

117TH CONGRESS
2D SESSION

S. 4244

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

MAY 18 (legislative day, MAY 17), 2022

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 2022”.

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.—

11 “(i) IN GENERAL.—The term ‘com-
12 mercial asbestos’ means asbestiform fibers
13 that have been extracted and processed
14 from any of the following minerals:

15 “(I) Chrysotile (serpentine).

16 “(II) Crocidolite (riebeckite).

17 “(III) Amosite (cummingtonite-
18 grunerite).

19 “(IV) Anthophyllite asbestos.

20 “(V) Tremolite asbestos.

21 “(VI) Actinolite asbestos.

22 “(VII) Richterite.

23 “(VIII) Winchite.

24 “(ii) EXCLUSION.—The term ‘com-
25 mercial asbestos’ does not include asbestos

1 fibers that are not extracted or processed
2 for the value of the asbestos fibers.

3 “(B) DISTRIBUTE IN COMMERCE.—

4 “(i) IN GENERAL.—Except as pro-
5 vided in clause (ii), the terms ‘distribute in
6 commerce’ and ‘distribution in commerce’
7 have the meanings given the terms in sec-
8 tion 3.

9 “(ii) EXCLUSIONS.—The terms ‘dis-
10 tribute in commerce’ and ‘distribution in
11 commerce’ do not include, with respect to
12 commercial asbestos—

13 “(I) end-use of a mixture or arti-
14 cle containing commercial asbestos
15 and installed in a building or other
16 structure before the date of enactment
17 of the Alan Reinstein Ban Asbestos
18 Now Act of 2022; or

19 “(II) distribution of a mixture or
20 article containing commercial asbestos
21 solely for the purpose of disposal of
22 the mixture or article in compliance
23 with applicable Federal, State, and
24 local requirements.

1 “(C) MIXTURE OR ARTICLE CONTAINING
2 COMMERCIAL ASBESTOS.—The term ‘mixture or
3 article containing commercial asbestos’ does not
4 include a mixture or article in which commer-
5 cial asbestos is present solely as an impurity (as
6 defined in section 720.3 of title 40, Code of
7 Federal Regulations (or successor regulations)).

8 “(2) APPLICABILITY.—

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

12 “(i) apply only—

13 “(I) to chemical substances; and

14 “(II) for purposes of regulating
15 chemical substances under this Act;
16 and

17 “(ii) have no effect on—

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

20 “(II) any other requirement reg-
21 ulating asbestos, including for pur-
22 poses of—

23 “(aa) regulating cosmetics
24 under the Federal Food, Drug,

1 and Cosmetic Act (21 U.S.C. 301
2 et seq.); and

3 “(bb) determining whether a
4 cosmetic contains asbestos as an
5 ingredient or as an impurity to
6 an ingredient.

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

11 “(3) PROHIBITION OF MANUFACTURE, PROC-
12 ESSING, USE, AND DISTRIBUTION IN COMMERCE.—
13 Effective 1 year after the date of enactment of the
14 Alan Reinstein Ban Asbestos Now Act of 2022, no
15 person may manufacture, process, use, or distribute
16 in commerce commercial asbestos or any mixture or
17 article containing commercial asbestos.

18 “(4) CHLOR-ALKALI INDUSTRY.—Notwith-
19 standing paragraph (3), an owner, operator, or
20 agent of an owner or operator of a chlor-alkali facil-
21 ity that is in operation on the date of enactment of
22 the Alan Reinstein Ban Asbestos Now Act of 2022
23 may, until the date that is 2 years after that date
24 of enactment—

1 “(A) import processed commercial asbestos
2 fibers solely for the purpose of manufacturing
3 diaphragms for use in the chlor-alkali process;
4 and

5 “(B) use, hold, or process commercial as-
6 bestos fibers solely for the purpose of manufac-
7 turing diaphragms for use in the chlor-alkali
8 process.

9 “(5) EXEMPTION FOR NATIONAL SECURITY
10 REASONS.—

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

20 “(i) the manufacture, processing, use,
21 or distribution in commerce of commercial
22 asbestos or any mixture or article con-
23 taining commercial asbestos by the person
24 is necessary to protect the national secu-
25 rity interests of the United States; and

1 “(ii) no feasible alternative to the
2 manufacture, processing, use, or distribu-
3 tion in commerce of commercial asbestos
4 or any mixture or article containing com-
5 mercial asbestos exists for the intended
6 use.

