

House Bill 1089

By: Representatives McCall of the 33<sup>rd</sup>, Silcox of the 52<sup>nd</sup>, Cooper of the 43<sup>rd</sup>, England of the 116<sup>th</sup>, Hawkins of the 27<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend various titles of the Official Code of Georgia Annotated so as to streamline the  
2 process of litigation and reduce costs for Georgia's industries, small businesses, and citizens;  
3 to amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as  
4 to change certain provisions relating to the tolling of limitations for tort actions while  
5 criminal prosecution is pending; to require a judge to provide written responses to jury  
6 questions; to change a provision related to certain compensatory arguments; to provide for  
7 separate trials for issues of liability and damages under certain circumstances; to prohibit  
8 certain instructions relating to damages; to change certain provisions related to settlement  
9 offers and agreements; to amend Title 15 of the Official Code of Georgia Annotated, relating  
10 to courts, so as to require certain procedures for disqualification of jurors; to amend Title 31  
11 of the Official Code of Georgia Annotated, relating to health, so as to revise the "Temporary  
12 Health Care Placement Decision Maker for an Adult Act"; to define a term and provide that  
13 any person who exercises the power to consent to a transfer, admission, or discharge to or  
14 from a nursing home is authorized to execute on behalf of the subject of such consent a  
15 binding arbitration agreement; to amend Title 36 of the Official Code of Georgia Annotated,  
16 relating to local government, so as to revise certain provisions relating to the immunity of  
17 municipal corporations; to amend Title 40 of the Official Code of Georgia Annotated,  
18 relating to motor vehicles and traffic, so as to change certain provisions relating to insurance  
19 of motor carriers and certain causes of action; to provide for certain presumptions when  
20 hiring commercial motor vehicle drivers; to provide for a conforming change; to change  
21 certain provisions relating to safety belts and insurance coverage and causes of action related  
22 thereto; to provide for statutory construction; to amend Title 51 of the Official Code of  
23 Georgia Annotated, relating to torts, so as to change certain provisions related to product  
24 liability; to provide for the protection of all Georgia landowners from unwarranted liability  
25 for the willful, wanton, or intentional tortious acts of third parties; to regulate the liability of  
26 landowners and provide for the apportionment of fault among the parties to a  
27 premises-liability action in certain circumstances; to provide for the recovery of special  
28 damages for medical and health care expenses; to revise certain provisions relating to

29 punitive damages; to provide for legislative findings, definitions, discovery, and procedures  
 30 related to asbestos claims; to provide for related matters; to provide for severability; to  
 31 provide for an effective date; to repeal conflicting laws; and for other purposes.

32 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

33 **PART I**  
 34 **SECTION 1-1.**

35 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by  
 36 revising Code Section 9-3-99, relating to the tolling of limitations for tort actions while  
 37 criminal prosecution is pending, as follows:

38 "9-3-99.

39 The running of the period of limitations with respect to any cause of action in tort that may  
 40 be brought by the victim of an alleged ~~crime~~ felony which arises out of the facts and  
 41 circumstances relating to the commission of such alleged ~~crime~~ felony committed in this  
 42 state shall be tolled from the date of the commission of the alleged ~~crime or the act~~ felony  
 43 giving rise to such action in tort until the prosecution of such ~~crime or act~~ felony has  
 44 become final or otherwise terminated, provided that such time does not exceed six years,  
 45 except as otherwise provided in Code Section 9-3-33.1."

46 **SECTION 1-2.**

47 Said title is further amended by revising subsections (b) and (c) of Code Section 9-10-5,  
 48 relating to charges to be written out on request, exception, filing of written charges, and  
 49 copies, as follows:

50 "(b) In any civil action, ~~upon motion by a party, upon request by the jury, or sua sponte,~~  
 51 a judge of a superior, state, or city court ~~is authorized, but shall not be required, to reduce~~  
 52 all of the charge to the jury to writing and send all of the charge so reduced to writing out  
 53 with the jury during its deliberation. In response to any written question sent to the judge  
 54 by a jury during its deliberation, the judge, after consultation with counsel for all parties,  
 55 shall respond to the jury in writing.

56 (c) Any charge or response to a jury question reduced to writing under ~~subsection (a) or~~  
 57 ~~(b)~~ of this Code section shall be filed with the clerk of the court in which it was given and  
 58 shall be accessible to all persons interested in it. The clerk shall give certified copies of the  
 59 charge to any person applying therefor, upon payment of the usual fee."

60 **SECTION 1-3.**

61 Said title is further amended by revising Code Section 9-10-184, relating to value of pain and  
 62 suffering may be argued, as follows:

63 "9-10-184.

64 In the trial of a civil action for personal injuries, counsel shall not be allowed to argue ~~the~~  
 65 directly or by analogy a specific worth or monetary value of pain and suffering or the value  
 66 of any life in any wrongful death action to the jury; ~~provided, however, that any such~~  
 67 ~~argument shall conform to the evidence or reasonable deductions from the evidence in the~~  
 68 ~~case."~~

69 **SECTION 1-4.**

70 Said title is further amended by revising subsection (b) of Code Section 9-11-42, relating to  
 71 consolidation and severance, as follows:

72 "(b) **Separate trials.**

73 (1) The court, in furtherance of convenience or to avoid prejudice, may order a separate  
 74 trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate  
 75 issue, or of any number of claims, cross-claims, counterclaims, third-party claims, or  
 76 issues.

