

118TH CONGRESS
1ST SESSION

S. 1069

To amend the Toxic Substances Control Act to prohibit the manufacture, processing, use, and distribution in commerce of commercial asbestos and mixtures and articles containing commercial asbestos, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Toxic Substances Control Act to prohibit the manufacture, processing, use, and distribution in commerce of commercial asbestos and mixtures and articles containing commercial asbestos, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Alan Reinstein Ban
5 Asbestos Now Act of 2023”.

1 **SEC. 2. COMMERCIAL ASBESTOS BAN AND REPORTING.**

2 Section 6 of the Toxic Substances Control Act (15
3 U.S.C. 2605) is amended—

4 (1) by redesignating subsection (j) as sub-
5 section (k); and

6 (2) by inserting after subsection (i) the fol-
7 lowing:

8 “(j) ASBESTOS.—

9 “(1) DEFINITIONS.—In this subsection:

10 “(A) COMMERCIAL ASBESTOS.—The term
11 ‘commercial asbestos’ means the asbestiform
12 varieties of the following fibers if extracted and
13 processed for their commercial value:

14 “(i) Chrysotile (serpentine).

15 “(ii) Crocidolite (riebeckite).

16 “(iii) Amosite (cummingtonite-
17 grunerite).

18 “(iv) Anthophyllite.

19 “(v) Tremolite.

20 “(vi) Actinolite.

21 “(vii) Richterite.

22 “(viii) Winchite.

23 “(B) DISTRIBUTE IN COMMERCE; DIS-
24 TRIBUTION IN COMMERCE.—

25 “(i) IN GENERAL.—Except as pro-
26 vided in clause (ii), the terms ‘distribute in

1 commerce’ and ‘distribution in commerce’
2 have the meanings given the terms in sec-
3 tion 3.

4 “(ii) EXCLUSIONS.—The terms ‘dis-
5 tribute in commerce’ and ‘distribution in
6 commerce’ do not include, with respect to
7 commercial asbestos—

8 “(I) end-use of a mixture or arti-
9 cle containing commercial asbestos
10 and installed in a building or other
11 structure before the date of enactment
12 of the Alan Reinstein Ban Asbestos
13 Now Act of 2023; or

14 “(II) distribution of a mixture or
15 article containing commercial asbestos
16 solely for the purpose of disposal of
17 the mixture or article in compliance
18 with applicable Federal, State, and
19 local requirements.

20 “(C) MIXTURE OR ARTICLE CONTAINING
21 COMMERCIAL ASBESTOS.—The term ‘mixture or
22 article containing commercial asbestos’ does not
23 include a mixture or article in which commer-
24 cial asbestos is present solely as an impurity (as

1 defined in section 720.3 of title 40, Code of
2 Federal Regulations (or successor regulations)).

3 “(2) APPLICABILITY.—

4 “(A) IN GENERAL.—The prohibitions, re-
5 quirements, and definition of the term ‘commer-
6 cial asbestos’ in this subsection shall—

7 “(i) apply only—

8 “(I) to chemical substances; and

9 “(II) for purposes of regulating
10 chemical substances under this Act;
11 and

12 “(ii) have no effect on—

13 “(I) any other prohibition or def-
14 inition of the term ‘asbestos’; or

15 “(II) any other requirement reg-
16 ulating asbestos, including for pur-
17 poses of—

18 “(aa) regulating cosmetics
19 under the Federal Food, Drug,
20 and Cosmetic Act (21 U.S.C. 301
21 et seq.); and

22 “(bb) determining whether a
23 cosmetic contains asbestos as an
24 ingredient or as an impurity to
25 an ingredient.

1 “(B) IMPURITIES.—Nothing in this sub-
2 section applies to any chemical substance, mix-
3 ture, or article in which commercial asbestos is
4 present solely as an impurity.

5 “(3) PROHIBITION OF MANUFACTURE, PROC-
6 ESSING, USE, AND DISTRIBUTION IN COMMERCE.—
7 Effective 1 year after the date of enactment of the
8 Alan Reinstein Ban Asbestos Now Act of 2023, no
9 person may manufacture, process, use, or distribute
10 in commerce commercial asbestos or any mixture or
11 article containing commercial asbestos.