7 “(B) DURATION.—

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

11 “(ii) EXTENSION.—The President
12 may, in accordance with subparagraph (A),
13 extend an exemption granted under that
14 subparagraph once, for a period not to ex-
15 ceed 3 years.

16 “(C) TERMS AND CONDITIONS.—An ex-
17 emption granted under this paragraph (includ-
18 ing any extension granted under subparagraph
19 (B)(ii)) shall include such terms and conditions
20 as are necessary to achieve the maximum extent
21 practicable reduction in exposure to commercial
22 asbestos.

23 “(D) PUBLICATION.—

24 “(i) APPLICATIONS.—Not later than
25 30 days after receipt of an application for

1 an exemption under this paragraph (in-
2 cluding an extension under subparagraph
3 (B)(ii)), the President shall publish the ap-
4 plication in the Federal Register.

5 “(ii) EXEMPTIONS.—Not later than
6 30 days after granting an exemption under
7 this paragraph (including an extension
8 under subparagraph (B)(ii)), the President
9 shall publish in the Federal Register—

10 “(I) a notice of the exemption;

11 and

12 “(II) the terms and conditions
13 included under subparagraph (C).

14 “(iii) EXCEPTION.—The President, on
15 a determination that publication under this
16 subparagraph of information relating to an
17 application or granting of a particular ex-
18 emption would harm the national security
19 interests of the United States—

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

22 “(II) shall provide that informa-
23 tion to the Committee on Energy and
24 Commerce of the House of Represent-

1 atives and the Committee on Environ-
2 ment and Public Works of the Senate.

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

7 “(6) REPORTS.—

8 “(A) TIMING AND COVERAGE.—

9 “(i) PREVIOUS ACTION.—Not later
10 than 120 days after the date of enactment
11 of the Alan Reinstein Ban Asbestos Now
12 Act of 2022, any person who has manufac-
13 tured, processed, used, or distributed in
14 commerce commercial asbestos or any mix-
15 ture or article containing commercial as-
16 bestos during the 3-year period preceding
17 that date of enactment shall submit to the
18 Administrator a report described in sub-
19 paragraph (B).

20 “(ii) LATER ACTION.—Any person
21 manufacturing, processing, using, or dis-
22 tributing in commerce commercial asbestos
23 or any mixture or article containing com-
24 mercial asbestos during the period that be-
25 gins on the date of enactment of the Alan

1 Reinstein Ban Asbestos Now Act of 2022
2 and ends on the date on which the prohibi-
3 tion under paragraph (3) takes effect shall
4 submit to the Administrator a report de-
5 scribed in subparagraph (B) not later than
6 60 days after—

7 “(I) the date of enactment of the
8 Alan Reinstein Ban Asbestos Now Act
9 of 2022, for any person who has man-
10 ufactured, processed, used, or distrib-
11 uted in commerce commercial asbestos
12 or any mixture or article containing
13 commercial asbestos before that date
14 of enactment; or

15 “(II) the date on which the per-
16 son initiates that manufacture, proc-
17 essing, use, or distribution in com-
18 merce, for any person initiating that
19 manufacture, processing, use, or dis-
20 tribution in commerce on or after that
21 date of enactment.

22 “(iii) REPORTS BY CHLOR-ALKALI IN-
23 DUSTRY.—An owner, operator, or agent of
24 an owner or operator of a chlor-alkali facil-
25 ity importing, using, holding, or processing

1 an article containing commercial asbestos
2 pursuant to paragraph (4) in a calendar
3 year shall submit to the Administrator a
4 report described in subparagraph (B)—

5 “(I) not later than March 1 of
6 the following calendar year; and

7 “(II) annually thereafter until
8 the person has submitted such a re-
9 port with respect to each calendar
10 year after the date of enactment of
11 the Alan Reinstein Ban Asbestos Now
12 Act of 2022 in which that person im-
13 ported, used, held, or processed such
14 an article.

