

Senate Bill 182

By: Senators Wiles of the 37th, Unterman of the 45th and Hill of the 32nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to
2 change provisions relating to asbestos claims and silica claims; to state legislative findings
3 and purpose; to provide for applicability; to provide definitions; to provide that physical
4 impairment shall be an essential element of an asbestos claim or a silica claim; to provide for
5 a limitations period for filing a claim; to provide for dismissal of pending claims under
6 certain conditions; to provide for general rules applicable to new filings; to provide for forum
7 non conveniens; to provide for venue; to provide for joinder and consolidation of claims; to
8 clarify Georgia law and to create provisions relating to asbestos claims and successor
9 corporations; to provide for legislative findings and intent; to provide definitions; to provide
10 that limitations of liabilities for asbestos claims apply to a corporation that is a successor and
11 became a successor corporation before January 1, 1972; to provide for exceptions to the
12 limitations; to provide for other exceptions; to provide for methods by which to establish fair
13 market value of total gross assets; to provide for the fair market value of total gross assets
14 at the time of a merger or consolidation to increase annually; to provide for adjustments; to
15 provide a methodology by which the fair market value of the assets is increased; to require
16 that the courts liberally construe this Act; to provide for other matters relative to the
17 foregoing; to provide for severability; to provide an effective date and applicability; to repeal
18 conflicting laws; and for other purposes.

19 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

20 **SECTION 1.**

21 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by striking
22 in its entirety Chapter 14, relating to asbestos and silica claims, and inserting in its place a
23 new Chapter 14 to read as follows:

"CHAPTER 14

1
2 51-14-1.

3 (a) The General Assembly finds that:

4 (1) Asbestos is a mineral that was widely used prior to the 1980's for insulation,
5 fireproofing, and other purposes;

6 (2) Many American workers were exposed to asbestos, especially during World War II;

7 (3) Exposure to asbestos has been causally associated with mesothelioma and lung
8 cancer, as well as nonmalignant conditions such as asbestosis, pleural plaques, and
9 diffuse pleural thickening;

10 (4) The United States Supreme Court in *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591,
11 597 (1997), stated that this country is in the midst of an 'asbestos-litigation crisis';

12 (5) The vast majority of new asbestos claims are filed by individuals who allege
13 exposure to asbestos but have only minimal or no physical evidence of exposure and who
14 suffer no present asbestos related impairment. In *Amchem*, United States Supreme Court
15 Justice Stephen Breyer observed that 'up to one-half of asbestos claims are now filed by
16 people who have little or no physical impairment.' That number may be conservative.
17 Recent reports indicate that as many as 90 percent of new asbestos related claims are filed
18 by plaintiffs with no impairment;

19 (6) Concerns about statutes of limitations can force claimants who have been exposed
20 to asbestos but who have no current injury to bring premature lawsuits in order to protect
21 against losing their rights to future compensation should they become impaired;

22 (7) X-ray screenings of workers at occupational locations are used to amass large
23 numbers of claimants. Frequently, a complaint is filed on behalf of anyone who shows
24 any evidence of asbestos or silica exposure, even though most claimants are functionally
25 asymptomatic when the suit is filed;

26 (8) In federal multidistrict litigation proceedings, *In re Silica Products Liability*
27 *Litigation*, MDL No. 1553 (S.D. Tex.), U.S. District Judge Janis Graham Jack
28 documented the abuses this chapter is designed to address in silica cases involving many
29 of the same physicians involved in the troublesome asbestos screenings. Discovery and
30 *Daubert* hearings in that litigation raise serious questions regarding the validity of the
31 silicosis diagnoses of the more than 10,000 plaintiffs involved in those actions.
32 Proceedings in the litigation also revealed that a significant number of the silica plaintiffs
33 are 'recycled' asbestos plaintiffs who previously made asbestos claims to recover for the
34 same respiratory injuries that they now claim to be the result of silica exposure. Judge
35 Jack found 'that in every case involving a screening company, the diagnoses were

1 essentially manufactured on an assembly line.' *In re Silica Products Liability Litigation*,
2 398 F. Supp. 2d 563, 633 (S.D. Tex. 2005). Judge Jack also stated:

3 The word 'litigation' implies (or should imply) the search for truth and the quest for
4 justice. But it is apparent that truth and justice had very little to do with these
5 diagnoses—otherwise more effort would have been devoted to ensuring they were
6 accurate. Instead, these diagnoses were driven by neither health nor justice: they
7 were manufactured for money.

8 *Id.* at 635;

9 (9) The questionable screening practices that generated the diagnoses in the federal silica
10 cases, which have also been employed in asbestos litigation, are now the subject of a
11 federal criminal investigation. See 'Civil Suits Over Silica in Texas Become a Criminal
12 Matter in New York'; *New York Times*, May 18, 2005; Roger Parloff, 'Diagnosing for
13 Dollars'; *Fortune*, June 13, 2005; 'Grand Jury Convened in New York to Look Into Silica,
14 Asbestos Fraud'; *Mealey's Publications*, June 1, 2005;

15 (10) These screenings and mass filings have contributed to the bankruptcy of at least 78
16 companies, including nearly all manufacturers of asbestos textile and insulation products;

17 (11) Bankruptcies resulting from asbestos litigation have led plaintiffs and their lawyers
18 to expand their search for new solvent defendants, including many defendants with only
19 a tenuous connection to asbestos. The number of asbestos defendants now includes over
20 8,400 companies, touching firms in industries that span 85 percent of the United States
21 economy. Some of these defendants are large companies, but others are firms with as
22 few as 20 employees and just a few million dollars in annual revenues;

23 (12) The cost of compensating exposed individuals who are not sick and legal costs spent
24 on their claims jeopardize recoveries by people with cancer or other serious asbestos
25 related injuries; threaten the savings, retirement benefits, and jobs of current and retired
26 employees of the defendants; and adversely affect the communities in which the
27 defendants operate;

28 (13) In February, 2003, in light of the problem of claimants pursuing recoveries without
29 proof of impairment, the American Bar Association Commission on Asbestos Litigation,
30 with input from ten of the nation's most prominent physicians in the area of pulmonary
31 function, adopted the 'ABA Standard For Non-Malignant Asbestos-Related Disease
32 Claims,' which sets forth medical criteria for demonstrating asbestos related impairment
33 that provide the underlying framework for the criteria set forth in this chapter and in
34 similar legislation adopted in several other states;

35 (14) Ohio, Florida, Texas, Kansas, South Carolina, and Tennessee have enacted
36 legislation similar to this chapter that, among other things, sets medical criteria governing
37 asbestos or silica claims or both, tolls statutes of limitations, and requires persons alleging

1 nonmalignant disease claims to demonstrate physical impairment as a prerequisite to
2 filing or maintaining such claims;

3 (15) Several jurisdictions have adopted inactive dockets, also called 'pleural registries'
4 or 'deferred dockets,' or issued case management orders to control the unlimited filing of
5 asbestos claims by persons who are not impaired; other courts have decided that only sick
6 claimants are entitled to compensation;

7 (16) Reports indicate that efforts to improve the asbestos litigation environment may lead
8 to a proliferation in silica related claims as personal injury attorneys seek to build new
9 inventories of claimants and find new defendants to target in lawsuits;

10 (17) Sound public policy requires deferring the claims of persons exposed to asbestos or
11 silica who are not presently impaired in order to give priority to those cases that involve
12 claims of actual and current conditions of impairment; preserve compensation for people
13 with cancer and other serious injuries; and safeguard the jobs, benefits, and savings of
14 workers;

15 (18) During the last several years, a large majority of the asbestos and silica claims filed
16 in Georgia involve plaintiffs who do not reside in this state and whose exposure did not
17 occur in this state, at a time when the resources of the Georgia courts should be conserved
18 to address the claims of Georgia residents or the claims of persons who were injured in
19 Georgia; and

20 (19) In light of the foregoing findings, the provisions of this chapter are reasonably
21 related to the goal of achieving the purposes set forth in subsection (b) of this Code
22 section, see, e.g., *Lasseter v. Georgia Public Service Commission*, 253 Ga. 227(2) (1984).
23 The unique history of the asbestos litigation and problems therein, and similar abuses
24 recently documented in the silica litigation, warrant the adoption of statutory remedies
25 and procedures to reduce the prospects for abuse and accomplish the purposes of this
26 chapter.

