

116TH CONGRESS
1ST SESSION

S. 717

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

IN THE SENATE OF THE UNITED STATES

MARCH 7, 2019

Mr. MERKLEY (for himself, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. TESTER, Mr. BOOKER, Ms. HARRIS, Mr. SANDERS, Mr. DURBIN, Mrs. FEINSTEIN, Mr. MARKEY, Ms. KLOBUCHAR, and Mr. CARDIN) 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, and distribution in commerce of asbestos and asbestos-containing mixtures and articles, 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 2019”.

1 **SEC. 2. 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) ASBESTOS.—The term ‘asbestos’
11 means—

12 “(i) the asbestiform varieties of
13 chrysotile, actinolite, amosite,
14 anthophyllite, crocidolite, richterite,
15 winchite, and tremolite; and

16 “(ii) the nonasbestiform varieties of
17 richterite and winchite.

18 “(B) DISTRIBUTE IN COMMERCE.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clause (ii), the terms ‘distribute in
21 commerce’ and ‘distribution in commerce’
22 have the meanings given the terms in sec-
23 tion 3.

24 “(ii) EXCLUSIONS.—The terms ‘dis-
25 tribute in commerce’ and ‘distribution in

1 commerce' do not include, with respect to
2 asbestos—

3 “(I) end-use of a mixture or arti-
4 cle containing asbestos and installed
5 in a building or other structure before
6 the date of enactment of this sub-
7 section; or

8 “(II) distribution of a mixture or
9 article containing asbestos solely for
10 the purpose of disposal of the mixture
11 or article in compliance with applica-
12 ble Federal, State, and local require-
13 ments.

14 “(C) MIXTURE OR ARTICLE CONTAINING
15 ASBESTOS.—The term ‘mixture or article con-
16 taining asbestos’ includes a mixture or article in
17 which asbestos is present as an impurity.

18 “(2) PROHIBITION OF MANUFACTURE, PROC-
19 ESSING, AND DISTRIBUTION IN COMMERCE.—Effec-
20 tive 1 year after the date of enactment of this sub-
21 section, no person may manufacture, process, or dis-
22 tribute in commerce asbestos or any mixture or arti-
23 cle containing asbestos.

24 “(3) EXEMPTION FOR NATIONAL SECURITY
25 REASONS.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of this subsection, the President
3 may, on application, grant any person an ex-
4 emption from the prohibition under paragraph
5 (2) once for the manufacture, processing, or
6 distribution in commerce of asbestos or any
7 mixture or article containing asbestos only if
8 the President determines that—

9 “(i) the manufacture, processing, or
10 distribution in commerce of asbestos or
11 any mixture or article containing asbestos
12 by the person is necessary to protect the
13 national security interests of the United
14 States; and

15 “(ii) no feasible alternative to the
16 manufacture, processing, or distribution in
17 commerce of asbestos or any mixture or
18 article containing asbestos exists for the
19 intended use.

20 “(B) DURATION.—

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

24 “(ii) EXTENSION.—The President
25 may, in accordance with subparagraph (A),

1 extend an exemption granted under that
2 subparagraph once, for a period not to ex-
3 ceed 3 years.

4 “(C) TERMS AND CONDITIONS.—An ex-
5 emption granted under this paragraph (includ-
6 ing any extension granted under subparagraph
7 (B)(ii)) shall include such terms and conditions
8 as are necessary to achieve the maximum prac-
9 ticable reduction in exposure to asbestos.

10 “(D) PUBLICATION.—

11 “(i) APPLICATIONS.—Not later than
12 30 days after receipt of an application for
13 an exemption under this paragraph (in-
14 cluding an extension under subparagraph
15 (B)(ii)), the President shall publish the ap-
16 plication in the Federal Register.

17 “(ii) EXEMPTIONS.—Not later than
18 30 days after granting an exemption under
19 this paragraph (including an extension
20 under subparagraph (B)(ii)), the President
21 shall publish in the Federal Register—

22 “(I) a notice of the exemption;

23 and

24 “(II) the terms and conditions
25 included under subparagraph (C).

1 “(E) APPLICATION OF WAIVER AUTHOR-
2 ITY.—Notwithstanding section 22, the Adminis-
3 trator may not issue a waiver under that sec-
4 tion with respect to asbestos.

