

102. O.C.G.A. § 36-92-4(f) (2002).

103. O.C.G.A. § 36-92-4(g) (2002).

104. O.C.G.A. § 36-92-5 (2002).

105. *Id.*

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authorized emergency vehicles, are subject to the procedures and limitations contained in chapter 92 of Title 36.<sup>106</sup>

*David Walker*

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106. Compare 1995 Ga. Laws 855 § 1 (formerly found at O.C.G.A. 40-6-6 (2001) with O.C.G.A. § 40-6-6 (2002).