27 (b) It is the purpose of this chapter to:

28 (1) Give priority to claimants who can demonstrate actual physical harm or illness
29 caused by asbestos or silica;

30 (2) Preserve the rights of claimants to pursue asbestos or silica claims if an exposed
31 person becomes sick in the future;

32 (3) Enhance the ability of the courts to supervise and control asbestos litigation and silica
33 litigation; and

34 (4) Conserve resources to allow compensation of claimants who have cancer and others
35 who are impaired as a result of exposure to asbestos or silica while securing the right to
36 similar compensation for those who may suffer physical impairment in the future.

1 51-14-2.

2 This chapter applies to any claim defined in this chapter as an asbestos claim or as a silica
3 claim.

4 51-14-3.

5 As used in this chapter, the term:

6 (1) 'Asbestos' means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite
7 asbestos, actinolite asbestos, and any of these minerals that have been chemically treated
8 or altered, including but not limited to all minerals defined as asbestos in 29 C.F.R. 1910,
9 as amended from time to time.

10 (2)(A) 'Asbestos claim' means any claim, wherever or whenever made, for damages,
11 losses, indemnification, contribution, loss of consortium, or other relief arising out of,
12 based on, or in any way related to the health effects of exposure to asbestos, including,
13 but not limited to:

14 (i) Any claim, to the extent recognized by applicable state law now or in the future,
15 for:

16 (I) Personal injury or death;

17 (II) Mental or emotional injury;

18 (III) Risk or fear of disease or other injury;

19 (IV) The costs of medical monitoring or surveillance; or

20 (V) Damage or loss caused by the installation, presence, or removal of asbestos;
21 and

22 (ii) Any claim made by or on behalf of an exposed person or based on that exposed
23 person's exposure to asbestos, including a representative, spouse, parent, child, or
24 other relative of the exposed person.

25 (B) 'Asbestos claim' shall not mean a claim brought under:

26 (i) A workers' compensation law administered by this state to provide benefits,
27 funded by a responsible employer or its insurance carrier, for occupational diseases
28 or injuries or for disability or death caused by occupational diseases or injuries;

29 (ii) The Act of April 22, 1908, known as the Federal Employers' Liability Act, 45
30 U.S.C. Section 51, et seq., as may be amended from time to time;

31 (iii) The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sections
32 901-944, 948-950, as may be amended from time to time; or

33 (iv) The Federal Employees Compensation Act, 5 U.S.C. Chapter 81, as may be
34 amended from time to time.

35 (3) 'Asbestosis' means bilateral diffuse interstitial fibrosis of the lungs caused by
36 inhalation of asbestos.

- 1 (4) 'Board certified internist' means a qualified physician licensed to practice medicine
2 who is currently certified by the American Board of Internal Medicine.
- 3 (5) 'Board certified occupational medicine physician' means a qualified physician
4 licensed to practice medicine who is currently certified in the subspecialty of
5 occupational medicine by the American Board of Preventive Medicine.
- 6 (6) 'Board certified oncologist' means a qualified physician licensed to practice medicine
7 who is currently certified in the subspecialty of medical oncology by the American Board
8 of Internal Medicine.
- 9 (7) 'Board certified pathologist' means a qualified physician licensed to practice medicine
10 who holds primary certification in anatomic pathology or combined anatomic or clinical
11 pathology from the American Board of Pathology and whose professional practice is
12 principally in the field of pathology and involves regular evaluation of pathology
13 materials obtained from surgical or post-mortem specimens.
- 14 (8) 'Board certified pulmonologist' means a qualified physician licensed to practice
15 medicine who is currently certified in the subspecialty of pulmonary medicine by the
16 American Board of Internal Medicine.
- 17 (9) 'Certified B-reader' means a qualified physician who has successfully passed the
18 B-reader certification examination for X-ray interpretation sponsored by the National
19 Institute for Occupational Safety and Health and whose certification was current at the
20 time of any readings required by this chapter.
- 21 (10) 'Chest X-rays' means films taken in two views (PA and Lateral) for reading in
22 accordance with the radiological standards established by the International Labor Office,
23 as interpreted by a certified B-reader.
- 24 (11) 'Claimant' means a party seeking recovery of damages for an asbestos claim or silica
25 claim, including the exposed person, any other plaintiff making a claim as a result of the
26 exposed person's exposure to asbestos or silica, counterclaimant, cross-claimant, or
27 third-party plaintiff. If a claim is brought through or on behalf of an estate, the term
28 includes the claimant's decedent; if a claim is brought through or on behalf of a minor or
29 incompetent, the term includes the claimant's parent or guardian.
- 30 (12) 'Exposed person' means any person whose exposure to asbestos or silica is the basis
31 for an asbestos claim or a silica claim.
- 32 (13) 'FEV-1' means forced expiratory volume in the first second, which is the maximal
33 volume of air expelled in one second during performance of simple spirometric tests.
- 34 (14) 'FVC' means forced vital capacity, which is the maximal volume of air expired with
35 maximum effort from a position of full inspiration.
- 36 (15) 'ILO system' means the radiological ratings of the International Labor Office set
37 forth in *Guidelines for the Use of ILO International Classification of Radiographs of*

1 *Pneumoconioses*, revised edition, as amended from time to time by the International
2 Labor Office.

3 (16) 'Lower limit of normal' means the fifth percentile of healthy populations based on
4 age, height, and gender, as referenced in the American Medical Association's *Guides to*
5 *the Evaluation of Permanent Impairment*, fifth edition, as amended from time to time by
6 the American Medical Association.

7 (17) In the context of an asbestos claim, 'prima-facie evidence of physical impairment'
8 means:

9 (A) For an asbestos claim that accrued before April 12, 2005:

10 (i) For an asbestos claim alleging mesothelioma: that a claimant alleges
11 mesothelioma caused by exposure to asbestos, and no further prima-facie evidence
12 of physical impairment shall be required;

13 (ii) For an asbestos claim alleging cancer other than mesothelioma: that a physician
14 licensed to practice medicine (who need not be a 'qualified physician' as defined in
15 this Code section) has signed a medical report certifying to a reasonable degree of
16 medical probability that the exposed person's exposure to asbestos was a contributing
17 factor to the diagnosed cancer other than mesothelioma and attaching whatever
18 evidence the physician relied upon in determining that the exposed person has or had
19 an asbestos related cancer; and

20 (iii) For an asbestos claim alleging nonmalignant injury: that a physician licensed to
21 practice medicine (who need not be a 'qualified physician' as defined in this Code
22 section) has signed a medical report certifying to a reasonable degree of medical
23 probability that the exposed person's exposure to asbestos was a contributing factor
24 to the diagnosed nonmalignant asbestos injury and attaching whatever evidence the
25 physician relied upon in determining that the exposed person has or had a
26 nonmalignant asbestos injury;

27 (B) For an asbestos claim that accrued on or after May 1, 2007:

28 (i) For an asbestos claim alleging mesothelioma: that a claimant alleges
29 mesothelioma caused by exposure to asbestos, and no further prima-facie evidence
30 of physical impairment shall be required;