5 “(4) REPORTS.—

6 “(A) TIMING AND COVERAGE.—

7 “(i) PREVIOUS ACTION.—Not later
8 than 120 days after the date of enactment
9 of this subsection, any person who has
10 manufactured, processed, or distributed in
11 commerce asbestos or any mixture or arti-
12 cle containing asbestos during the 3-year
13 period preceding that date of enactment
14 shall submit to the Administrator a report
15 described in subparagraph (B).

16 “(ii) LATER ACTION.—Any person
17 manufacturing, processing, or distributing
18 in commerce asbestos or any mixture or
19 article containing asbestos during the pe-
20 riod that begins on the date of enactment
21 of this subsection and ends on the date on
22 which the prohibition under paragraph (2)
23 takes effect shall submit to the Adminis-
24 trator a report described in subparagraph
25 (B) not later than 60 days after—

1 “(I) the date of enactment of this
 2 subsection, for any person who has
 3 manufactured, processed, or distrib-
 4 uted in commerce asbestos or any
 5 mixture or article containing asbestos
 6 before that date of enactment; or

7 “(II) the date on which the per-
 8 son initiates that manufacture, proc-
 9 essing, or distribution in commerce,
 10 for any person initiating that manu-
 11 facture, processing, or distribution in
 12 commerce on or after that date of en-
 13 actment.

14 “(iii) REPORTS DURING EXEMPTED
 15 PERIOD.—Any person granted an exemp-
 16 tion under paragraph (3) shall submit to
 17 the Administrator a report described in
 18 subparagraph (B) not later than 27
 19 months after—

20 “(I) the date on which the ex-
 21 emption is granted; and

22 “(II) the date on which the ex-
 23 emption is extended, if applicable.

24 “(B) CONTENTS.—Each report submitted
 25 under subparagraph (A) shall include—

1 “(i) the name and address of the per-
2 son submitting the report;

3 “(ii) the name, title, and contact in-
4 formation of an authorized representative
5 of the person submitting the report;

6 “(iii) the location of the facility or fa-
7 cilities where the manufacture, processing,
8 or distribution in commerce of asbestos or
9 mixtures or articles containing asbestos
10 has occurred, or will occur, during the re-
11 porting period;

12 “(iv) a description of the manufac-
13 ture, processing, or distribution activity
14 during the reporting period of the person
15 submitting the report and the intended and
16 known uses of asbestos and each mixture
17 or article containing asbestos by that per-
18 son and all other persons to whom the as-
19 bestos, mixture, or article is sold or other-
20 wise distributed in commerce;

21 “(v) the quantity of asbestos, and the
22 quantity and concentration of asbestos in
23 any mixture or article containing asbestos,
24 that is manufactured, processed, or distrib-
25 uted in commerce, or expected to be manu-

1 factured, processed, or distributed in com-
2 merce, by the person during the reporting
3 period;

4 “(vi) reasonable estimates of the
5 quantity of asbestos to be disposed of as a
6 result of the reported manufacture, proc-
7 essing, or distribution activities, and the
8 manner of the disposal; and

9 “(vii) reasonable estimates of—

10 “(I) the number of individuals
11 who, as a result of the reported manu-
12 facture, processing, and distribution
13 activities—

14 “(aa) have been exposed to
15 asbestos or mixtures or articles
16 containing asbestos; and

17 “(bb) will be so exposed; and

18 “(II) the nature, duration, fre-
19 quency, and levels of any exposure de-
20 scribed in subclause (I).

21 “(C) REPORTING PERIOD.—For purposes
22 of subparagraph (B), the reporting period for a
23 report submitted under—

1 “(i) subparagraph (A)(i) shall be the
2 3-year period preceding the date of enact-
3 ment of this subsection;

4 “(ii) subparagraph (A)(ii) shall be the
5 period that begins on the date of enact-
6 ment of this subsection and ends on the
7 date on which the prohibition under para-
8 graph (2) takes effect;

9 “(iii) subparagraph (A)(iii)(I) shall be
10 the period that begins on the date on
11 which an exemption is granted under para-
12 graph (3) and ends on the date on which
13 that exemption expires (not including any
14 extension of that exemption); and

15 “(iv) subparagraph (A)(iii)(II) shall
16 be the period that begins on the date on
17 which an exemption is extended under
18 paragraph (3)(B)(ii) and ends on the date
19 on which that extension expires.