15 “(iv) REPORTS DURING EXEMPTED
16 PERIOD.—Any person granted an exemp-
17 tion under paragraph (5) shall submit to
18 the Administrator a report described in
19 subparagraph (B) not later than 27
20 months after—

21 “(I) the date on which the ex-
22emption is granted; and

23 “(II) the date on which the ex-
24emption is extended, if applicable.

1 “(B) CONTENTS.—Each report submitted
2 under subparagraph (A) shall include—

3 “(i) the name and address of the per-
4 son submitting the report;

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

8 “(iii) the location of the facility or fa-
9 cilities where the manufacture, processing,
10 use, or distribution in commerce of com-
11 mercial asbestos or mixtures or articles
12 containing commercial asbestos has oc-
13 curred, or will occur, during the reporting
14 period;

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

1 “(v) the quantity of commercial asbes-
2 tos, and the quantity and concentration of
3 commercial asbestos in any mixture or ar-
4 ticle containing commercial asbestos, that
5 is manufactured, processed, used, or dis-
6 tributed in commerce, or expected to be
7 manufactured, processed, used, or distrib-
8 uted in commerce, by the person during
9 the reporting period;

10 “(vi) reasonable estimates of the
11 quantity of commercial asbestos to be dis-
12 posed of as a result of the reported manu-
13 facture, processing, use, or distribution ac-
14 tivities, and the manner of the disposal;
15 and

16 “(vii) reasonably ascertainable esti-
17 mates of—

18 “(I) the number of individuals
19 who, as a result of the reported manu-
20 facture, processing, use, and distribu-
21 tion activities—

22 “(aa) have been exposed to
23 commercial asbestos or mixtures
24 or articles containing commercial
25 asbestos; and

1 “(bb) will be so exposed; and

2 “(II) the nature, duration, fre-
3 quency, and levels of any exposure de-
4 scribed in subclause (I).

5 “(C) REPORTING PERIOD.—For purposes
6 of subparagraph (B), the reporting period for a
7 report submitted under—

8 “(i) subparagraph (A)(i) shall be the
9 3-year period preceding the date of enact-
10 ment of the Alan Reinstein Ban Asbestos
11 Now Act of 2022;

12 “(ii) subparagraph (A)(ii) shall be the
13 period that begins on the date of enact-
14 ment of the Alan Reinstein Ban Asbestos
15 Now Act of 2022 and ends on the date on
16 which the prohibition under paragraph (3)
17 takes effect;

18 “(iii) subparagraph (A)(iii) shall be
19 the calendar year before the calendar year
20 in which the report is submitted;

21 “(iv) subparagraph (A)(iv)(I) shall be
22 the period that begins on the date on
23 which an exemption is granted under para-
24 graph (5) and ends on the date on which

1 that exemption expires (not including any
2 extension of that exemption); and

3 “(v) subparagraph (A)(iv)(II) shall be
4 the period that begins on the date on
5 which an exemption is extended under
6 paragraph (5)(B)(ii) and ends on the date
7 on which that extension expires.

8 “(D) REPORTING FORMS AND INSTRUC-
9 TIONS.—Not later than 30 days after the date
10 of enactment of the Alan Reinstein Ban Asbes-
11 tos Now Act of 2022, the Administrator shall
12 publish a notice in the Federal Register that
13 provides instructions for reporting under this
14 paragraph and a form or forms for use by per-
15 sons submitting reports under this paragraph.

16 “(E) AVAILABILITY.—Not later than 90
17 days after the date on which a report is sub-
18 mitted under subparagraph (A), the Adminis-
19 trator shall, subject to section 14, make that re-
20 port available to the public.

21 “(F) SUMMARY AND ANALYSIS.—Not later
22 than 180 days after the date on which a report
23 is submitted under subparagraph (A), the Ad-
24 ministrator shall, subject to section 14, make

1 available to the public a summary and analysis
2 of the information that report contains.”.

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

4 The Administrator of the Environmental Protection
5 Agency shall—

6 (1) publicize the prohibition under paragraph
7 (3) of subsection (j) of section 6 of the Toxic Sub-
8 stances Control Act (15 U.S.C. 2605); and

9 (2) provide to persons who may be subject to
10 that prohibition assistance in complying with that
11 subsection.

○