

The House Committee on Judiciary, Non-civil offers the following substitute to SB 182:

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

51-14-1.

(a) The General Assembly finds that:

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

(2) Many American workers and others were exposed to asbestos, especially during and after World War II, at shipyards and other sites, prior to the advent of regulation by the United States Occupational Safety and Health Administration in the early 1970's;

(3) Exposure to asbestos is associated with various types of cancer, including mesothelioma, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening;

(4) Diseases caused by asbestos exposure often have long latency periods;

(5) Silica is a naturally occurring mineral and is the second most common constituent of the earth's crust. Crystalline silica in the form of quartz is present in sand, gravel, soil, and rocks;

(6) Silica related illnesses, including silicosis, can develop from the inhalation of respirable silica dust. Silicosis was widely recognized as an occupational disease many years ago;

(7) Concerns about statutes of limitations may prompt unimpaired asbestos and silica claimants to bring lawsuits to protect their ability to recover for their potentially progressive occupational disease;

(8) It is proper for the General Assembly to support and protect the Georgia courts from the massive litigation expense and the crowding of trial dockets caused by asbestos and silica litigation;

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

(10) In February, 2003, the American Bar Association Commission on Asbestos Litigation, with input from ten of the nation's most prominent physicians in the area of pulmonary function, adopted the 'ABA Standard For Non-Malignant Asbestos-Related Disease Claims,' which sets forth medical criteria for demonstrating asbestos related impairment that provide the underlying framework for the criteria set forth in this chapter and in similar legislation adopted in several other states;

(11) Ohio, Florida, Texas, Kansas, South Carolina, and Tennessee have enacted legislation similar to this chapter that, among other things, sets medical criteria governing asbestos or silica claims or both, tolls statutes of limitations, and requires persons alleging nonmalignant disease claims to demonstrate physical impairment as a prerequisite to filing or maintaining such claims; and

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

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

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

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

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

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

51-14-2.

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

51-14-3.

As used in this chapter, the term:

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

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

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

1 (I) Personal injury or death;

2 (II) Mental or emotional injury;

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

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

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

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

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

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

14 (ii) The Act of April 22, 1908, known as the Federal Employers' Liability Act, 45
15 U.S.C. Section 51, et seq.;

16 (iii) The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sections
17 901-944, 948-950; or

18 (iv) The Federal Employees Compensation Act, 5 U.S.C. Chapter 81.

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

21 (4) 'Board certified internist' means a qualified physician licensed to practice medicine
22 who is currently certified by the American Board of Internal Medicine.

23 (5) 'Board certified occupational medicine physician' means a qualified physician
24 licensed to practice medicine who is currently certified in the subspecialty of
25 occupational medicine by the American Board of Preventive Medicine.

26 (6) 'Board certified oncologist' means a qualified physician licensed to practice medicine
27 who is currently certified in the subspecialty of medical oncology by the American Board
28 of Internal Medicine.

29 (7) 'Board certified pathologist' means a qualified physician licensed to practice medicine
30 who holds primary certification in anatomic pathology or combined anatomic or clinical
31 pathology from the American Board of Pathology and whose professional practice is
32 principally in the field of pathology and involves regular evaluation of pathology
33 materials obtained from surgical or post-mortem specimens.

34 (8) 'Board certified pulmonologist' means a qualified physician licensed to practice
35 medicine who is currently certified in the subspecialty of pulmonary medicine by the
36 American Board of Internal Medicine.

1 (9) 'Certified B-reader' means a qualified physician who has successfully passed the
2 B-reader certification examination for X-ray interpretation sponsored by the National
3 Institute for Occupational Safety and Health and whose certification was current at the
4 time of any readings required by this chapter.

5 (10) 'Chest X-rays' means films taken in two views (PA and Lateral) for reading in
6 accordance with the radiological standards established by the International Labor Office,
7 as interpreted by a certified B-reader.