31 (ii) For an asbestos claim alleging cancer other than mesothelioma: that a board
32 certified internist, board certified pulmonologist, board certified pathologist, board
33 certified occupational medicine physician, or board certified oncologist has signed a
34 medical report certifying to a reasonable degree of medical probability that the
35 exposed person has or had a cancer other than mesothelioma; that the cancer is a
36 primary cancer; that exposure to asbestos was a substantial contributing factor to the

1 diagnosed cancer; and that other potential causes (such as smoking) were not the sole
2 or most likely cause of the injury at issue;

3 (iii) For an asbestos claim alleging nonmalignant injury: that a board certified
4 internist, board certified pulmonologist, board certified pathologist, board certified
5 occupational medicine physician, or board certified oncologist has signed a medical
6 report stating that the exposed person suffers or suffered from a nonmalignant
7 asbestos injury and:

8 (I) Verifying that the doctor signing the medical report or a medical professional
9 or professionals employed by and under the direct supervision and control of that
10 doctor has taken histories as defined below or, alternatively, confirming that the
11 signing doctor is relying on such histories taken or obtained by another physician
12 or physicians who actually treated the exposed person or who had a doctor-patient
13 relationship with the exposed person or by a medical professional or professionals
14 employed by and under the direct supervision and control of such other physician
15 or physicians, with such histories to consist of the following:

16 (a) A detailed occupational and exposure history from the exposed person or, if
17 the exposed person is deceased or incapable of providing such history, from the
18 person or persons most knowledgeable about the exposures that form the basis for
19 the asbestos claim. The history shall include all of the exposed person's principal
20 employments and his or her exposures to airborne contaminants that can cause
21 pulmonary impairment, including, but not limited to, asbestos, silica, and other
22 disease-causing dusts, and the nature, duration, and level of any such exposure;
23 and

24 (b) A detailed medical and smoking history from the exposed person or, if the
25 exposed person is deceased or incapable of providing such history, from the
26 person or persons most knowledgeable about the exposed person's medical and
27 smoking history, or the exposed person's medical records, or both, that includes
28 a thorough review of the exposed person's past and present medical problems and
29 their most probable cause;

30 (II) Setting out the details of the exposed person's occupational, medical, and
31 smoking histories and verifying that at least 15 years have elapsed between the
32 exposed person's first exposure to asbestos and the time of diagnosis;

33 (III) Verifying that the exposed person has:

34 (a) An ILO quality 1 chest X-ray taken in accordance with all applicable state and
35 federal regulatory standards, and that the X-ray has been read by a certified
36 B-reader according to the ILO system of classification as showing bilateral small
37 irregular opacities (s, t, or u) graded 1/1 or higher or bilateral diffuse pleural

1 thickening graded b2 or higher including blunting of the costophrenic angle;
2 provided, however, that in a death case where no pathology is available, the
3 necessary radiologic findings may be made with a quality 2 film if a quality 1 film
4 is not available; or

5 (b) Pathological asbestosis graded 1(B) or higher under the criteria published in
6 the Asbestos-Associated Diseases, Special Issue of the *Archives of Pathological*
7 *and Laboratory Medicine*, Volume 106, Number 11, Appendix 3, as amended
8 from time to time;

9 (IV) Verifying that the exposed person has pulmonary impairment related to
10 asbestos as demonstrated by pulmonary function testing, performed using
11 equipment, methods of calibration, and techniques that meet the criteria
12 incorporated in the American Medical Association's *Guides to the Evaluation of*
13 *Permanent Impairment*, fifth edition, and reported as set forth in 20 C.F.R. 404,
14 Subpt. P. App 1, Part (A) Section 3.00 (E) and (F), as amended from time to time
15 by the American Medical Association, and the interpretative standards of the
16 American Thoracic Society, *Lung Function Testing: Selection of Reference Values*
17 *and Interpretive Strategies*, 144 Am. Rev. Resp. Dis. 1202-1218 (1991), as
18 amended from time to time by the American Thoracic Society, that shows:

19 (a) Forced vital capacity below the lower limit of normal and FEV1/FVC ratio,
20 using actual values, at or above the lower limit of normal; or

21 (b) Total lung capacity, by plethysmography or timed gas dilution, below the
22 lower limit of normal,

23 except that this subdivision (17)(B)(iii)(IV) shall not apply if the medical report
24 includes the pathological evidence set forth in clause (17)(B)(iii)(III)(b) of this Code
25 section;

26 (V)(a) Exception to pulmonary function test requirement in subdivision
27 (17)(B)(iii)(IV) of this Code section: If the doctor signing the medical report
28 states in the medical report that the exposed person's medical condition or process
29 prevents the pulmonary function test described in subdivision (17)(B)(iii)(IV) of
30 this Code section from being performed or makes the results of such test an
31 unreliable indicator of physical impairment, a board certified internist, board
32 certified pulmonologist, board certified pathologist, board certified occupational
33 medicine physician, or board certified oncologist (none of whom need be a
34 'qualified physician' as defined in this Code section), independent from the
35 physician signing the report required in this subdivision, must provide a report
36 which states to a reasonable degree of medical probability that the exposed person
37 has or had a nonmalignant asbestos related condition causing physical impairment

1 equivalent to that required in subdivision (17)(B)(iii)(IV) of this Code section and
 2 states the reasons why the pulmonary function test could not be performed or
 3 would be an unreliable indicator of physical impairment.

4 (b) Exception to X-ray requirement in clause (17)(B)(iii)(III)(a) of this Code
 5 section: Alternatively and not to be used in conjunction with clause
 6 (17)(B)(iii)(V)(a) of this Code section, if the doctor signing the medical report
 7 states in the medical report that the exposed person's medical condition or process
 8 prevents a physician from being able to diagnose or evaluate that exposed person
 9 sufficiently to make a determination as to whether that exposed person meets the
 10 requirements of clause (17)(B)(iii)(III)(a) of this Code section, the claimant may
 11 serve on each defendant a report by a board certified internist, board certified
 12 pulmonologist, board certified pathologist, board certified occupational medicine
 13 physician, or board certified oncologist (none of whom need be a 'qualified
 14 physician' as defined in this Code section) that:

15 (1) Verifies that the physician has or had a doctor patient relationship with the
 16 exposed person;

17 (2) Verifies that the exposed person has or had asbestos related pulmonary
 18 impairment as demonstrated by pulmonary function testing showing:

19 (A) Forced vital capacity below the lower limit of normal and total lung
 20 capacity, by plethysmography, below the lower limit of normal; or

21 (B) Forced vital capacity below the lower limit of normal and FEV1/FVC
 22 ratio (using actual values) at or above the lower limit of normal; and

23 (3) Verifies that the exposed person has a chest X-ray and computed
 24 tomography scan or high resolution computed tomography scan read by the
 25 physician or a board certified internist, board certified pulmonologist, board
 26 certified pathologist, board certified occupational medicine physician, board
 27 certified oncologist, or board certified radiologist (none of whom need be a
 28 'qualified physician' as defined in this Code section) showing either bilateral
 29 pleural disease or bilateral parenchymal disease diagnosed and reported as being
 30 a consequence of asbestos exposure; and

31 (VI) Verifies that the doctor signing the medical report has concluded to a
 32 reasonable degree of medical probability that exposure to asbestos was a substantial
 33 contributing factor to the exposed person's physical impairment.