77 (2) Upon motion of any party in an action in tort wherein the plaintiff seeks damages  
 78 exceeding \$150,000.00 and the defendant disputes liability, the court shall order separate  
 79 trials for the issue of liability and the issue of damages, unless the court for good cause  
 80 shown orders a single trial. Evidence relating solely to compensatory damages shall not  
 81 be admissible until the trier of fact has determined that the defendant is liable. The same  
 82 trier of fact that tries the issues relating to the liability shall try the issues relating to  
 83 damages."

84 **SECTION 1-5.**

85 Said title is further amended by revising Code Section 9-11-53, which was previously  
 86 reserved, as follows:

87 "9-11-53.

88 In accordance with Code Section 51-12-33, the court and counsel for any party shall be  
 89 prohibited from informing the trier of fact that the total amount of damages awarded to the  
 90 plaintiff shall be reduced by an amount based on the negligence of the plaintiff or a  
 91 nonparty. The court and counsel for any party shall be further prohibited from informing  
 92 the trier of fact that the plaintiff shall not be entitled to receive any damages if the plaintiff  
 93 is 50 percent or more responsible for the injury or damages claimed. Reserved."

94 **SECTION 1-6.**

95 Said title is further amended by revising Code Section 9-11-67.1, relating to settlement offers  
 96 and agreements for personal injury, bodily injury, and death from motor vehicle and payment  
 97 methods, as follows:

98 "9-11-67.1.

99 (a) ~~Any~~ Prior to the filing of a civil action, offer to settle a tort claim for personal injury,  
 100 bodily injury, or death arising from the use of a motor vehicle and prepared by or with the  
 101 assistance of an attorney on behalf of a claimant or claimants shall be in writing and  
 102 contain the following material terms:

- 103 (1) The time period within which such offer must be accepted, which shall be not less  
 104 than 30 days from receipt of the offer;
- 105 (2) Amount of monetary payment;
- 106 (3) The party or parties the claimant or claimants will release if such offer is accepted;
- 107 (4) The type of release, full or limited, if any, the claimant or claimants will provide to  
 108 each releasee; and
- 109 (5) The claims to be released.

110 (b) When making an offer, the offeror shall include:

- 111 (1) All medical records; and
- 112 (2) Either medical bills or receipts for payment of such bills related to the tort claim that  
 113 can be reasonably obtained by the offeror.

114 ~~(b)~~(c) Unless otherwise agreed to by both the offeror and the recipient in writing, the  
 115 material terms outlined in subsection (a) of this Code section are the only material terms  
 116 which can be included in an offer to settle made pursuant to this Code section. The  
 117 recipients of an offer to settle made under this Code section may accept the same by  
 118 providing written acceptance of the material terms outlined in subsection (a) of this Code  
 119 section in their entirety.

120 ~~(c)~~(d) Nothing in this Code section is intended to prohibit parties from reaching a  
 121 settlement agreement ~~in a manner and~~ under terms otherwise agreeable to ~~the parties~~ both  
 122 the offeror and the recipient of the offer.

123 ~~(d)~~(e) Upon receipt of an offer to settle as set forth in subsection (a) of this Code section,  
 124 the recipients shall have the right to seek clarification regarding terms, liens, subrogation  
 125 claims, standing to release claims, medical bills, medical records, and other relevant facts.  
 126 Any attempt to seek clarification may be made verbally, in writing, or both verbally and  
 127 in writing. An attempt to seek ~~reasonable~~ clarification shall not be deemed a counteroffer.

128 ~~(e)~~(f) An offer to settle made pursuant to this Code section shall be sent by certified mail  
 129 or statutory overnight delivery, return receipt requested, ~~and~~ shall specifically reference this  
 130 Code section, and shall include an address and either a facsimile number or an email

131 address to which a written acceptance pursuant to subsection (c) of this Code section can  
 132 be sent.

133 ~~(f)~~(g) The person or entity providing payment to satisfy the material term set forth in  
 134 paragraph (2) of subsection (a) of this Code section may elect to provide payment by any  
 135 one or more of the following means:

- 136 (1) Cash;
- 137 (2) Money order;
- 138 (3) Wire transfer;
- 139 (4) A cashier's check issued by a bank or other financial institution;
- 140 (5) A draft or bank check issued by an insurance company; or
- 141 (6) Electronic funds transfer or other method of electronic payment.

142 ~~(g)~~(h) Nothing in this Code section shall prohibit a party making an offer to settle from  
 143 requiring payment ~~within a specified period by a certain date~~; provided, however, that such  
 144 ~~period shall be not less than ten days after the written acceptance of the offer to settle date~~  
 145 certain shall not be less than 40 days from the receipt of the offer.

146 ~~(h)~~(i) This Code section shall apply to causes of action for personal injury, bodily injury,  
 147 and death arising ~~from the use of a motor vehicle~~ on or after July 1, ~~2013~~ 2020."

## 148 PART II

### 149 SECTION 2-1.

150 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising  
 151 Code Section 15-12-135, relating to disqualification for relationship to interested party, as  
 152 follows:

153 "15-12-135.

154 (a) All trial jurors in the courts of this state shall be disqualified to act or serve in any case  
 155 or matter when such jurors are related by consanguinity or affinity to any party interested  
 156 in the result of the case or matter within the third degree as computed according to the civil  
 157 law. Relationship more remote shall not be a disqualification.