20 “(D) REPORTING FORMS AND INSTRUC-
21 TIONS.—Not later than 30 days after the date
22 of enactment of this subsection, the Adminis-
23 trator shall publish a notice in the Federal Reg-
24 ister that provides instructions for reporting
25 under this paragraph and a form or forms for

1 use by persons submitting reports under this
2 paragraph.

3 “(E) AVAILABILITY.—Not later than 90
4 days after the date on which a report is sub-
5 mitted under subparagraph (A), the Adminis-
6 trator shall make that report available to the
7 public.

8 “(F) SUMMARY AND ANALYSIS.—Not later
9 than 180 days after the date on which a report
10 is submitted under subparagraph (A), the Ad-
11 ministrator shall make available to the public a
12 summary and analysis of the information that
13 report contains.”.

14 **SEC. 3. LEGACY ASBESTOS: REPORT AND RECOMMENDA-**
15 **TIONS.**

16 (a) DEFINITION OF ASBESTOS.—In this section, the
17 term “asbestos” means—

18 (1) the asbestiform varieties of chrysotile, actin-
19 olite, amosite, anthophyllite, crocidolite, richterite,
20 winchite, and tremolite; and

21 (2) the nonasbestiform varieties of richterite
22 and winchite.

23 (b) REPORT.—Not later than 540 days after the date
24 of enactment of this Act, the Administrator of the Envi-
25 ronmental Protection Agency, in consultation with the

1 Secretary of Health and Human Services and the Sec-
2 retary of Labor, shall prepare and submit to Congress a
3 report assessing—

4 (1) the presence of asbestos in residential, com-
5 mercial, industrial, public, and school buildings; and

6 (2) the extent of exposure and risk to human
7 health associated with the asbestos present in those
8 buildings from all commercial, industrial, and con-
9 sumer activities that may result in asbestos expo-
10 sure.

11 (c) CONTENTS.—The report required under sub-
12 section (b) shall—

13 (1) be based on the best available information,
14 and information that can feasibly be obtained
15 through surveys or other means; and

16 (2) provide the following:

17 (A) An estimate of the number of residen-
18 tial, commercial, industrial, public, and school
19 buildings where asbestos is present.

20 (B) An estimate of the quantity of asbes-
21 tos in those buildings and the portion of that
22 asbestos that is friable.

23 (C) A description of the types of building
24 components and systems containing asbestos in
25 those buildings and the categories of mixtures

1 and articles containing asbestos that are
2 present, such as thermal insulation, roofing ma-
3 terials, asbestos cement pipe, and asbestos ce-
4 ment sheet.

5 (D) For each category of building, an esti-
6 mate of the number of people potentially ex-
7 posed to asbestos, the conditions and activities
8 with the greatest potential for exposure, and es-
9 timates of the levels of exposure.

10 (E) A description of the role of handling,
11 maintenance, and construction practices in cre-
12 ating exposure to asbestos and the impact of
13 building aging on the potential for asbestos ex-
14 posure.

15 (F) An estimate of the quantity of asbestos
16 waste generated from building renovation, re-
17 pair, and demolition for each of the 5 calendar
18 years preceding the date of submission of the
19 report, and the procedures that are used for the
20 handling, transport, and disposal of that waste.

21 (d) RECOMMENDATIONS.—

22 (1) IN GENERAL.—The report submitted under
23 subsection (b) shall contain—

24 (A) an assessment of the sufficiency of ex-
25 isting statutes, regulations, policies, and pro-

grams implemented by the Environmental Protection Agency, the Department of Labor, and other agencies in protecting against exposures to legacy asbestos; and

(B) recommendations for modifications or additions to those statutes, regulations, policies, and programs as necessary to reduce or eliminate risks to human health.

(2) INCLUSIONS.—Recommendations under paragraph (1)(B) may include recommendations for new, additional, or modified regulations, policies, or programs for—

(A) the inspection of buildings to determine the presence and condition of asbestos;

(B) inventorying the presence and condition of asbestos in buildings;

(C) removal of asbestos from buildings;

(D) handling asbestos during building maintenance, repair, demolition, and other commercial and industrial activities with the potential for asbestos exposure; and

(E) disposal of asbestos-containing waste and debris.

(e) EFFECT ON EXISTING LAW.—Compliance with this section shall not relieve the Administrator of the Envi-

1 ronmental Protection Agency, the Secretary of Health and
2 Human Services, or the Secretary of Labor of any other
3 obligation arising under this Act (or an amendment made
4 by this Act) or any other law.