34 Copies of the B-reading, the pulmonary function tests, including printouts of the flow
 35 volume loops and all other elements required to demonstrate compliance with the
 36 equipment, quality, interpretation, and reporting standards set forth in this paragraph (17),
 37 the medical report (in the form of an affidavit as required by subparagraph (A) of

1 paragraph (2) of Code Section 51-14-6), and all other required reports shall be submitted
2 as required by this chapter. All such reports, as well as all other evidence used to
3 establish prima-facie evidence of physical impairment, must comply, to the extent
4 applicable, with the technical recommendations for examinations, testing procedures,
5 quality assurance, quality controls, and equipment in the American Medical Association's
6 *Guides to the Evaluation of Permanent Impairment*, fifth edition, as amended from time
7 to time by the American Medical Association, and the most current version of the Official
8 Statements of the American Thoracic Society regarding lung function testing. Testing
9 performed in a hospital or other medical facility that is fully licensed and accredited by
10 all appropriate regulatory bodies in the state in which the facility is located is presumed
11 to meet the requirements of this chapter. This presumption may be rebutted by evidence
12 demonstrating that the accreditation or licensing of the hospital or other medical facility
13 has lapsed or by providing specific facts demonstrating that the technical
14 recommendations for examinations, testing procedures, quality assurance, quality control,
15 and equipment have not been followed. All such reports, as well as all other evidence
16 used to establish prima-facie evidence of physical impairment, must not be obtained
17 through testing or examinations that violate any applicable law, regulation, licensing
18 requirement, or medical code of practice and must not be obtained under the condition
19 that the exposed person retain legal services in exchange for the examination, testing, or
20 screening. Failure to attach the required reports or demonstration by any party that the
21 reports do not satisfy the standards set forth in this paragraph (17) shall result in the
22 dismissal of the asbestos claim, without prejudice, upon motion of any party.

23 (18) In the context of a silica claim, 'prima-facie evidence of physical impairment'
24 means:

25 (A) For a silica claim that accrued before April 12, 2005, that a physician licensed to
26 practice medicine (who need not be a 'qualified physician' as defined in this Code
27 section) has signed a medical report certifying to a reasonable degree of medical
28 probability that the exposed person's exposure to silica was a contributing factor to the
29 claimed injury and attached whatever evidence the physician relied upon in determining
30 that the exposed person has or had a silica related injury; and

31 (B) For a silica claim that accrued on or after May 1, 2007:

32 (i) A medical report asserting that the exposed person has or had a silica related lung
33 cancer and:

34 (I) Certifying to a reasonable degree of medical probability that the cancer is a
35 primary lung cancer; and

36 (II) Signed by a board certified internist, board certified pulmonologist, board
37 certified pathologist, board certified occupational medicine physician, or board

1 certified oncologist stating to a reasonable degree of medical probability that
2 exposure to silica was a substantial contributing factor to the lung cancer with
3 underlying silicosis demonstrated by an X-ray that has been read by a certified
4 B-reader according to the ILO system of classification as showing bilateral nodular
5 opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or
6 higher, and that the lung cancer was not more probably the sole result of causes
7 other than the silica exposure revealed by the exposed person's occupational, silica
8 exposure, medical, and smoking histories;

9 (ii) A medical report asserting that the exposed person has or had silica related
10 progressive massive fibrosis or acute silicoproteinosis, or silicosis complicated by
11 documented tuberculosis, signed by a board certified internist, board certified
12 pulmonologist, board certified pathologist, board certified occupational medicine
13 physician, or board certified oncologist; or

14 (iii) A medical report signed by a board certified internist, board certified
15 pulmonologist, board certified pathologist, board certified occupational medicine
16 physician, or board certified oncologist stating that the exposed person suffers from
17 other stages of nonmalignant disease related to silicosis other than those set forth in
18 divisions (i) and (ii) of this paragraph, and:

19 (I) Verifying that the doctor signing the medical report or a medical professional
20 or professionals employed by and under the direct supervision and control of that
21 doctor has taken histories as defined below or, alternatively, confirming that the
22 signing doctor is relying on such histories taken or obtained by another physician
23 or physicians who actually treated the exposed person or who had a doctor-patient
24 relationship with the exposed person or by a medical professional or professionals
25 employed by and under the direct supervision and control of such other physician
26 or physicians, with such histories to consist of the following:

27 (a) A detailed occupational and exposure history from the exposed person or, if
28 the exposed person is deceased or incapable of providing such history, from the
29 person or persons most knowledgeable about the exposures that form the basis for
30 the silica claim. The history shall include all of the exposed person's principal
31 employments and his or her exposures to airborne contaminants that can cause
32 pulmonary impairment, including, but not limited to, asbestos, silica, and other
33 disease-causing dusts, and the nature, duration, and level of any such exposure;
34 and

35 (b) A detailed medical and smoking history from the exposed person or, if the
36 exposed person is deceased or incapable of providing such history, from the
37 person or persons most knowledgeable about the exposed person's medical and

1 smoking history, or the exposed person's medical records, or both, that includes
2 a thorough review of the exposed person's past and present medical problems and
3 their most probable cause;

4 (II) Setting out the details of the exposed person's occupational, medical, and
5 smoking histories and verifying a sufficient latency period for the applicable stage
6 of silicosis;

7 (III) Verifying that the exposed person has at least Class 2 or higher impairment
8 due to silicosis, as set forth in the American Medical Association's *Guides to the*
9 *Evaluation of Permanent Impairment*, fifth edition, as amended from time to time
10 by the American Medical Association and:

11 (a) Has an ILO quality 1 chest X-ray taken in accordance with all applicable state
12 and federal regulatory standards, and that the X-ray has been read by a certified
13 B-reader according to the ILO system of classification as showing bilateral
14 nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded
15 1/1 or higher; provided, however, that in a death case where no pathology is
16 available, the necessary radiologic findings may be made with a quality 2 film if
17 a quality 1 film is not available; or

18 (b) Has pathological demonstration of classic silicotic nodules exceeding 1
19 centimeter in diameter as set forth in 112 *Archives of Pathological & Laboratory*
20 *Medicine* 7 (July 1988), as amended from time to time; and

21 (IV) Verifying that the doctor signing the medical report has concluded to a
22 reasonable degree of medical probability that the exposure to silica was a substantial
23 contributing factor to the exposed person's physical impairment.

24 Copies of the B-reading, the pulmonary function tests, including printouts of the flow
25 volume loops and all other elements required to demonstrate compliance with the
26 equipment, quality, interpretation, and reporting standards set forth in this paragraph (18),
27 and the medical report (in the form of an affidavit as required by subparagraph (A) of
28 paragraph (2) of Code Section 51-14-6), and all other required reports shall be submitted
29 as required by this chapter. All such reports, as well as all other evidence used to
30 establish prima-facie evidence of physical impairment, must comply, to the extent
31 applicable, with the technical recommendations for examinations, testing procedures,
32 quality assurance, quality controls, and equipment in the American Medical Association's
33 *Guides to the Evaluation of Permanent Impairment*, fifth edition, as amended from time
34 to time by the American Medical Association, and the most current version of the Official
35 Statements of the American Thoracic Society regarding lung function testing. Testing
36 performed in a hospital or other medical facility that is fully licensed and accredited by
37 all appropriate regulatory bodies in the state in which the facility is located is presumed

1 to meet the requirements of this chapter. This presumption may be rebutted by evidence
2 demonstrating that the accreditation or licensing of the hospital or other medical facility
3 has lapsed or by providing specific facts demonstrating that the technical
4 recommendations for examinations, testing procedures, quality assurance, quality control,
5 and equipment have not been followed. All such reports, as well as all other evidence
6 used to establish prima-facie evidence of physical impairment, must not be obtained
7 through testing or examinations that violate any applicable law, regulation, licensing
8 requirement, or medical code of practice, and must not be obtained under the condition
9 that the exposed person retain legal services in exchange for the examination, testing, or
10 screening. Failure to attach the required reports or demonstration by any party that the
11 reports do not satisfy the standards set forth in this paragraph (18) shall result in the
12 dismissal of the silica claim, without prejudice, upon motion of any party.