158 (b) Notwithstanding subsection (a) of this Code section, jurors shall not be qualified in  
 159 open court regarding a relationship with any insurance company that may have a financial  
 160 interest in the outcome of the case. Rather, jurors shall complete a questionnaire that  
 161 identifies their current employers and their current insurance companies, if any. The court  
 162 shall exclude any jurors for cause, after voir dire, if the questionnaire reveals a relationship  
 163 to any insurance company that has a financial interest in the outcome of the case.

164 ~~(b)~~(c) Notwithstanding subsection (a) of this Code section, any juror, irrespective of his  
 165 relationship to a party to the case or his interest in the case, shall be qualified to try any

166 civil case when there is no defense filed unless one of the parties to the case objects to the  
167 related juror."

168 **PART III**  
169 **SECTION 3-1.**

170 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
171 Code Section 31-36A-3, relating to definitions relative to the "Temporary Health Care  
172 Placement Decision Maker for an Adult Act," as follows:

173 "31-36A-3.

174 As used in this chapter, the term:

175 (1) 'Absence of a person authorized to consent' means that:

176 (A) After diligent efforts for a reasonable period of time, no person authorized to  
177 consent under the provisions of Code Section 31-36A-6 has been located; or

178 (B) All such authorized persons located have affirmatively waived their authority to  
179 consent or dissent to admission to or discharge from a health care facility or placement  
180 or transfer to an alternative health care facility or placement, provided that dissent by  
181 an authorized person to a proposed admission, discharge, or transfer shall not be  
182 deemed waiver of authority.

183 (2) 'Nursing home' means a facility licensed as such under Chapter 7 of Title 31.

184 ~~(2)~~(3) 'Unable to consent' means that an adult is unable to:

185 (A) Make rational and competent decisions regarding his or her placement options for  
186 health or personal care; or

187 (B) Communicate such decisions by any means."

188 **SECTION 3-2.**

189 Said title is further amended by adding a new Code section to read as follows:

190 "31-36A-6.1.

191 Any person listed in subsection (a) of Code Section 31-36A-6 who exercises the power to  
192 consent to a transfer, admission, or discharge to or from a nursing home as provided in this  
193 chapter is authorized to execute on behalf of the subject of such consent a binding  
194 arbitration agreement executed in compliance with Part 1 of Article 1 of Chapter 9 of  
195 Title 9, the 'Georgia Arbitration Code.'"

196

**PART IV**

197

**SECTION 4-1.**

198 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
 199 by revising Code Section 36-33-1, relating to immunity from liability for damages, waiver  
 200 of immunity by purchase of liability insurance, and liability for acts or omissions generally,  
 201 as follows:

202 "36-33-1.

203 (a) Pursuant to Article I, Section II, Paragraph IX and Article IX, Section II, Paragraph IX  
 204 of the Constitution of the State of Georgia, the General Assembly, except as provided in  
 205 this Code section and in Chapter 92 of this title, declares it is the public policy of the State  
 206 of Georgia that there is no waiver of the sovereign immunity of municipal corporations of  
 207 the state, and such municipal corporations shall be immune from liability for damages to  
 208 the same extent that counties are immune as provided for in subsection (b) of this Code  
 209 section. A municipal corporation shall not waive its immunity by the purchase of liability  
 210 insurance, except as provided in Code Section 33-24-51 or 36-92-2, or unless the policy  
 211 of insurance issued covers an occurrence for which the defense of sovereign immunity is  
 212 available, and then only to the extent of the limits of such insurance policy. ~~This~~  
 213 ~~subsection shall not be construed to affect any litigation pending on July 1, 1986.~~

214 (b) Municipal corporations shall not be liable for failure to perform or for errors in  
 215 performing their legislative or judicial powers. For neglect to perform or improper or  
 216 unskillful performance of their ministerial duties, they shall be liable; provided, however,  
 217 that municipal corporations shall only be liable to the same extent that counties are liable  
 218 and they shall be immune to the same extent that counties are immune for any joint airport  
 219 authority created between any municipal corporation and any county or counties and for  
 220 any claims relating to motor vehicles owned or operated by such joint airport authority."

221

**PART V**

222

**SECTION 5-1.**

223 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
 224 amended by revising Code Section 40-1-112, relating to insurance of motor carriers, as  
 225 follows:

226 "40-1-112.

227 (a) No motor carrier of household goods or property or passengers shall be issued a motor  
 228 carrier certificate unless there is filed with the department a certificate of insurance for such  
 229 applicant or holder on forms prescribed by the commissioner evidencing a policy of

230 indemnity insurance by an insurance company licensed to do business in this state, ~~which~~  
 231 ~~policy must provide~~ that provides for the protection, in case of passenger vehicles, of  
 232 passengers and the public against injury proximately caused by the negligence of such  
 233 motor carrier, its servants, or its agents; and, in the case of vehicles transporting household  
 234 goods, to secure the owner or person entitled to recover against loss or damage to such  
 235 household goods for which the motor common carrier may be legally liable. The  
 236 department shall determine and fix the amounts of such indemnity insurance and shall  
 237 prescribe the provisions and limitations thereof. The insurer shall file such certificate. The  
 238 failure to file any form required by the department shall not diminish the rights of any  
 239 person to pursue an action directly against a motor carrier's insurer.

