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Ga. legislation lets citizens sue municipalities

Cobb County case sparked law signed quietly earlier this year

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page A 1

MARIETTA — Gov. Roy Barnes quietly signed a bill — spurred by a Cobb County case — into law last May that grants citizens the right to sue municipalities in certain cases.

The Georgia Legislature passed the law, which won't become effective until 2005, in part because of the case of Mableton resident Michelle Rusin.

In 1992, Ms. Rusin, who was pregnant at the time, was driving on Nickajack Road in south Cobb when a Cobb County patrol car crossed over the center lane and crashed into Ms. Rusin head-on, totaling her car and causing her serious injuries.

When Ms. Rusin and her attorney, Matt Flournoy of Marietta, attempted to sue Cobb County, Flournoy said they asserted the defense of sovereign immunity.

Sovereign Immunity

The common law doctrine of sovereign immunity, which dates back to English law, dictates that "the king can do no wrong." The doctrine effectively prevents municipalities from being held liable for the damage they cause.

See Law, Page 5A



Staff photo by Jim Bolt

Mableton resident Michelle Rusin hugs her son, John, 10. Ms. Rusin was injured in an accident with a police officer 10 years ago while she was pregnant with John.

Law

Continued from Page 1A

"The county is essentially saying, 'Even though our employee is at fault and has hurt you, we are not going to pay for it,'" Flournoy said.

Sovereign immunity — a common law doctrine dating back to England — effectively means "the king can do no wrong." Simply put, local governments can't be held liable for the damage they cause.

Flournoy said because county and city entities are protected by sovereign immunity, the Cobb County government is not required to have auto insurance on any of its motor vehicles.

"You are required, if you have a car, to have mandatory auto insurance. And if you don't, you can get a ticket, fined and put in jail," he said. "Yet, the same Cobb County officer who is giving you the citation has no auto insurance because he is protected by sovereign immunity. That's hypocrisy."

Flournoy said Cobb County commissioners voted to pay Ms. Rusin some of the money, but it was a fraction of the amount she deserved.

In an effort to amend this infraction, local lawmakers — including Barnes before his

gubernatorial election — began an effort to pass a bill to rectify the seeming injustice. Lawmakers even wore "Rusin Act" pins to bring attention to the bill that referred informally to Ms. Rusin.

The Legislature passed the bill earlier this year, and Barnes signed it into law on May 9, 2002.

Effective Jan. 1, 2005, the new bill, sponsored by House Judiciary Committee Chairman Tom Bordeaux (D-Savannah), waives sovereign immunity of local government entities up to \$100,000 per person and \$300,000 per occurrence.

"An occurrence means that if seven people are injured, the local government is still only responsible for paying a maximum of \$300,000," Flournoy said.

The law only applies to civil lawsuits resulting from motor vehicle accidents.

Flournoy laments that the law won't become effective for another three years.

"So for the next three years, if a Cobb County officer hits you and it is his fault, you have no legal recourse under Georgia law," he said.

Rep. Earl Ehrhart (R-Powder Springs), who voted for the bill, said the reason the bill won't come into effect until 2005 was to give the municipalities time to get the liability insurance they need

to cover themselves from these types of claims.

Bordeaux said the bill is a remarkable breakthrough for the people.

"Great legislatures have been trying to get this passed, and they met a stone wall," he said. "So many cases have happened over the years, and it was like these local cities and counties were denying to pay for what they broke."

Ms. Rusin shared similar sentiments.

"I think it's terrific," she said Thursday. "When I first found out that the county could actually do that and not have auto insurance, I was shocked in disbelief. But now that (the law) has passed, I feel like I have made a difference."

Flournoy said detractors of the bill argue sovereign immunity is designed to protect the public purse of the taxpayer and is a valid defense against all tort claims against the county.

"They say we will have to increase taxes to pay for these damages," he said.

Barnes signed the law with little fanfare largely because of the financial burden the law places on the state's municipalities, according to some lawmakers.

Officials from Barnes' office were unavailable for comment Thursday.

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