13 (19) 'Qualified physician' means a medical doctor, who:

14 (A) Spends no more than 35 percent of his or her professional practice time in
15 providing consulting or expert services in connection with actual or potential civil
16 actions, and whose medical group, professional corporation, clinic, or other affiliated
17 group earns not more than 50 percent of its revenues from providing such services;
18 provided, however, that the trial court, in its discretion, may allow a physician who
19 meets the other requirements of this chapter but does not meet the time and revenue
20 requirements of this subparagraph to submit a report required by this chapter if the trial
21 court first makes an evidentiary finding (after all parties have had a reasonable
22 opportunity to present evidence) that it would be manifestly unjust not to allow the
23 physician at issue to submit the report and makes specific and detailed findings, setting
24 forth the bases therefor, that the physician's opinions appear to be reliable medical
25 opinions in that they are supported by documented, reliable medical evidence that was
26 obtained through testing or examinations that comply with and do not violate any
27 applicable law, regulation, licensing requirement, or medical code of practice and that
28 the opinions are not the product of bias or the result of financial influence due to his or
29 her role as a paid expert. The cost of retaining another physician who is qualified
30 pursuant to this subparagraph for the purpose of submitting a report required by this
31 chapter may not be considered in determining manifest injustice, but the availability or
32 unavailability of other physicians who meet the time and revenue requirements of this
33 subparagraph shall be considered as a relevant factor; and

34 (B) Does not require as a condition of diagnosing, examining, testing, screening, or
35 treating the exposed person that legal services be retained by the exposed person or any
36 other person pursuing an asbestos or silica claim based on the exposed person's
37 exposure to asbestos or silica.

1 The board certified internist, board certified pulmonologist, board certified pathologist,
2 board certified occupational medicine physician, or board certified oncologist who
3 submits a report under this chapter may be an expert witness retained by counsel for the
4 exposed person or claimant, so long as the physician otherwise meets the requirements
5 of this chapter and any other applicable Code sections governing the qualifications of
6 expert witnesses.

7 (20) 'Silica' means a group of naturally occurring crystalline forms of silicon dioxide,
8 including, but not limited to, quartz and silica sand, whether in the form of respirable free
9 silica or any quartz-containing or crystalline silica-containing dust, in the form of a
10 quartz-containing by-product or crystalline silica-containing by-product, or dust released
11 from individual or commercial use, release, or disturbance of silica sand, silicon dioxide,
12 or crystalline-silica containing media, consumables, or materials.

13 (21)(A) 'Silica claim' means any claim, wherever or whenever made, for damages,
14 losses, indemnification, contribution, loss of consortium, or other relief arising out of,
15 based on, or in any way related to the health effects of exposure to silica, including, but
16 not limited to:

17 (i) Any claim, to the extent recognized by applicable state law now or in the future,
18 for:

19 (I) Personal injury or death;

20 (II) Mental or emotional injury;

21 (III) Risk or fear of disease or other injury; or

22 (IV) The costs of medical monitoring or surveillance; and

23 (ii) Any claim made by or on behalf of an exposed person or based on that exposed
24 person's exposure to silica, including a representative, spouse, parent, child, or other
25 relative of the exposed person.

26 (B) 'Silica claim' shall not mean a claim brought under:

27 (i) A workers' compensation law administered by this state to provide benefits,
28 funded by a responsible employer or its insurance carrier, for occupational diseases
29 or injuries or for disability or death caused by occupational diseases or injuries;

30 (ii) The Act of April 22, 1908, known as the Federal Employers' Liability Act, 45
31 U.S.C. Section 51, et seq., as may be amended from time to time;

32 (iii) The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sections
33 901-944, 948-950, as may be amended from time to time; or

34 (iv) The Federal Employees Compensation Act, 5 U.S.C. Chapter 81, as may be
35 amended from time to time.

36 (22) 'Silicosis' means nodular interstitial fibrosis of the lung produced by inhalation of
37 silica.

1 (23) 'Substantial contributing factor' means that exposure to asbestos or silica took place
2 on a regular basis over an extended period of time and in close proximity to the exposed
3 person and was a factor without which the physical impairment in question would not
4 have occurred.

5 (24) 'Total lung capacity' means the volume of gas contained in the lungs at the end of
6 a maximal inspiration.

7 51-14-4.

8 (a) Prima-facie evidence of physical impairment of the exposed person as defined in
9 paragraph (17) or (18) of Code Section 51-14-3 shall be an essential element of an asbestos
10 claim or silica claim.

11 (b) In order to bring or maintain an asbestos claim or silica claim, the claimant shall
12 submit prima-facie evidence of physical impairment in accordance with the requirements
13 of this chapter.

14 51-14-5.

15 Notwithstanding any other provision of law, with respect to any asbestos claim or silica
16 claim not barred as of May 1, 2007, the limitations period shall not begin to run until the
17 exposed person, or any plaintiff making an asbestos claim or silica claim based on the
18 exposed person's exposure to asbestos or silica, obtains, or through the exercise of
19 reasonable diligence should have obtained, prima-facie evidence of physical impairment,
20 as defined in paragraph (17) or (18) of Code Section 51-14-3.

21 51-14-6.

22 Subject to the provisions of Code Section 51-14-12:

23 (1) Any asbestos claim or silica claim pending in this state on May 1, 2007, shall be
24 dismissed within 180 days after May 1, 2007, without prejudice unless:

25 (A) All parties stipulate by no less than 60 days prior to the commencement of trial that
26 the plaintiff has established prima-facie evidence of physical impairment with respect
27 to an asbestos claim or silica claim; or

28 (B) The trial court in which the complaint was initially filed issues an order that the
29 plaintiff has established prima-facie evidence of physical impairment with respect to
30 an asbestos claim or silica claim. Such an order shall be issued only if the following
31 conditions and procedures are met:

32 (i) By no less than 60 days prior to the commencement of trial, the plaintiff files with
33 the trial court and serves on each defendant named in the complaint or on counsel

1 designated by each defendant the medical documentation necessary to establish
2 prima-facie evidence of physical impairment;

3 (ii) Within 30 days of service of plaintiff's documentation establishing prima-facie
4 evidence of physical impairment, any defendant may file an opposition with the trial
5 court challenging plaintiff's prima-facie evidence of physical impairment. To the
6 extent any such opposition is based upon the medical opinion of a licensed physician,
7 that physician shall be a qualified physician, as that term is defined in subparagraph
8 (A) of paragraph (19) of Code Section 51-14-3, and shall be either a board certified
9 internist, a board certified pathologist, a board certified pulmonologist, a board
10 certified occupational medicine physician, a board certified oncologist, or a certified
11 B-reader. Defendant's opposition shall be filed with the trial court and served on
12 plaintiff's counsel and each defendant;

13 (iii) If a defendant does not file an opposition within the time permitted, the trial
14 court shall determine if the plaintiff has established prima-facie evidence of physical
15 impairment in a timely manner based on the papers and documentation submitted to
16 the trial court;

17 (iv) If a defendant files an objection, then within ten days of service of defendant's
18 opposition, the plaintiff may file a reply with the trial court. The reply must be served
19 on each defendant; and

20 (v) The trial court shall determine if the plaintiff has established prima-facie evidence
21 of physical impairment in a timely manner based on the papers and documentation
22 submitted to the trial court. A hearing will be conducted only if the trial court so
23 orders on its own motion or if, in the exercise of discretion, the trial court grants a
24 party's request for a hearing. No testimony shall be taken at the hearing. A decision
25 of the trial court not to grant a request for a hearing may not be appealed and does not
26 constitute reversible error. If the trial court determines that the plaintiff has failed to
27 establish prima-facie evidence of physical impairment, it shall dismiss the plaintiff's
28 complaint without prejudice;

29 In the event a trial is scheduled to commence in less than 60 days after May 1, 2007, a
30 trial court can shorten the deadlines contained in this paragraph as necessary in order to
31 make a determination regarding the prima-facie evidence of physical impairment before
32 trial commences; and

33 (2)(A) The plaintiff in any asbestos claim or silica claim filed in this state on or after
34 May 1, 2007, shall file together with the complaint a medical report (which shall be in
35 the form of an affidavit) and accompanying documentation setting forth the medical
36 findings necessary to establish prima-facie evidence of physical impairment as provided
37 in paragraph (17) or (18) of Code Section 51-14-3. In addition, the plaintiff's

1 complaint shall allege with specificity that the plaintiff satisfies the prima-facie
2 evidence of physical impairment with respect to an asbestos claim or silica claim.