12 “(4) CHLOR-ALKALI INDUSTRY.—Notwith-
13 standing paragraph (3), an owner, operator, or
14 agent of an owner or operator of a chlor-alkali facil-
15 ity that is in operation on the date of enactment of
16 the Alan Reinstein Ban Asbestos Now Act of 2023
17 may, until the date that is 2 years after that date
18 of enactment—

19 “(A) import processed commercial asbestos
20 fibers solely for the purpose of manufacturing
21 diaphragms for use in the chlor-alkali process;

22 “(B) use, hold, or process commercial as-
23 bestos fibers solely for the purpose of manufac-
24 turing diaphragms for use in the chlor-alkali
25 process; and

1 “(C) use asbestos diaphragms in chlor-al-
2 kali production.

3 “(5) EXEMPTION FOR NATIONAL SECURITY
4 REASONS.—

5 “(A) IN GENERAL.—Notwithstanding any
6 other provision of this subsection, the President
7 may, on application, grant any person an ex-
8 emption from the prohibition under paragraph
9 (3) once for the manufacture, processing, use,
10 or distribution in commerce of commercial as-
11 bestos or any mixture or article containing com-
12 mercial asbestos only if the President deter-
13 mines that—

14 “(i) the manufacture, processing, use,
15 or distribution in commerce of commercial
16 asbestos or any mixture or article con-
17 taining commercial asbestos by the person
18 is necessary to protect the national secu-
19 rity interests of the United States; and

20 “(ii) no feasible alternative to the
21 manufacture, processing, use, or distribu-
22 tion in commerce of commercial asbestos
23 or any mixture or article containing com-
24 mercial asbestos exists for the intended
25 use.

1 “(B) DURATION.—

2 “(i) IN GENERAL.—The period of an
3 exemption granted under subparagraph
4 (A) shall not exceed 3 years.

5 “(ii) EXTENSION.—The President
6 may, in accordance with subparagraph (A),
7 extend an exemption granted under that
8 subparagraph once, for a period not to ex-
9 ceed 3 years.

10 “(C) TERMS AND CONDITIONS.—An ex-
11 emption granted under this paragraph (includ-
12 ing any extension granted under subparagraph
13 (B)(ii)) shall include such terms and conditions
14 as are necessary to achieve the maximum extent
15 practicable reduction in exposure to commercial
16 asbestos.

17 “(D) PUBLICATION.—

18 “(i) APPLICATIONS.—Not later than
19 30 days after receipt of an application for
20 an exemption under this paragraph (in-
21 cluding an extension under subparagraph
22 (B)(ii)), the President shall publish the ap-
23 plication in the Federal Register.

24 “(ii) EXEMPTIONS.—Not later than
25 30 days after granting an exemption under

1 this paragraph (including an extension
2 under subparagraph (B)(ii)), the President
3 shall publish in the Federal Register—

4 “(I) a notice of the exemption;

5 and

6 “(II) the terms and conditions
7 included under subparagraph (C).

8 “(iii) EXCEPTION.—The President, on
9 a determination that publication under this
10 subparagraph of information relating to an
11 application or granting of a particular ex-
12 emption would harm the national security
13 interests of the United States—

14 “(I) shall not publish that infor-
15 mation in the Federal Register; but

16 “(II) shall provide that informa-
17 tion to the Committee on Energy and
18 Commerce of the House of Represent-
19 atives and the Committee on Environ-
20 ment and Public Works of the Senate.

21 “(E) APPLICATION OF WAIVER AUTHOR-
22 ITY.—Notwithstanding section 22, the Adminis-
23 trator may not issue a waiver under that sec-
24 tion with respect to commercial asbestos.”.

1 **SEC. 3. PUBLIC EDUCATION.**

2 The Administrator of the Environmental Protection
3 Agency, in consultation with the Secretary of Health and
4 Human Services, shall develop and make publicly available
5 resources that may be used by the Federal Government
6 and other entities to educate the public and health profes-
7 sionals about—

8 (1) the adverse health effects of asbestos expo-
9 sure;

10 (2) any Federal resources, including easily un-
11 derstandable regulations, available to address the
12 prevention and mitigation of asbestos exposure; and

13 (3) licensed commercial asbestos mitigation
14 availability within each State, the District of Colum-
15 bia, and each territory or possession of the United
16 States.

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