8 (11) 'Claimant' means a party seeking recovery of damages for an asbestos claim or silica
9 claim, including the exposed person, any other plaintiff making a claim as a result of the
10 exposed person's exposure to asbestos or silica, counterclaimant, cross-claimant, or
11 third-party plaintiff. If a claim is brought through or on behalf of an estate, the term
12 includes the claimant's decedent; if a claim is brought through or on behalf of a minor or
13 incompetent, the term includes the claimant's parent or guardian.

14 (12) 'Exposed person' means any person whose exposure to asbestos or silica is the basis
15 for an asbestos claim or a silica claim.

16 (13) 'FEV-1' means forced expiratory volume in the first second, which is the maximal
17 volume of air expelled in one second during performance of simple spirometric tests.

18 (14) 'FVC' means forced vital capacity, which is the maximal volume of air expired with
19 maximum effort from a position of full inspiration.

20 (15) 'ILO system' means the radiological ratings of the International Labor Office set
21 forth in *Guidelines for the Use of ILO International Classification of Radiographs of*
22 *Pneumoconioses*, revised edition, as amended from time to time by the International
23 Labor Office.

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

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

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

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

34 (ii) For an asbestos claim alleging cancer other than mesothelioma: that a physician
35 licensed to practice medicine (who need not be a 'qualified physician' as defined in
36 this Code section) has signed a medical report certifying to a reasonable degree of
37 medical probability that the exposed person's exposure to asbestos was a contributing

1 factor to the diagnosed cancer other than mesothelioma and attaching whatever
2 evidence the physician relied upon in determining that the exposed person has or had
3 an asbestos related cancer; and

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

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

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

15 (ii) For an asbestos claim alleging cancer other than mesothelioma: that a board
16 certified internist, board certified pulmonologist, board certified pathologist, board
17 certified occupational medicine physician, or board certified oncologist has signed a
18 medical report certifying to a reasonable degree of medical probability that the
19 exposed person has or had a cancer other than mesothelioma; that the cancer is a
20 primary cancer; that exposure to asbestos was a substantial contributing factor to the
21 diagnosed cancer; and that other potential causes (such as smoking) were not the sole
22 or most likely cause of the injury at issue;

23 (iii) For an asbestos claim alleging nonmalignant injury: that a board certified
24 internist, board certified pulmonologist, board certified pathologist, board certified
25 occupational medicine physician, or board certified oncologist has signed a medical
26 report stating that the exposed person suffers or suffered from a nonmalignant
27 asbestos injury and:

28 (I) Verifying that the doctor signing the medical report or a medical professional
29 or professionals employed by and under the direct supervision and control of that
30 doctor has taken histories as defined below or, alternatively, confirming that the
31 signing doctor is relying on such histories taken or obtained by another physician
32 or physicians who actually treated the exposed person or who had a doctor-patient
33 relationship with the exposed person or by a medical professional or professionals
34 employed by and under the direct supervision and control of such other physician
35 or physicians, with such histories to consist of the following:

36 (a) A detailed occupational and exposure history from the exposed person or, if
37 the exposed person is deceased or incapable of providing such history, from the

1 person or persons most knowledgeable about the exposures that form the basis for
2 the asbestos claim. The history shall include all of the exposed person's principal
3 employments and his or her exposures to airborne contaminants that can cause
4 pulmonary impairment, including, but not limited to, asbestos, silica, and other
5 disease-causing dusts, and the nature, duration, and level of any such exposure;
6 and

7 (b) A detailed medical and smoking history from the exposed person or, if the
8 exposed person is deceased or incapable of providing such history, from the
9 person or persons most knowledgeable about the exposed person's medical and
10 smoking history, or the exposed person's medical records, or both, that includes
11 a thorough review of the exposed person's past and present medical problems and
12 their most probable cause;

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

16 (III) Verifying that the exposed person has:

17 (a) An ILO quality 1 chest X-ray taken in accordance with all applicable state and
18 federal regulatory standards, and that the X-ray has been read by a certified
19 B-reader according to the ILO system of classification as showing bilateral small
20 irregular opacities (s, t, or u) graded 1/1 or higher or bilateral diffuse pleural
21 thickening graded b2 or higher including blunting of the costophrenic angle;
22 provided, however, that in a death case where no pathology is available, the
23 necessary radiologic findings may be made with a quality 2 film if a quality 1 film
24 is not available; or