3 (B) Within 90 days of service of plaintiff's complaint, any defendant may file an
4 opposition with the trial court challenging plaintiff's prima-facie evidence of physical
5 impairment. To the extent any such opposition is based upon the medical opinion of
6 a licensed physician, that physician shall be a qualified physician, as that term is
7 defined in subparagraph (A) of paragraph (19) of Code Section 51-14-3, and shall be
8 either a board certified internist, a board certified pathologist, a board certified
9 pulmonologist, a board certified occupational medicine physician, a board certified
10 oncologist, or a certified B-reader. Defendant's opposition shall be filed with the trial
11 court and served on plaintiff's counsel and each defendant.

12 (C) If the defendant does not file an opposition challenging plaintiff's prima-facie
13 evidence of physical impairment within the time permitted, the trial court shall
14 determine if the plaintiff has established prima-facie evidence of physical impairment
15 based on the papers and documentation submitted to the trial court. The trial court's
16 decision shall be made in a timely manner.

17 (D) If the defendant files an objection, the plaintiff may file a reply with the trial court
18 within ten days of service of defendant's opposition. The reply must be served on each
19 defendant.

20 (E) The trial court shall determine if the plaintiff has established prima-facie evidence
21 of physical impairment with respect to an asbestos claim or silica claim in a timely
22 manner based on the papers and documentation submitted to the trial court. A hearing
23 will be conducted only if the trial court so orders on its own motion, or if, in the
24 exercise of discretion, the trial court grants a party's request for a hearing. No
25 testimony shall be taken at the hearing. A decision of the trial court not to grant a
26 request for a hearing may not be appealed and does not constitute reversible error. If
27 the trial court determines that the plaintiff has failed to establish prima-facie evidence
28 of physical impairment, it shall dismiss the plaintiff's complaint without prejudice.

29 51-14-7.

30 (a) All asbestos claims and silica claims filed in this state on or after May 1, 2007, shall
31 include with the complaint a sworn information form containing the following information:

32 (1) The exposed person's name, address, date of birth, social security number, and
33 marital status;

34 (2) If the exposed person alleges exposure to asbestos or silica through the testimony of
35 another person or other than by direct or bystander exposure to a product or products, the
36 name, address, date of birth, social security number, and marital status for each person

1 by which claimant alleges exposure, hereafter the 'index person,' and the claimant's
2 relationship to each such person;

3 (3) The specific location of each alleged exposure;

4 (4) The specific asbestos-containing product or silica-containing product to which the
5 exposed person was exposed and the manufacturer of each product;

6 (5) The beginning and ending dates of each alleged exposure as to each
7 asbestos-containing product or silica-containing product for each location at which
8 exposure allegedly took place for plaintiff and for each index person;

9 (6) The occupation and name of employer of the exposed person at the time of each
10 alleged exposure;

11 (7) The specific condition related to asbestos or silica claimed to exist;

12 (8) Any supporting documentation of the condition claimed to exist; and

13 (9) The identity of any bankruptcy trust to which a claim has been submitted concerning
14 any asbestos or silica injury of the exposed person, attaching any claim form or other
15 information submitted to such trust or trusts with respect to the exposed person. Plaintiff
16 must also identify any bankruptcy trust that the plaintiff believes is or may be liable for
17 all or part of the injury at issue, even if a claim has not been submitted to that trust at the
18 time the complaint is filed.

19 (b) If a plaintiff filing an asbestos claim or silica claim fails to file with the complaint a
20 sworn information form or files a sworn information form that is allegedly defective or
21 incomplete, and one or more defendants allege, with specificity, by motion to dismiss filed
22 on or before the close of discovery, that said sworn information form is missing, defective,
23 or incomplete, the plaintiff's complaint shall be dismissed without prejudice for failure to
24 state a claim, except that the plaintiff may file the sworn information form or cure the
25 alleged defect or omission any time between service of the motion to dismiss and 30 days
26 after any order of dismissal identifying the defective or missing item or items. The trial
27 court may, in the exercise of its discretion, extend the time for filing the missing
28 information as it shall determine justice requires.

29 (c) All asbestos claims and silica claims along with sworn information forms must be
30 individually filed in separate civil actions except that claims relating to the exposure to
31 asbestos or silica for the same exposed person whose alleged injury is the basis for the civil
32 action may be joined in a single action. Otherwise, no claims on behalf of a group or class
33 of persons shall be joined in single civil action.

34 51-14-8.

35 (a) Until such time as the trial court enters an order determining that the plaintiff has
36 established prima-facie evidence of physical impairment, no asbestos claim or silica claim

1 shall be subject to discovery, except discovery related to establishing or challenging the
2 prima-facie evidence of physical impairment or by order of the trial court upon motion of
3 one of the parties and for good cause shown.

4 (b) The medical criteria set forth in this chapter to establish prima-facie evidence of
5 physical impairment are solely for the purpose of determining whether a claim meets the
6 criteria to proceed in court. The fact that a plaintiff satisfies the criteria necessary to
7 establish prima-facie evidence of physical impairment for an asbestos claim or silica claim
8 shall not be construed as an admission or determination that the exposed person in fact has
9 a condition related to exposure to asbestos or silica and shall not be cited, referred to, or
10 otherwise used at trial.

11 (c) Unless stipulated to by the parties, an expert report submitted for the purpose of
12 establishing or challenging prima-facie evidence of physical impairment is inadmissible
13 for any other purpose.

14 51-14-9.

15 (a) Notwithstanding Code Section 1-2-6 or 1-2-10, a civil action alleging an asbestos claim
16 or silica claim may only be brought or maintained in the courts of Georgia if the plaintiff,
17 whether a citizen of Georgia or a citizen of some other state, is a resident of Georgia at the
18 time of filing the action or the exposure to asbestos or silica on which the claim is based
19 occurred in Georgia; provided, however, nothing contained in this chapter shall preclude
20 a nonresident of Georgia who currently has a case pending in this state that was filed before
21 April 12, 2005 from maintaining that asbestos claim or silica claim if that nonresident can
22 establish prima-facie evidence of physical impairment with respect to an asbestos claim or
23 silica claim as provided in paragraph (17) or (18) of Code Section 51-14-3. Civil actions
24 alleging an asbestos claim or silica claim filed on or after May 1, 2007, must comply with
25 the forum provisions set forth in this Code section. Civil actions alleging an asbestos claim
26 or silica claim filed on or after April 12, 2005 and before May 1, 2007, must comply with
27 the forum provisions of Code Section 51-14-8, as enacted on April 12, 2005, by 2005 Act
28 No. 29 (Ga. L. 2005, p. 145) as they existed prior to May 1, 2007.

29 (b) The trial court, on motion of a defendant, shall dismiss each asbestos claim or silica
30 claim that is subject to this chapter against the defendant unless the plaintiff files a written
31 statement with the trial court electing to abate the plaintiff's claim against the defendant
32 for a period of 180 days from the date the trial court disposes of the defendant's motions
33 in order to afford the plaintiff an opportunity to file a new action on the claims in another
34 state of the United States.