240 (b) The department shall have power to permit self-insurance, in lieu of a policy of  
 241 indemnity insurance, whenever in its opinion the financial ability of the motor carrier so  
 242 warrants.

243 ~~(c) It shall be permissible under this part for any person having a cause of action arising~~  
 244 ~~under this part to join in the same action the motor carrier and the insurance carrier,~~  
 245 ~~whether arising in tort or contract."~~

246 **SECTION 5-2.**

247 Said title is further amended by revising paragraph (4) of subsection (d) of Code Section  
 248 40-2-140, relating to Department of Public Safety to administer provisions and registration,  
 249 insurance, and fee requirements of motor carriers, as follows:

250 ~~"(4) Any person having a cause of action, whether arising in tort or contract, under this~~  
 251 ~~Code section may join in the same cause of action the motor carrier and its insurance~~  
 252 ~~carrier."~~

253 **SECTION 5-3.**

254 Said title is further amended by revising Code Section 40-5-145, relating to duties of  
 255 employer, as follows:

256 "40-5-145.

257 (a) Each employer shall require every commercial motor vehicle driver applicant to  
 258 provide the information specified in subsection (d) of Code Section 40-5-144.

259 (b) A person is presumed to possess the qualifications necessary to be hired and entrusted  
 260 to drive a commercial motor vehicle if the person has a commercial driver's license issued  
 261 by a state in accordance with the minimum federal standards for the issuance of  
 262 commercial motor vehicle driver's licenses; if the person's license is not suspended,  
 263 revoked, or cancelled at the time of the accident in question; and if the person is not



264 disqualified from driving a commercial motor vehicle at the time of the accident in  
 265 question.

266 ~~(b)~~(c) No employer may knowingly allow, require, permit, or authorize a driver to drive  
 267 a commercial motor vehicle during any period:

268 (1) In which the driver has a driver's license suspended, revoked, or canceled by a state;  
 269 has lost the privilege to drive a commercial motor vehicle in a state; or has been  
 270 disqualified from driving a commercial motor vehicle;

271 (2) In which the driver has more than one driver's license;

272 (3) In which the driver, or the commercial motor vehicle that he or she is driving, or the  
 273 motor carrier operation, is subject to an ~~out-of-service~~ out-of-service order; or

274 (4) In violation of a federal, state, or local law or regulation pertaining to  
 275 railroad-highway grade crossings."

276 **SECTION 5-4.**

277 Said title is further amended by revising subsection (a) of Code Section 40-5-159, relating  
 278 to violations, as follows:

279 "(a) Any person who drives a commercial motor vehicle while in violation of the  
 280 provisions of Code Section 40-5-143 or any employer who knowingly allows, requires,  
 281 permits, or authorizes a driver to drive a commercial motor vehicle in violation of the  
 282 provisions of subsection ~~(b)~~ (c) of Code Section 40-5-145 shall be guilty of a felony and,  
 283 upon conviction thereof, shall be punished as follows:

284 (1) Except as provided for in subsections (d) and (e) of this Code section, by a civil  
 285 penalty of \$2,500.00 for each offense; and

286 (2) By a fine of \$5,000.00, imprisonment for not more than 90 days, or both, for each  
 287 offense."

288 **PART VI**

289 **SECTION 6-1.**

290 Said Title 40 is further amended by revising subsection (c) of Code Section 40-8-76, relating  
 291 to safety belts required as equipment and safety restraints for children, as follows:

292 "(c) Violation of this Code section ~~shall not constitute negligence per se nor contributory~~  
 293 ~~negligence per se~~ may be considered in any civil action as evidence admissible on the  
 294 issues of failure to mitigate damages, assumption of risk, apportionment of fault,  
 295 negligence, comparative negligence, contributory negligence, or causation. Violation of  
 296 subsection (b) of this Code section shall not be the basis for cancellation of insurance  
 297 coverage ~~or increase in insurance rates."~~

298 **SECTION 6-2.**

299 Said title is further amended by revising Code Section 40-8-76.1, relating to use of safety  
 300 belts in passenger vehicles, as follows:

301 "40-8-76.1.

302 (a) As used in this Code section, the term 'passenger vehicle' means every motor vehicle,  
 303 including, but not limited to, pickup trucks, vans, and sport utility vehicles, designed to  
 304 carry 15 passengers or fewer and used for the transportation of persons; provided, however,  
 305 that such term shall not include motorcycles; or motor driven cycles; or off-road vehicles  
 306 or pickup trucks being used by an owner, driver, or occupant 18 years of age or older in  
 307 connection with agricultural pursuits that are usual and normal to the user's farming  
 308 operation; and provided, further, that such term shall not include motor vehicles designed  
 309 to carry 11 to 15 passengers which were manufactured prior to July 1, 2015, and which, as  
 310 of such date, did not have manufacturer installed seat safety belts.

311 (b) Each occupant of the front seat of a passenger vehicle shall, while such passenger  
 312 vehicle is being operated on a public road, street, or highway of this state, be restrained by  
 313 a seat safety belt approved under Federal Motor Vehicle Safety Standard 208.