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

29 (IV) Verifying that the exposed person has pulmonary impairment related to
30 asbestos as demonstrated by pulmonary function testing, performed using
31 equipment, methods of calibration, and techniques that meet the criteria
32 incorporated in the American Medical Association's *Guides to the Evaluation of*
33 *Permanent Impairment*, fifth edition, and reported as set forth in 20 C.F.R. 404,
34 Subpt. P. App 1, Part (A) Section 3.00 (E) and (F), as amended from time to time
35 by the American Medical Association, and the interpretative standards of the
36 American Thoracic Society, *Lung Function Testing: Selection of Reference Values*

1 *and Interpretive Strategies*, 144 Am. Rev. Resp. Dis. 1202-1218 (1991), as
2 amended from time to time by the American Thoracic Society, that shows:

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

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

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

10 (V)(a) Exception to pulmonary function test requirement in subdivision
11 (17)(B)(iii)(IV) of this Code section: If the doctor signing the medical report
12 states in the medical report that the exposed person's medical condition or process
13 prevents the pulmonary function test described in subdivision (17)(B)(iii)(IV) of
14 this Code section from being performed or makes the results of such test an
15 unreliable indicator of physical impairment, a board certified internist, board
16 certified pulmonologist, board certified pathologist, board certified occupational
17 medicine physician, or board certified oncologist (none of whom need be a
18 'qualified physician' as defined in this Code section), independent from the
19 physician signing the report required in this subdivision, must provide a report
20 which states to a reasonable degree of medical probability that the exposed person
21 has or had a nonmalignant asbestos related condition causing physical impairment
22 equivalent to that required in subdivision (17)(B)(iii)(IV) of this Code section and
23 states the reasons why the pulmonary function test could not be performed or
24 would be an unreliable indicator of physical impairment.

25 (b) Exception to X-ray requirement in clause (17)(B)(iii)(III)(a) of this Code
26 section: Alternatively and not to be used in conjunction with clause
27 (17)(B)(iii)(V)(a) 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 a physician from being able to diagnose or evaluate that exposed person
30 sufficiently to make a determination as to whether that exposed person meets the
31 requirements of clause (17)(B)(iii)(III)(a) of this Code section, the claimant may
32 serve on each defendant a report by a board certified internist, board certified
33 pulmonologist, board certified pathologist, board certified occupational medicine
34 physician, or board certified oncologist (none of whom need be a 'qualified
35 physician' as defined in this Code section) that:

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

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

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

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

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

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

Copies of the B-reading, the pulmonary function tests, including printouts of the flow volume loops and all other elements required to demonstrate compliance with the equipment, quality, interpretation, and reporting standards set forth in this paragraph (17), the medical report (in the form of an affidavit as required by subparagraph (A) of paragraph (2) of Code Section 51-14-6), and all other required reports shall be submitted as required by this chapter. All such reports, as well as all other evidence used to establish prima-facie evidence of physical impairment, must comply, to the extent applicable, with the technical recommendations for examinations, testing procedures, quality assurance, quality controls, and equipment in the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, fifth edition, as amended from time to time by the American Medical Association, and the most current version of the Official Statements of the American Thoracic Society regarding lung function testing. Testing performed in a hospital or other medical facility that is fully licensed and accredited by all appropriate regulatory bodies in the state in which the facility is located is presumed to meet the requirements of this chapter. This presumption may be rebutted by evidence demonstrating that the accreditation or licensing of the hospital or other medical facility has lapsed or by providing specific facts demonstrating that the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment have not been followed. All such reports, as well as all other evidence used to establish prima-facie evidence of physical impairment, must not be obtained

1 through testing or examinations that violate any applicable law, regulation, licensing
2 requirement, or medical code of practice and must not be obtained under the condition
3 that the exposed person retain legal services in exchange for the examination, testing, or
4 screening. Failure to attach the required reports or demonstration by any party that the
5 reports do not satisfy the standards set forth in this paragraph (17) shall result in the
6 dismissal of the asbestos claim, without prejudice, upon motion of any party.

