118TH CONGRESS  
1ST SESSION

S.________

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

Mr. Merkley introduced the following bill; which was read twice and referred to the Committee on ________

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”.
SEC. 2. COMMERCIAL ASBESTOS BAN AND REPORTING.

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

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following:

"(j) ASBESTOS.—

"(1) DEFINITIONS.—In this subsection:

"(A) COMMERCIAL ASBESTOS.—The term 'commercial asbestos’ means the asbestiform varieties of the following fibers if extracted and processed for their commercial value:

"(i) Chrysotile (serpentine).

"(ii) Crocidolite (riebeckite).

"(iii) Amosite (cummingtonite-grunerite).

"(iv) Anthophyllite.

"(v) Tremolite.

"(vi) Actinolite.

"(vii) Richterite.

"(viii) Winchite.

"(B) DISTRIBUTE IN COMMERCE; DISTRIBUTION IN COMMERCE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the terms ‘distribute in
commerce’ and ‘distribution in commerce’ have the meanings given the terms in section 3.

“(ii) Exclusions.—The terms ‘distribute in commerce’ and ‘distribution in commerce’ do not include, with respect to commercial asbestos—

“(I) end-use of a mixture or article containing commercial asbestos and installed in a building or other structure before the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2023; or

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

“(C) Mixture or Article Containing Commercial Asbestos.—The term ‘mixture or article containing commercial asbestos’ does not include a mixture or article in which commercial asbestos is present solely as an impurity (as
defined in section 720.3 of title 40, Code of
Federal Regulations (or successor regulations)).

“(2) APPLICABILITY.—

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

“(i) apply only—

“(I) to chemical substances; and

“(II) for purposes of regulating
chemical substances under this Act;

and

“(ii) have no effect on—

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

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

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

“(bb) determining whether a
cosmetic contains asbestos as an
ingredient or as an impurity to
an ingredient.
“(B) IMPURITIES.—Nothing in this subsection applies to any chemical substance, mixture, or article in which commercial asbestos is present solely as an impurity.

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

“(4) CHLOR-ALKALI INDUSTRY.—Notwithstanding paragraph (3), an owner, operator, or agent of an owner or operator of a chlor-alkali facility that is in operation on the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2023 may, until the date that is 2 years after that date of enactment—

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

“(B) use, hold, or process commercial asbestos fibers solely for the purpose of manufacturing diaphragms for use in the chlor-alkali process; and
“(C) use asbestos diaphragms in chlor-alkali production.

“(5) **Exemption for national security reasons.**—

“(A) **In general.**—Notwithstanding any other provision of this subsection, the President may, on application, grant any person an exemption from the prohibition under paragraph (3) once for the manufacture, processing, use, or distribution in commerce of commercial asbestos or any mixture or article containing commercial asbestos only if the President determines that—

“(i) the manufacture, processing, use, or distribution in commerce of commercial asbestos or any mixture or article containing commercial asbestos by the person is necessary to protect the national security interests of the United States; and

“(ii) no feasible alternative to the manufacture, processing, use, or distribution in commerce of commercial asbestos or any mixture or article containing commercial asbestos exists for the intended use.
“(B) Duration.—

“(i) In general.—The period of an exemption granted under subparagraph (A) shall not exceed 3 years.

“(ii) Extension.—The President may, in accordance with subparagraph (A), extend an exemption granted under that subparagraph once, for a period not to exceed 3 years.

“(C) Terms and conditions.—An exemption granted under this paragraph (including any extension granted under subparagraph (B)(ii)) shall include such terms and conditions as are necessary to achieve the maximum extent practicable reduction in exposure to commercial asbestos.

“(D) Publication.—

“(i) Applications.—Not later than 30 days after receipt of an application for an exemption under this paragraph (including an extension under subparagraph (B)(ii)), the President shall publish the application in the Federal Register.

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

“(I) a notice of the exemption; and

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

“(iii) EXCEPTION.—The President, on a determination that publication under this subparagraph of information relating to an application or granting of a particular exemption would harm the national security interests of the United States—

“(I) shall not publish that information in the Federal Register; but

“(II) shall provide that information to the Committee on Energy and Commerce of the House of Representa- tives and the Committee on Environment and Public Works of the Senate.

“(E) APPLICATION OF WAIVER AUTHORITY.—Notwithstanding section 22, the Adminis-trator may not issue a waiver under that section with respect to commercial asbestos.”.
SEC. 3. PUBLIC EDUCATION.

The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Health and Human Services, shall develop and make publicly available resources that may be used by the Federal Government and other entities to educate the public and health professionals about—

(1) the adverse health effects of asbestos exposure;

(2) any Federal resources, including easily understandable regulations, available to address the prevention and mitigation of asbestos exposure; and

(3) licensed commercial asbestos mitigation availability within each State, the District of Columbia, and each territory or possession of the United States.