314 (c) The requirement of subsection (b) of this Code section shall not apply to:

315 (1) A driver or passenger frequently stopping and leaving the vehicle or delivering  
 316 property from the vehicle, if the speed of the vehicle between stops does not exceed 15  
 317 miles per hour;

318 (2) A driver or passenger possessing a written statement from a physician that such  
 319 person is unable, for medical or physical reasons, to wear a seat safety belt;

320 (3) A driver or passenger possessing an official certificate or license endorsement issued  
 321 by the appropriate agency in another state or country indicating that the driver is unable  
 322 for medical, physical, or other valid reasons to wear a seat safety belt;

323 (4) A driver operating a passenger vehicle in reverse;

324 (5) A passenger vehicle with a model year prior to 1965;

325 (6) A passenger vehicle which is not required to be equipped with seat safety belts under  
 326 federal law;

327 (7) A passenger vehicle operated by a rural letter carrier of the United States Postal  
 328 Service while performing duties as a rural letter carrier;

329 (8) A passenger vehicle from which a person is delivering newspapers; ~~or~~

330 (9) A passenger vehicle performing an emergency service; or

331 (10) Off-road vehicles or pickup trucks being used by an owner, driver, or occupant 18  
 332 years of age or older in connection with agricultural pursuits that are usual and normal  
 333 to the user's farming operation.

334 (d)(1) Except when occurring under the circumstances set forth in subsection (c) of this  
 335 Code section, the ~~The~~ failure of an occupant of a ~~motor~~ passenger vehicle to wear a seat  
 336 safety belt in any seat of a ~~motor~~ passenger vehicle which has a seat safety belt or belts  
 337 ~~shall not be considered evidence of negligence or causation, shall not otherwise be~~  
 338 ~~considered by the finder of fact on any question of liability of any person, corporation,~~  
 339 ~~or insurer, shall not be any basis for cancellation of coverage or increase in insurance~~  
 340 ~~rates, and shall not be evidence~~ may be considered in any civil action as evidence  
 341 admissible on the issues of failure to mitigate damages, assumption of risk,  
 342 apportionment of fault, negligence, comparative negligence, contributory negligence, or  
 343 causation and may be used to diminish any recovery for damages arising out of the  
 344 ownership, maintenance, occupancy, or operation of a motor vehicle.

345 (2) The failure of an occupant of a passenger vehicle to wear a seat safety belt in any seat  
 346 of a motor vehicle which has a seat safety belt or belts shall not be the basis for  
 347 cancellation of insurance coverage.

348 (e)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, a person  
 349 failing to comply with the requirements of subsection (b) of this Code section shall not  
 350 be guilty of any criminal act and shall not be guilty of violating any ordinance. A  
 351 violation of this Code section shall not be a moving traffic violation for purposes of Code  
 352 Section 40-5-57.

353 (2) A person failing to comply with the requirements of subsection (b) of this Code  
 354 section shall be guilty of the offense of failure to wear a seat safety belt and, upon  
 355 conviction thereof, may be fined not more than \$15.00; but, the provisions of Chapter 11  
 356 of Title 17 and any other provision of law to the contrary notwithstanding, the costs of  
 357 such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to  
 358 a fine for such offense be assessed against a person for conviction thereof. The court  
 359 imposing such fine shall forward a record of the disposition of the case of failure to wear  
 360 a seat safety belt to the Department of Driver Services.

361 (3) Each minor eight years of age or older who is an occupant of a passenger vehicle  
 362 shall, while such passenger vehicle is being operated on a public road, street, or highway  
 363 of this state, be restrained by a seat safety belt approved under Federal Motor Vehicle  
 364 Safety Standard 208. In any case where a minor passenger eight years of age or older  
 365 fails to comply with the requirements of this paragraph, the driver of the passenger  
 366 vehicle shall be guilty of the offense of failure to secure a seat safety belt on a minor and,  
 367 upon conviction thereof, may be fined not more than \$25.00. The court imposing such  
 368 a fine shall forward a record of the court disposition of the case of failure to secure a seat  
 369 safety belt on a minor to the Department of Driver Services.

370 (f) Probable cause for violation of this Code section shall be based solely upon a law  
 371 enforcement officer's clear and unobstructed view of a person not restrained as required by  
 372 this Code section. Noncompliance with the restraint requirements of this Code section  
 373 shall not constitute probable cause for violation of any other Code section."

374 **SECTION 6-3.**

375 To the extent that the Georgia Court of Appeals' rulings in Reid v. Odom, 199 Ga. App. 146,  
 376 404 S.E.2d 323 (1991), Boatwright v. Czerepinski, 194 Ga. App. 697, 391 S.E.2d 685  
 377 (1990), Katz v. White, 190 Ga. App. 458, 379 S.E.2d 186 (1989), Sapp v. Johnson, 184 Ga.  
 378 App. 603, 362 S.E.2d 82 (1987), and any other decisions limit the purposes for which seat  
 379 safety belt nonusage evidence may be admitted or create additional conditions for the  
 380 consideration of such evidence which are not consistent with the provisions of Sections 6-1  
 381 and 6-2 of this Act, these decisions are contrary to the General Assembly's intent and shall  
 382 be deemed overruled on the effective date of this Act.

