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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Alan Reinstein Ban Asbestos Now Act of 2022”.

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.—

"(i) IN GENERAL.—The term ‘commercial asbestos’ means asbestiform fibers that have been extracted and processed from any of the following minerals:

“(I) Chrysotile (serpentine).

“(II) Crocidolite (riebeckite).

“(III) Amosite (cummingtonite-grunerite).

“(IV) Anthophyllite asbestos.

“(V) Tremolite asbestos.

“(VI) Actinolite asbestos.

“(VII) Richterite.

“(VIII) Winchite.

“(ii) EXCLUSION.—The term ‘commercial asbestos’ does not include asbestos
fibers that are not extracted or processed for the value of the asbestos fibers.

“(B) Distribute 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 2022; 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, requirements, and definition of the term ‘commercial 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 definition of the term ‘asbestos’; or

“(II) any other requirement regulating asbestos, including for purposes 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 2022, 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 2022 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; and

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

“(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 (in-
cluding an extension under subparagraph
(B)(ii)), the President shall publish the ap-
lication 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 ex-
emption would harm the national security
interests of the United States—

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

“(II) shall provide that informa-
tion to the Committee on Energy and
Commerce of the House of Represent-
atives and the Committee on Environment and Public Works of the Senate.

“(E) Application of waiver authority.—Notwithstanding section 22, the Administrator may not issue a waiver under that section with respect to commercial asbestos.

“(6) Reports.—

“(A) Timing and coverage.—

“(i) Previous action.—Not later than 120 days after the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2022, any person who has manufactured, processed, used, or distributed in commerce commercial asbestos or any mixture or article containing commercial asbestos during the 3-year period preceding that date of enactment shall submit to the Administrator a report described in subparagraph (B).

“(ii) Later action.—Any person manufacturing, processing, using, or distributing in commerce commercial asbestos or any mixture or article containing commercial asbestos during the period that begins on the date of enactment of the Alan
Reinstein Ban Asbestos Now Act of 2022 and ends on the date on which the prohibition under paragraph (3) takes effect shall submit to the Administrator a report described in subparagraph (B) not later than 60 days after—

“(I) the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2022, for any person who has manufactured, processed, used, or distributed in commerce commercial asbestos or any mixture or article containing commercial asbestos before that date of enactment; or

“(II) the date on which the person initiates that manufacture, processing, use, or distribution in commerce, for any person initiating that manufacture, processing, use, or distribution in commerce on or after that date of enactment.

“(iii) REPORTS BY CHLOR-ALKALI INDUSTRY.—An owner, operator, or agent of an owner or operator of a chlor-alkali facility importing, using, holding, or processing
an article containing commercial asbestos pursuant to paragraph (4) in a calendar year shall submit to the Administrator a report described in subparagraph (B)—

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

“(II) annually thereafter until the person has submitted such a report with respect to each calendar year after the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2022 in which that person imported, used, held, or processed such an article.

“(iv) REPORTS DURING EXEMPTED PERIOD.—Any person granted an exemption under paragraph (5) shall submit to the Administrator a report described in subparagraph (B) not later than 27 months after—

“(I) the date on which the exemption is granted; and

“(II) the date on which the exemption is extended, if applicable.
“(B) CONTENTS.—Each report submitted under subparagraph (A) shall include—

“(i) the name and address of the person submitting the report;

“(ii) the name, title, and contact information of an authorized representative of the person submitting the report;

“(iii) the location of the facility or facilities where the manufacture, processing, use, or distribution in commerce of commercial asbestos or mixtures or articles containing commercial asbestos has occurred, or will occur, during the reporting period;

“(iv) a description of the manufacture, processing, use, or distribution activity during the reporting period of the person submitting the report and the intended and known uses of commercial asbestos and each mixture or article containing commercial asbestos by that person and all other persons to whom the commercial asbestos, mixture, or article is sold or otherwise distributed in commerce;
“(v) the quantity of commercial asbestos, and the quantity and concentration of commercial asbestos in any mixture or article containing commercial asbestos, that is manufactured, processed, used, or distributed in commerce, or expected to be manufactured, processed, used, or distributed in commerce, by the person during the reporting period;

“(vi) reasonable estimates of the quantity of commercial asbestos to be disposed of as a result of the reported manufacture, processing, use, or distribution activities, and the manner of the disposal; and

“(vii) reasonably ascertainable estimates of—

“(I) the number of individuals who, as a result of the reported manufacture, processing, use, and distribution activities—

“(aa) have been exposed to commercial asbestos or mixtures or articles containing commercial asbestos; and
“(bb) will be so exposed; and

“(II) the nature, duration, frequency, and levels of any exposure described in subclause (I).

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

“(i) subparagraph (A)(i) shall be the 3-year period preceding the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2022;

“(ii) subparagraph (A)(ii) shall be the period that begins on the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2022 and ends on the date on which the prohibition under paragraph (3) takes effect;

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

“(iv) subparagraph (A)(iv)(I) shall be the period that begins on the date on which an exemption is granted under paragraph (5) and ends on the date on which
that exemption expires (not including any extension of that exemption); and

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

“(D) REPORTING FORMS AND INSTRUCTIONS.—Not later than 30 days after the date of enactment of the Alan Reinstein Ban Asbestos Now Act of 2022, the Administrator shall publish a notice in the Federal Register that provides instructions for reporting under this paragraph and a form or forms for use by persons submitting reports under this paragraph.

“(E) AVAILABILITY.—Not later than 90 days after the date on which a report is submitted under subparagraph (A), the Administrator shall, subject to section 14, make that report available to the public.

“(F) SUMMARY AND ANALYSIS.—Not later than 180 days after the date on which a report is submitted under subparagraph (A), the Administrator shall, subject to section 14, make
available to the public a summary and analysis
of the information that report contains.”

SEC. 3. PUBLIC EDUCATION.

The Administrator of the Environmental Protection
Agency shall—

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

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