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

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

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

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

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

20 (II) Signed by a board certified internist, board certified pulmonologist, board
21 certified pathologist, board certified occupational medicine physician, or board
22 certified oncologist stating to a reasonable degree of medical probability that
23 exposure to silica was a substantial contributing factor to the lung cancer with
24 underlying silicosis demonstrated by an X-ray that has been read by a certified
25 B-reader according to the ILO system of classification as showing bilateral nodular
26 opacities (p, q, or r) occurring primarily in the upper lung fields, graded 1/1 or
27 higher, and that the lung cancer was not more probably the sole result of causes
28 other than the silica exposure revealed by the exposed person's occupational, silica
29 exposure, medical, and smoking histories;

30 (ii) A medical report asserting that the exposed person has or had silica related
31 progressive massive fibrosis or acute silicoproteinosis, or silicosis complicated by
32 documented tuberculosis, signed by a board certified internist, board certified
33 pulmonologist, board certified pathologist, board certified occupational medicine
34 physician, or board certified oncologist; or

35 (iii) A medical report signed by a board certified internist, board certified
36 pulmonologist, board certified pathologist, board certified occupational medicine
37 physician, or board certified oncologist stating that the exposed person suffers from

1 other stages of nonmalignant disease related to silicosis other than those set forth in
2 divisions (i) and (ii) of this paragraph, and:

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

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

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

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

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

32 (a) Has an ILO quality 1 chest X-ray taken in accordance with all applicable state
33 and federal regulatory standards, and that the X-ray has been read by a certified
34 B-reader according to the ILO system of classification as showing bilateral
35 nodular opacities (p, q, or r) occurring primarily in the upper lung fields, graded
36 1/1 or higher; provided, however, that in a death case where no pathology is

1 available, the necessary radiologic findings may be made with a quality 2 film if
2 a quality 1 film is not available; or

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

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

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

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

36 (A) Spends no more than 35 percent of his or her professional practice time in
37 providing consulting or expert services in connection with actual or potential civil

actions, and whose medical group, professional corporation, clinic, or other affiliated group earns not more than 50 percent of its revenues from providing such services; provided, however, that the trial court, in its discretion, may allow a physician who meets the other requirements of this chapter but does not meet the time and revenue requirements of this subparagraph to submit a report required by this chapter if the trial court first makes an evidentiary finding (after all parties have had a reasonable opportunity to present evidence) that it would be manifestly unjust not to allow the physician at issue to submit the report and makes specific and detailed findings, setting forth the bases therefor, that the physician's opinions appear to be reliable medical opinions in that they are supported by documented, reliable medical evidence that was obtained through testing or examinations that comply with and do not violate any applicable law, regulation, licensing requirement, or medical code of practice and that the opinions are not the product of bias or the result of financial influence due to his or her role as a paid expert. The cost of retaining another physician who is qualified pursuant to this subparagraph for the purpose of submitting a report required by this chapter may not be considered in determining manifest injustice, but the availability or unavailability of other physicians who meet the time and revenue requirements of this subparagraph shall be considered as a relevant factor; and

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

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

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

(21)(A) 'Silica claim' means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, loss of consortium, or other relief arising out of,

1 based on, or in any way related to the health effects of exposure to silica, including, but
2 not limited to:

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

5 (I) Personal injury or death;

6 (II) Mental or emotional injury;

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

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

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

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

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

16 (ii) The Act of April 22, 1908, known as the Federal Employers' Liability Act, 45
17 U.S.C. Section 51, et seq.;

18 (iii) The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sections
19 901-944, 948-950; or

20 (iv) The Federal Employees Compensation Act, 5 U.S.C. Chapter 81.

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

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

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

29 51-14-4.

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

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

1 51-14-5.

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

8 51-14-6.