383 **PART VII**

384 **SECTION 7-1.**

385 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by revising  
 386 subsection (c) of Code Section 51-1-11, relating to when privity required to support action,  
 387 product liability action and time limitation therefore, and industry-wide liability theories  
 388 rejected, as follows:

389 "(c) The limitation of paragraph (2) of subsection (b) of this Code section regarding  
 390 bringing an action within ten years from the date of the first sale for use or consumption  
 391 of personal property shall also apply to the commencement of an action claiming  
 392 negligence of a manufacturer as the basis of liability, except an action seeking to recover  
 393 from a manufacturer for injuries or damages arising out of the negligence of such  
 394 manufacturer in manufacturing products which cause a disease or birth defect, or arising  
 395 out of conduct which manifests a ~~willful, reckless, or wanton~~ an intentional disregard for  
 396 life or property. Nothing contained in this subsection shall relieve a manufacturer from the  
 397 duty to warn of a unreasonable danger arising from use of a product once that unreasonable  
 398 danger actually becomes known to the manufacturer. Constructive knowledge of such  
 399 unreasonable danger shall not provide a basis for liability in a duty to warn claim beyond  
 400 ten years of the date of the first sale."

401 **SECTION 7-2.**

402 Said title is further amended by adding a new Code section to read as follows:

403 "51-3-4.

404 (a) As used in this Code section, the term:

405 (1) 'Landowner' means any person who owns, occupies, leases, operates, maintains, or  
 406 manages any residential, agricultural, commercial, or other real property in the State of  
 407 Georgia; any director, officer, employee, or agent of such person; and any independent  
 408 contractor acting on behalf of any such person.

409 (2) 'Premises-liability action' means any civil action sounding in tort based upon the duty  
 410 owed to someone injured on a landowner's property as the result of conditions present or  
 411 activities occurring upon the property.

412 (3) 'Property' means any residential, agricultural, commercial, or other real property,  
 413 whether held in fee simple or under a leasehold, life estate, estate for years, usufruct,  
 414 easement, license, or other instrument of title, that is owned, operated, maintained, or  
 415 managed by a landowner.

416 (b) Notwithstanding any other provision of law, no landowner shall be liable in a  
 417 premises-liability action to any invitee who is injured on the landowner's property as a  
 418 result of the willful, wanton, or intentional tortious conduct of any third party who is not  
 419 a director, officer, employee, or agent of the landowner unless the invitee can prove by  
 420 clear and convincing evidence that:

421 (1) The conduct of said third party occurred within the legal boundaries of the  
 422 landowner's property; and

423 (2)(A) The conduct of the landowner actively and affirmatively, and with a degree of  
 424 conscious decision-making, impelled the specific action of said third party; or

425 (B) The landowner had actual knowledge of the specific threat of imminent harm to  
 426 the invitee from said third party and, through reasonable action, the landowner could  
 427 have prevented that harm from occurring; and

428 (3) The landowner's conduct proximately caused the economic and noneconomic  
 429 damages allegedly suffered by the invitee.

430 (c) No landowner shall be held liable in a premises-liability action to any licensee who is  
 431 injured on the landowner's property as a result of the willful, wanton, or intentional tortious  
 432 conduct of any third party who is not a director, officer, employee, or agent of the  
 433 landowner unless the licensee can prove by clear and convincing evidence that:

434 (1) The conduct of said third party occurred within the legal boundaries of the  
 435 landowner's property;

436 (2) The landowner willfully and wantonly impelled the specific action of said third party;  
 437 and

438 (3) The landowner's conduct proximately caused the economic and noneconomic  
 439 damages allegedly suffered by the licensee.

440 (d) No landowner shall be held liable in a premises-liability action to any trespasser who  
 441 is injured on the landowner's property as a result of the willful, wanton, or intentional  
 442 tortious conduct of any third party who is not a director, officer, employee, or agent of the  
 443 landowner unless the trespasser can prove by clear and convincing evidence that:

444 (1) The conduct of said third party occurred within the legal boundaries of the  
 445 landowner's property;

446 (2) The landowner acted with the specific intent to harm the trespasser and impelled the  
 447 specific action of said third party; and

448 (3) The landowner's conduct proximately caused the economic and noneconomic  
 449 damages allegedly suffered by the trespasser.

450 (e) No liability may be imposed upon any landowner under this Code section premised in  
 451 whole or in part upon the landowner's alleged constructive knowledge of prior crimes on  
 452 or near the landowner's property or upon the landowner's alleged constructive knowledge  
 453 of the prior crimes or violent nature of a third party whose acts or omissions proximately  
 454 caused the alleged injury or damage.

455 (f)(1) In any premises-liability action brought against a landowner under this Code  
 456 section, the trier of fact, in making the apportionment of fault under Code Section  
 457 51-12-33 shall:

458 (A) Only apportion fault to the landowner for the acts or omissions of the landowner;

459 (B) Fairly and accurately apportion fault to a third party for the willful, wanton, or  
 460 intentional conduct of such third party; and

461 (C) Not consider the pendency of criminal charges against a third party, the financial  
 462 resources of any of the parties to the premises-liability action, the impact of such a  
 463 finding upon the court's judgment in the case, or any other factors except the relative  
 464 degrees of fault among the parties.

465 (2) If the jury fails to apportion an appropriate degree of fault to a third party, the trial  
 466 court may, in the exercise of its sound discretion, set aside the verdict of the jury and  
 467 order a retrial of the case.

468 (3) Notwithstanding the provisions of this Code section or any other provisions of law  
 469 which might be construed to the contrary, the injured party shall not be entitled to receive  
 470 any damages if the plaintiff is 50 percent or more responsible for the injury or damages  
 471 claimed."