35 (c)(1) A trial court may not abate or dismiss a claim under this Code section until the
36 defendant files with the trial court or with the clerk of the court a written stipulation that,

1 with respect to a new action on the claim commenced by the plaintiff, the defendant
2 waives the right to assert a statute of limitations defense in all other states of the United
3 States in which the claim was not barred by limitations at the time the claim was filed in
4 this state as necessary to effect a tolling of the limitations periods in those states
5 beginning on the date the claim was filed in this state and ending on the date the claim
6 is dismissed or the period of abatement ends. The fact that a claim subject to this Code
7 section was barred by the statute of limitations in all other states of the United States at
8 the time it was filed in this state shall not prevent the claim from being dismissed
9 pursuant to this Code section and such claim shall be dismissed even if it can not be filed
10 in another state. The trial court may not abate or dismiss a claim under this Code section
11 until the defendant files with the trial court or with the clerk of the court a written
12 stipulation that, with respect to a new action on the claim commenced by the plaintiff in
13 another state of the United States, the plaintiff may elect that the plaintiff and the
14 defendant may rely on responses to discovery already provided under Georgia law, plus
15 any additional discovery that may be conducted under the rules of civil procedure in
16 another state, or use responses to discovery already provided and conduct additional
17 discovery as permitted under the rules of civil procedure in such other state.

18 (2) If less than all of the defendants agree to provide the stipulations set forth in
19 paragraph (1) of this subsection, then the court shall dismiss the claims against those
20 defendants who so stipulate.

21 (d) To comply with this Code section in relation to an action that involves both claims that
22 arose in this state and claims that arose outside this state, a trial court shall consider each
23 claim individually and shall sever from the action the claims that are subject to this Code
24 section.

25 (e) If a plaintiff alleges that the exposed person was exposed to asbestos or silica while
26 located in more than one jurisdiction, the trial court shall determine, for purposes of this
27 Code section, which of the jurisdictions is the most appropriate forum for the claim,
28 considering the relative amounts and lengths of the exposed person's exposure to asbestos
29 or silica in each jurisdiction.

30 51-14-10.

31 Notwithstanding any other provision of law, an asbestos claim or silica claim that meets
32 the requirements of this chapter permitting a claim to be filed in this state may only be filed
33 in the county where the plaintiff resides or a county in which the exposure to asbestos or
34 silica on which the claim is based occurred. If a plaintiff alleges that an exposed person
35 was exposed to asbestos or silica while located in more than one county, the trial court shall
36 determine which of the counties is the most appropriate forum for the claim, considering

1 the relative amounts and lengths of the exposed person's exposure to asbestos or silica in
2 each of those counties.

3 51-14-11.

4 A trial court may consolidate for trial any number and type of asbestos claims or silica
5 claims with the consent of all the parties. In the absence of such consent, the trial court
6 may consolidate for trial only asbestos claims or silica claims relating to the same exposed
7 person and members of his or her household.

8 51-14-12.

9 (a) Asbestos claims and silica claims that accrued before April 12, 2005, or that will
10 accrue on or after May 1, 2007, shall be governed by this chapter, as it exists on May 1,
11 2007. Asbestos claims and silica claims that accrued on or after April 12, 2005, and before
12 May 1, 2007, shall be governed by Chapter 14 of Title 51, as enacted on April 12, 2005,
13 by 2005 Act No. 29 (Ga. L. 2005, p. 145).

14 (b) Notwithstanding the foregoing, all asbestos claims and silica claims filed on or after
15 April 12, 2005, and before May 1, 2007, shall be subject to and comply with the provisions
16 of Code Sections 51-14-6, 51-14-7, 51-14-8, 51-14-9, and 51-14-10, as enacted on April
17 12, 2005, by 2005 Act No. 29 (Ga. L. 2005, p 145). All asbestos claims and silica claims
18 filed on or after May 1, 2007, shall be subject to and comply with Code Sections 51-14-7,
19 51-14-8, 51-14-9, 51-14-10, and 51-14-11, as they exist on May 1, 2007.

20 54-14-13.

21 In the event any part, portion, section, subsection, paragraph, sentence, clause, phrase, or
22 word of this chapter shall be declared or adjudged invalid or unconstitutional, such
23 adjudication shall in no manner affect the other parts, portions, sections, subsections,
24 paragraphs, sentences, clauses, phrases, or words of this chapter which shall remain of full
25 force and effect as if the part, portion, section, subsection, paragraph, sentence, clause,
26 phrase, or word so declared or adjudged invalid or unconstitutional were not originally a
27 part hereof. For example, if a court determines that a particular word renders any portion
28 or application of this chapter unconstitutional, in that event, the court shall strike that word
29 and apply this chapter as if it were enacted without that word. The General Assembly
30 declares that it would have passed the remaining parts of this chapter if it had known that
31 such part or parts hereof would be declared or adjudged invalid or unconstitutional. The
32 General Assembly does not intend for this chapter to make any substantive change in the
33 law governing claims that accrued before April 12, 2005, and has only included procedural
34 provisions that govern where such claims can be filed and what early reports must be filed

1 in such cases. This chapter shall be interpreted consistently with the General Assembly's
2 intention not to make any substantive changes in the law applicable to cases that accrued
3 before April 12, 2005. The General Assembly expressly declares its intent that Code
4 Section 51-14-9 remain in full force and effect if any other part or parts of this chapter shall
5 be declared or adjudged invalid or unconstitutional. The General Assembly further
6 expressly declares its intent that, in the event any part, portion, section, subsection,
7 paragraph, sentence, clause, phrase, or word of this chapter shall be declared or adjudged
8 invalid or unconstitutional as applied to asbestos claims or silica claims that accrued before
9 April 12, 2005, such adjudication shall in no manner affect the applicability of any part,
10 portion, section, subsection, paragraph, sentence, clause, phrase, or word of this chapter to
11 asbestos claims or silica claims that accrued or may accrue on or after May 1, 2007."

12 SECTION 2.

13 Said Title 51 of the Official Code of Georgia Annotated, relating to torts, is further amended
14 by inserting at the end thereof a new Chapter 15 to read as follows:

15 "CHAPTER 15

16 51-15-1.

17 The General Assembly finds that the number of asbestos related claims has increased
18 significantly in recent years and threatens the continued viability of a number of uniquely
19 situated companies that have not ever manufactured, sold, or distributed asbestos or
20 asbestos products and are argued to be liable only as successor corporations. This liability
21 has created an overpowering public necessity to provide an immediate, clarifying, and
22 remedial legislative solution. The General Assembly intends that the cumulative recovery
23 by all asbestos claimants from innocent successors be limited, and intends to simply clarify
24 and fix the form of asbestos claimants' remedies without impairing their substantive rights
25 and finds that there are no alternative means to meet this public necessity. The General
26 Assembly finds that Pennsylvania, Ohio, Texas, Mississippi, Florida, and South Carolina
27 have enacted legislation similar to this chapter that, among other things, provides
28 limitations of liabilities for asbestos claims for innocent successors. The General Assembly
29 finds the public interest as a whole is best served by providing relief to these innocent
30 successors so that they may remain viable and continue to contribute to this state. The
31 General Assembly further finds that Georgia's successor liability statutes were never
32 intended or contemplated to impose liability on successors in the situation covered by this
33 chapter.

1 51-15-2.

2 As used in this chapter, the term:

3 (1)(A) 'Asbestos claim' means any claim, wherever or whenever made, for damages,
4 losses, indemnification, contribution, loss of consortium, or other relief arising out of,
5 based on, or in any way related to the health effects of exposure to asbestos, including,
6 but not limited to:

7 (i) Any claim, to the extent recognized by applicable state law now or in the future,
8 for:

9 (I) Personal injury or death;

10 (II) Mental or emotional injury;

11 (III) Risk or fear of disease or other injury;

12 (IV) The costs of medical monitoring or surveillance; or

13 (V) Damage or loss caused by the installation, presence, or removal of asbestos;
14 and

15 (ii) Any claim made by or on behalf of an exposed person or based on that exposed
16 person's exposure to asbestos, including a representative, spouse, parent, child, or
17 other relative of the exposed person.