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

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

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

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

19 (i) By no less than 60 days prior to the commencement of trial, the plaintiff files with
20 the trial court and serves on each defendant named in the complaint or on counsel
21 designated by each defendant the medical documentation necessary to establish
22 prima-facie evidence of physical impairment;

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

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

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

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

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

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

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

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

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

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

13 51-14-7.

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

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

18 (2) If the exposed person alleges exposure to asbestos or silica through the testimony of
19 another person or other than by direct or bystander exposure to a product or products, the
20 name, address, date of birth, social security number, and marital status for each person
21 by which claimant alleges exposure, hereafter the 'index person,' and the claimant's
22 relationship to each such person;

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

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

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

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

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

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

33 (9) The identity of any bankruptcy trust to which a claim has been submitted concerning
34 any asbestos or silica injury of the exposed person, attaching any claim form or other
35 information submitted to such trust or trusts with respect to the exposed person. Plaintiff
36 must also identify any bankruptcy trust that the plaintiff believes is or may be liable for

1 all or part of the injury at issue, even if a claim has not been submitted to that trust at the
2 time the complaint is filed.

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

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

18 51-14-8.

19 (a) Until such time as the trial court enters an order determining that the plaintiff has
20 established prima-facie evidence of physical impairment, no asbestos claim or silica claim
21 shall be subject to discovery, except discovery related to establishing or challenging the
22 prima-facie evidence of physical impairment or by order of the trial court upon motion of
23 one of the parties and for good cause shown.

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

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

1 51-14-9.

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

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

22 (c)(1) A trial court may not abate or dismiss a claim under this Code section until the
23 defendant files with the trial court or with the clerk of the court a written stipulation that,
24 with respect to a new action on the claim commenced by the plaintiff, the defendant
25 waives the right to assert a statute of limitations defense in all other states of the United
26 States in which the claim was not barred by limitations at the time the claim was filed in
27 this state as necessary to effect a tolling of the limitations periods in those states
28 beginning on the date the claim was filed in this state and ending on the date the claim
29 is dismissed or the period of abatement ends. The fact that a claim subject to this Code
30 section was barred by the statute of limitations in all other states of the United States at
31 the time it was filed in this state shall not prevent the claim from being dismissed
32 pursuant to this Code section and such claim shall be dismissed even if it can not be filed
33 in another state. The trial court may not abate or dismiss a claim under this Code section
34 until the defendant files with the trial court or with the clerk of the court a written
35 stipulation that, with respect to a new action on the claim commenced by the plaintiff in
36 another state of the United States, the plaintiff may elect that the plaintiff and the
37 defendant may rely on responses to discovery already provided under Georgia law, plus

1 any additional discovery that may be conducted under the rules of civil procedure in
2 another state, or use responses to discovery already provided and conduct additional
3 discovery as permitted under the rules of civil procedure in such other state.

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

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

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

16 51-14-10.

17 Notwithstanding any other provision of law, an asbestos claim or silica claim that meets
18 the requirements of this chapter permitting a claim to be filed in this state may only be filed
19 in the county where the plaintiff resides or a county in which the exposure to asbestos or
20 silica on which the claim is based occurred. If a plaintiff alleges that an exposed person
21 was exposed to asbestos or silica while located in more than one county, the trial court shall
22 determine which of the counties is the most appropriate forum for the claim, considering
23 the relative amounts and lengths of the exposed person's exposure to asbestos or silica in
24 each of those counties.

25 51-14-11.

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

30 51-14-12.

31 (a) Asbestos claims and silica claims that accrued before April 12, 2005, or that will
32 accrue on or after May 1, 2007, shall be governed by this chapter, as it exists on May 1,
33 2007. Asbestos claims and silica claims that accrued on or after April 12, 2005, and before

1 May 1, 2007, shall be governed by Chapter 14 of Title 51, as enacted on April 12, 2005,
2 by 2005 Act No. 29 (Ga. L. 2005, p. 145).

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

9 54-14-13.