472

## PART VIIA

473

### SECTION 7A-1.

474 Said Title 51 is further amended by adding a new Code section to read as follows:

475 "51-12-1.1.  
 476 (a) In any civil action to recover damages resulting from injury or death to a person, the  
 477 special damages for medical and health care expenses that may be admissible shall be  
 478 limited to the amounts actually:  
 479 (1) Paid by or on behalf of the claimant to health care providers for medically necessary  
 480 care, treatment, or services; and  
 481 (2) Necessary to satisfy incurred but unpaid charges for medically necessary care,  
 482 treatment, or services due to the health care provider by the claimant or a third party on  
 483 behalf of the claimant.  
 484 (b) In any action to recover damages resulting from death or injury to a person, nothing  
 485 in this Code section shall be construed to limit the right of a defendant to present evidence  
 486 or testimony, or both, challenging the medical and health care expenses, whether incurred  
 487 or projected future expenses, or the necessity of any treatment."

488 **SECTION 7A-2.**

489 Said title is further amended by revising subsections (e) and (f) of Code Section 51-12-5.1,  
 490 relating to punitive damages, as follows:

491 ~~"(e)(1) In a tort case in which the cause of action arises from product liability, there shall~~  
 492 ~~be no limitation regarding the amount which may be awarded as punitive damages. Only~~  
 493 ~~one award of punitive damages may be recovered in a court in this state from a defendant~~  
 494 ~~for any act or omission if the cause of action arises from product liability, regardless of~~  
 495 ~~the number of causes of action which may arise from such act or omission.~~

496 (2) Seventy-five percent of any amounts awarded under this subsection as punitive  
 497 damages, less a proportionate part of the costs of litigation, including reasonable  
 498 attorney's fees, all as determined by the trial judge, shall be paid into the treasury of the  
 499 state through the Office of the State Treasurer. Upon issuance of judgment in such a  
 500 case, the state shall have all rights due a judgment creditor until such judgment is satisfied  
 501 and shall stand on equal footing with the plaintiff of the original case in securing a  
 502 recovery after payment to the plaintiff of damages awarded other than as punitive  
 503 damages. A judgment debtor may remit the state's proportional share of punitive  
 504 damages to the clerk of the court in which the judgment was rendered. It shall be the  
 505 duty of the clerk to pay over such amounts to the Office of the State Treasurer within 60  
 506 days of receipt from the judgment debtor. This paragraph shall not be construed as  
 507 making the state a party at interest and the sole right of the state is to the proceeds as  
 508 provided in this paragraph.

509 ~~(f) In a tort case in which the cause of action does not arise from product liability, if it is~~  
 510 ~~found that the defendant acted, or failed to act, with the specific intent to cause harm, or~~

511 that the defendant acted or failed to act while under the influence of alcohol, drugs other  
 512 than lawfully prescribed drugs administered in accordance with prescription, or any  
 513 intentionally consumed glue, aerosol, or other toxic vapor to that degree that his or her  
 514 judgment is substantially impaired, there shall be no limitation regarding the amount which  
 515 may be awarded as punitive damages against an active ~~tort-feasor~~ tortfeasor but such  
 516 damages shall not be the liability of any defendant other than an active ~~tort-feasor~~  
 517 tortfeasor."

518 **PART VIIB**

519 **SECTION 7B-1.**

520 Said Title 51 is further amended by revising paragraphs (7), (8), and (9) of subsection (a) of  
 521 Code Section 51-14-7, relating to sworn information form providing required information,  
 522 failure to state a claim, and class actions barred, as follows:

523 "(7) The specific condition related to asbestos or silica claimed to exist; and  
 524 (8) Any supporting documentation of the condition claimed to exist; ~~and~~  
 525 ~~(9) The identity of any bankruptcy trust to which a claim has been submitted concerning~~  
 526 ~~any asbestos or silica injury of the exposed person, attaching any claim form or other~~  
 527 ~~information submitted to such trust or trusts with respect to the exposed person. Plaintiff~~  
 528 ~~must also identify any bankruptcy trust that the plaintiff believes is or may be liable for~~  
 529 ~~all or part of the injury at issue, even if a claim has not been submitted to that trust at the~~  
 530 ~~time the complaint is filed."~~

531 **SECTION 7B-2.**

532 Said title is further amended by adding a new chapter to read as follows:

533 "CHAPTER 16

534 51-16-1.

535 (a) The General Assembly finds that:

536 (1) Over 120 employers have declared bankruptcy at least partially due to asbestos  
 537 related liability;

538 (2) Scores of trusts have been established in bankruptcy proceedings to form a  
 539 multibillion dollar compensation system for asbestos claimants outside of the civil courts,  
 540 and new asbestos trusts continue to be formed;

541 (3) Asbestos claimants typically seek compensation from solvent defendants in civil  
 542 actions and from trusts or claims facilities formed in asbestos bankruptcy proceedings;



- 543 (4) There is limited transparency between these two paths to recovery;  
 544 (5) An absence of transparency with respect to asbestos bankruptcy trust claims has  
 545 resulted in the suppression of evidence in asbestos actions;  
 546 (6) A federal bankruptcy court found that trust claim filings are being manipulated and  
 547 information withheld in order to inflate recoveries in asbestos actions;  
 548 (7) The lack of transparency regarding trust claims information harms Georgia  
 549 employers, their employees, their shareholders, and the communities in which they  
 550 operate. Companies that pay inflated settlements and awards in asbestos actions have  
 551 fewer resources to pay future claimants and invest in the state's economy; and  
 552 (8) Transparency with respect to asbestos trust claims and claims made in civil asbestos  
 553 actions promotes the integrity of asbestos actions and furthers recovery longevity to help  
 554 future plaintiffs.
- 555 (b) It is the purpose of this chapter to:
- 556 (1) Provide transparency with respect to asbestos trust claims and claims made in civil  
 557 asbestos actions; and
- 558 (2) Reduce the opportunity for withholding or suppressing trust related exposure  
 559 evidence in asbestos actions.