18 (B) 'Asbestos claim' shall not mean a claim brought under:

19 (i) A workers' compensation law administered by this state to provide benefits,
20 funded by a responsible employer or its insurance carrier, for occupational diseases
21 or injuries or for disability or death caused by occupational diseases or injuries;

22 (ii) The Act of April 22, 1908, known as the Federal Employers' Liability Act, 45
23 U.S.C. Section 51, et seq., as may be amended from time to time;

24 (C) The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sections
25 901-944, 948-950, as may be amended from time to time; or

26 (D) The Federal Employees Compensation Act, 5 U.S.C. Chapter 81, as may be
27 amended from time to time.

28 (2) 'Corporation' means a corporation for profit, including a domestic corporation
29 organized under the laws of this state or a foreign corporation organized under laws other
30 than the laws of this state.

31 (3) 'Successor' means a corporation that assumes or incurs, or has assumed or incurred,
32 successor asbestos related liabilities.

33 (4) 'Successor asbestos related liabilities' means any liabilities, whether known or
34 unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated
35 or unliquidated, or due or to become due, which are related in any way to asbestos claims
36 and were assumed or incurred by a corporation as a result of or in connection with a
37 merger or consolidation, or the plan of merger or consolidation related to the merger or

1 consolidation, with or into another corporation, or which are related in any way to
2 asbestos claims based on the exercise of control or the ownership of stock of the
3 corporation before the merger or consolidation. The term includes liabilities that, after
4 the time of the merger or consolidation for which the fair market value of total gross
5 assets is determined under Code Section 51-15-4, were or are paid or otherwise
6 discharged, or committed to be paid or otherwise discharged, by or on behalf of the
7 corporation, or by a successor of the corporation, or by or on behalf of a transferor, in
8 connection with settlements, judgments, or other discharges in this state or another
9 jurisdiction.

10 (5) 'Transferor' means a corporation from which successor asbestos related liabilities are
11 or were assumed or incurred.

12 51-15-3.

13 (a) The limitations contained in Code Section 51-15-4 apply to a domestic or foreign
14 corporation that is a successor and became a successor before January 1, 1972, or is any
15 of that successor corporation's successor corporation.

16 (b) The limitations contained in Code Section 51-15-4 do not apply to:

17 (1) Any claim against a corporation that does not constitute a successor asbestos related
18 liability;

19 (2) An insurance corporation;

20 (3) Any obligations under the federal National Labor Relations Act or under any
21 collective bargaining agreement; or

22 (4) A successor that, after a merger or consolidation, continued in the business of mining
23 asbestos, in the business of selling or distributing asbestos fibers, or in the business of
24 manufacturing, distributing, removing, or installing asbestos-containing products that
25 were the same or substantially the same as those products previously manufactured,
26 distributed, removed, or installed by the transferor.

27 51-15-4.

28 (a) Except as further limited in subsection (b) of this Code section, the cumulative
29 successor asbestos related liabilities of a corporation are limited to the fair market value of
30 the total gross assets of the transferor determined as of the time of the merger or
31 consolidation. The corporation does not have any responsibility for successor asbestos
32 related liabilities in excess of this limitation.

33 (b) If the transferor had assumed or incurred successor asbestos related liabilities in
34 connection with a prior merger or consolidation with a prior transferor, the fair market
35 value of the total assets of the prior transferor, determined as of the time of the earlier

1 merger or consolidation, shall be substituted for the limitation set forth in subsection (a)
2 of this Code section for the purpose of determining the limitation of liability of a
3 corporation.

4 51-15-5.

5 (a) A corporation may establish the fair market value of total gross assets for the purpose
6 of the limitations under Code Section 51-15-4 through any method reasonable under the
7 circumstances, including:

8 (1) By reference to the going concern value of the assets or to the purchase price
9 attributable to or paid for the assets in an arm's length transaction; or

10 (2) In the absence of other readily available information from which fair market value
11 can be determined, by reference to the value of the assets recorded on a balance sheet.

12 (b) Total gross assets include intangible assets.

13 (c) Total gross assets include the aggregate coverage under any applicable third-party
14 liability insurance that was issued to the transferor whose assets are being valued for
15 purposes of this Code section, which insurance has been collected or is collectable to cover
16 successor asbestos related liabilities except compensation for liabilities arising from
17 workers' exposure to asbestos solely during the course of their employment by the
18 transferor. For purposes of this subsection, a settlement with an insurance company shall
19 fix what amount of coverage was collectable.

20 51-15-6.

21 (a) Except as provided in subsections (b), (c), and (d) of this Code section, the fair market
22 value of total gross assets at the time of a merger or consolidation shall increase annually
23 at a rate equal to the sum of:

24 (1) The prime rate as published by the Board of Governors of the Federal Reserve
25 System, as published in statistical release H.15 or any publication that may supersede it,
26 for each calendar year since the merger or consolidation; and

27 (2) One percent.

28 (b) The rate provided in subsection (a) of this Code section shall not be compounded.

29 (c) The adjustment of fair market value of total gross assets shall continue as provided
30 under subsection (a) of this Code section until the date the adjusted value is first exceeded
31 by the cumulative amounts of successor asbestos related liabilities paid or committed to be
32 paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor,
33 after the time of the merger or consolidation for which the fair market value of total gross
34 assets is determined.

1 (d) No adjustment of the fair market value of total gross assets shall be applied to any
2 liability insurance otherwise included in the definition of total gross assets by subsection
3 (c) of Code Section 51-15-5.

4 51-15-7.

5 The courts in this state shall apply, to the fullest extent permissible under the United States
6 Constitution, this state's substantive law, including the limitation under this chapter, to the
7 issue of successor asbestos related liabilities. This chapter shall be construed liberally to
8 accomplish its remedial purposes.

9 51-15-8.

10 If any part, portion, section, subsection, paragraph, sentence, clause, phrase, or word of this
11 chapter, or the application thereof to any person or circumstance is held invalid, the
12 invalidity shall not affect the other parts, portions, sections, subsections, paragraphs,
13 sentences, clauses, phrases, or words or applications of this chapter that can be given effect
14 without the invalid part, portion, section, subsection, paragraph, sentence, clause, phrase,
15 or word or application, and to this end the parts, portions, sections, subsections, paragraphs,
16 sentences, clauses, phrases, and words of this chapter are declared severable."

17 SECTION 3.

18 In the event any part, portion, section, subsection, paragraph, sentence, clause, phrase, or
19 word of Section 1 of this Act shall be declared or adjudged invalid or unconstitutional, such
20 adjudication shall in no manner affect the validity or applicability of any part, portion,
21 section, subsection, paragraph, sentence, clause, phrase, or word of Section 2 of this Act,
22 which shall remain of full force and effect as if the part, portion, section, subsection,
23 paragraph, sentence, clause, phrase, or word so declared or adjudged invalid or
24 unconstitutional were not originally a part hereof. Likewise, in the event any part, portion,
25 section, subsection, paragraph, sentence, clause, phrase, or word of Section 2 of this Act shall
26 be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner
27 affect the validity or applicability of any part, portion, section, subsection, paragraph,
28 sentence, clause, phrase, or word of Section 1 of this Act, which shall remain of full force
29 and effect as if the part, portion, section, subsection, paragraph, sentence, clause, phrase, or
30 word so declared or adjudged invalid or unconstitutional were not originally a part hereof.
31 The General Assembly declares that it would have passed the remaining parts of this Act if
32 it had known that any part or parts hereof would be declared or adjudged invalid or
33 unconstitutional.