10 In the event any part, portion, section, subsection, paragraph, sentence, clause, phrase, or
11 word of this chapter shall be declared or adjudged invalid or unconstitutional, such
12 adjudication shall in no manner affect the other parts, portions, sections, subsections,
13 paragraphs, sentences, clauses, phrases, or words of this chapter which shall remain of full
14 force and effect as if the part, portion, section, subsection, paragraph, sentence, clause,
15 phrase, or word so declared or adjudged invalid or unconstitutional were not originally a
16 part hereof. For example, if a court determines that a particular word renders any portion
17 or application of this chapter unconstitutional, in that event, the court shall strike that word
18 and apply this chapter as if it were enacted without that word. The General Assembly
19 declares that it would have passed the remaining parts of this chapter if it had known that
20 such part or parts hereof would be declared or adjudged invalid or unconstitutional. The
21 General Assembly does not intend for this chapter to make any substantive change in the
22 law governing claims that accrued before April 12, 2005, and has only included procedural
23 provisions that govern where such claims can be filed and what early reports must be filed
24 in such cases. This chapter shall be interpreted consistently with the General Assembly's
25 intention not to make any substantive changes in the law applicable to cases that accrued
26 before April 12, 2005. The General Assembly expressly declares its intent that Code
27 Section 51-14-9 remain in full force and effect if any other part or parts of this chapter shall
28 be declared or adjudged invalid or unconstitutional. The General Assembly further
29 expressly declares its intent that, in the event any part, portion, section, subsection,
30 paragraph, sentence, clause, phrase, or word of this chapter shall be declared or adjudged
31 invalid or unconstitutional as applied to asbestos claims or silica claims that accrued before
32 April 12, 2005, such adjudication shall in no manner affect the applicability of any part,
33 portion, section, subsection, paragraph, sentence, clause, phrase, or word of this chapter to
34 asbestos claims or silica claims that accrued or may accrue on or after May 1, 2007."

SECTION 2.

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

"CHAPTER 15

51-15-1.

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

51-15-2.

As used in this chapter, the term:

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

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

(I) Personal injury or death;

(II) Mental or emotional injury;

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

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

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

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

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

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

(ii) The Act of April 22, 1908, known as the Federal Employers' Liability Act, 45 U.S.C. Section 51, et seq.;

(C) The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sections 901-944, 948-950; or

(D) The Federal Employees Compensation Act, 5 U.S.C. Chapter 81.

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

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

(4) 'Successor asbestos related liabilities' means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, which are related in any way to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation, or which are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Code Section 51-15-4, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

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

1 51-15-3.

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

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

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

8 (2) An insurance corporation;

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

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

16 51-15-4.

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

22 (b) If the transferor had assumed or incurred successor asbestos related liabilities in
23 connection with a prior merger or consolidation with a prior transferor, the fair market
24 value of the total assets of the prior transferor, determined as of the time of the earlier
25 merger or consolidation, shall be substituted for the limitation set forth in subsection (a)
26 of this Code section for the purpose of determining the limitation of liability of a
27 corporation.

28 51-15-5.

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

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

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

1 (b) Total gross assets include intangible assets.

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

9 51-15-6.

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

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

16 (2) One percent.

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

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

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

27 51-15-7.

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

32 51-15-8.

33 If any part, portion, section, subsection, paragraph, sentence, clause, phrase, or word of this
34 chapter, or the application thereof to any person or circumstance is held invalid, the

invalidity shall not affect the other parts, portions, sections, subsections, paragraphs, sentences, clauses, phrases, or words or applications of this chapter that can be given effect without the invalid part, portion, section, subsection, paragraph, sentence, clause, phrase, or word or application, and to this end the parts, portions, sections, subsections, paragraphs, sentences, clauses, phrases, and words of this chapter are declared severable."

SECTION 3.

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

SECTION 4.

Section 1 of this Act shall become effective on May 1, 2007, and shall apply to certain accrued or future accruing asbestos claims or silica claims in which trial has not commenced as of May 1, 2007, in accordance with its terms. Section 2 of this Act shall become effective on May 1, 2007, and shall apply to asbestos claims that accrued or may accrue on or after that date.

SECTION 5.

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