560 51-16-2.

561 As used in this chapter, the term:

- 562 (1) 'Asbestos action' means any claim for damages or other civil or equitable relief  
 563 presented in a civil action arising out of, based on, or in any way related to the health  
 564 effects of exposure to asbestos, and any other derivative claim made by or on behalf of  
 565 a person exposed to asbestos or a representative, spouse, parent, child, or other relative  
 566 of that person.
- 567 (2) 'Asbestos trust' means a government approved or court approved trust, qualified  
 568 settlement fund, compensation fund, or claims facility that is created as a result of an  
 569 administrative or legal action, a court approved bankruptcy, or under 11 U.S.C. Section  
 570 524(g), 11 U.S.C. Section 1121(a), or other applicable provision of law and is intended  
 571 to provide compensation to claimants arising out of, based on, or in any way related to  
 572 the health effects of exposure to asbestos.
- 573 (3) 'Trust claims materials' means any final executed proof of claim and any other  
 574 document or information submitted to or received from an asbestos trust, including a  
 575 claim form or supplementary material, affidavit, deposition or trial testimony, work  
 576 history, exposure allegation, medical or health record, document reflecting the status of  
 577 a claim against an asbestos trust, and, if the trust claim has been settled, any document  
 578 relating to such settlement.

579 (4) 'Trust governance documents' means any document that relates to eligibility and  
580 payment levels, including a claims payment matrix, trust distribution procedure, or plan  
581 for reorganization for an asbestos trust.

582 51-16-3.

583 (a) In addition to the requirements set forth in Chapter 14 of this title, a plaintiff shall do  
584 all of the following within 30 days of filing an asbestos action:

585 (1) Provide all parties with a sworn statement indicating that an investigation of all  
586 asbestos trust claims has been conducted and that all asbestos trust claims that can be  
587 made by the plaintiff have been filed; and

588 (2) Identify all asbestos trust claims made by the plaintiff and provide all parties with all  
589 trust claims materials.

590 (b) A plaintiff shall supplement the information and materials required under subsection  
591 (a) of this Code section within 30 days after the plaintiff files an additional asbestos trust  
592 claim, supplements an existing asbestos trust claim, or receives additional information or  
593 materials related to an asbestos trust claim.

594 51-16-4.

595 (a) Not less than 60 days before trial of an asbestos action, if a defendant believes the  
596 plaintiff has not filed all asbestos trust claims as required by Code Section 51-16-3, the  
597 defendant may move the court for an order to require the plaintiff to file additional asbestos  
598 trust claims the defendant believes the plaintiff is eligible to file.

599 (b) If the court determines there is a sufficient basis for the plaintiff to file an asbestos trust  
600 claim identified by the defendant, the court shall stay the asbestos action until the plaintiff  
601 files the trust claim and produces all related trust claims materials. An asbestos action may  
602 not proceed to trial until at least 60 days after the plaintiff complies with the court's order.

603 51-16-5.

604 (a) A defendant in an asbestos action may seek discovery from an asbestos trust. The  
605 plaintiff may not claim privilege or confidentiality to bar discovery and shall provide  
606 consent or another expression of permission that may be required by the asbestos trust to  
607 release the information and materials sought by the defendant.

608 (b) Trust claims materials and trust governance documents are presumed to be relevant and  
609 authentic and are admissible in evidence. No claim of privilege shall apply to trust claims  
610 materials or trust governance documents.

611 (c) Trust claims materials that are sufficient to entitle a claim to consideration for payment  
612 under the applicable trust governance documents may be sufficient to support a jury finding

613 that the claimant was exposed to products for which the trust was established to provide  
614 compensation and that such exposure was a substantial contributing factor in causing the  
615 claimant's injury that is at issue in the asbestos action.

616 51-16-6.

617 If a plaintiff files an asbestos trust claim after obtaining a judgment in an asbestos action  
618 and the asbestos trust was in existence at the time of such judgment, the trial court, upon  
619 motion by a defendant, shall adjust the judgment by the amount of any subsequent asbestos  
620 trust payments obtained by the plaintiff."

621 **SECTION 7B-3.**

622 Said title is further amended by adding a new chapter to read as follows:

623 "CHAPTER 17

624 51-17-1.

625 A defendant in a product liability action related to asbestos shall not be liable for exposures  
626 from a product or component part made or sold by a third party."

627 **PART VIII**

628 **SECTION 8-1.**

629 This Act shall be severable in accordance with Code Section 1-1-3 of the Official Code of  
630 Georgia Annotated.

631 **SECTION 8-2.**

632 This Act shall become effective upon its approval by the Governor or upon its becoming law  
633 without such approval.

634 **SECTION 8-3.**

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