

HR 6903

110th CONGRESS
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H. R. 6903

To amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 15, 2008

Mr. GENE GREEN of Texas (for himself, Ms. MCCOLLUM of Minnesota, Ms. SOLIS, Mrs. CAPPS, Ms. BALDWIN, Mr. BUTTERFIELD, Ms. SCHAKOWSKY, Ms. MATSUI, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Bruce Vento Ban Asbestos and Prevent Mesothelioma Act of 2008'.

SEC. 2. ASBESTOS-CONTAINING PRODUCTS.

(a) In General- The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is amended by adding at the end the following:

'TITLE VI--ASBESTOS-CONTAINING PRODUCTS

'SEC. 601. DEFINITIONS.

'In this title:

'(1) ASBESTOS- The term 'asbestos' has the meaning given that term in section 202(3).

'(2) ASBESTOS-CONTAINING PRODUCT- The term 'asbestos-containing product' means any product (including any part) to which

asbestos is deliberately added, or used, or in which asbestos is otherwise present in any concentration, except concentrations present solely from contamination from--

`(A) ambient air; or

`(B) water that complies with the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and the regulations issued under that Act.

`(3) COSMETIC- The term `cosmetic' has the meaning given that term in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

`(4) DISTRIBUTE IN COMMERCE-

`(A) IN GENERAL- The term `distribute in commerce' has the meaning given the term in section 3.

`(B) EXCLUSIONS- The term `distribute in commerce' does not include--

`(i) the sale, introduction or delivery for introduction into commerce, or holding of an asbestos-containing product, or an interest in real property (and improvements thereon), by a person that is an end user;

`(ii) the sale, introduction or delivery for introduction into commerce, or holding of an asbestos-containing product by a person solely for the purpose of disposal of the asbestos-containing product in compliance with applicable Federal, State, and local requirements; or

`(iii) the sale, introduction or delivery for introduction into commerce, or holding of a motor vehicle that was manufactured and sold before the date of enactment of this title and that has an asbestos-containing product installed in or on the motor vehicle.

`(5) DRUG- The term `drug' has the meaning given that term in section 201 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

`(6) MOTOR VEHICLE- The term `motor vehicle' has the meaning given that term in section 30102(a)(6) of title 49, United States Code.

`(7) PERSON- The term `person' means--

`(A) any individual;

`(B) any trust, corporation (including a government corporation), company, association, firm, partnership, joint venture, sole proprietorship, or other for-profit or nonprofit business entity (including any manufacturer, importer, distributor, or processor);

`(C) any Federal, State, or local department, agency, or instrumentality; and

`(D) any interstate body.

`SEC. 602. PUBLIC EDUCATION PROGRAM.

`(a) In General- Not later than 1 year after the date of enactment of this title, the Administrator, in consultation with the Chairman of the Consumer Product Safety Commission, the Director of the Centers for Disease Control and Prevention, the

Secretary of Labor, and other appropriate Federal agencies, shall establish a plan and initiate a program--

- `(1) to increase awareness of the dangers posed by--
 - `(A) asbestos-containing products in homes and workplaces; and
 - `(B) asbestos-related diseases;
- `(2) to provide current and comprehensive information to asbestos-related disease patients, family members of patients, and front-line health care providers on--
 - `(A) the dangers of asbestos exposure;
 - `(B) asbestos-related labeling information;
 - `(C) health effects of exposure to asbestos;
 - `(D) symptoms of asbestos exposure; and
 - `(E) available and developing treatments for asbestos-related diseases, including clinical trials;
- `(3) to encourage asbestos-related disease patients, family members of patients, and front-line health care providers to participate in research and treatment endeavors relating to asbestos; and
- `(4) to encourage health care providers and researchers to provide to asbestos-related disease patients and family members of patients information relating to research, diagnostic, and clinical treatments relating to asbestos.

`(b) Greatest Risks- In establishing the program, the Administrator shall give priority to asbestos-containing products used by consumers and workers that present or will present the greatest risk of injury to human health.

`(c) Authorization of Appropriations- There are authorized to be appropriated such sums as are necessary to carry out this section.

`SEC. 603. PROHIBITION ON ASBESTOS-CONTAINING PRODUCTS.

`(a) Prohibition-

`(1) IN GENERAL- Subject to subsection (b), no person shall import, manufacture, process, or distribute in commerce asbestos-containing products.

`(2) EFFECTIVE DATE- The prohibition under paragraph (1) shall take effect 2 years after the date of enactment of this title.

`(b) Exemptions-

`(1) IN GENERAL-

`(A) PETITION- Any person may petition the Administrator for an exemption from the requirements of subsection (a) for an asbestos-containing product and the Administrator may grant, by rule, such an exemption if the Administrator finds that--

`(i) the use of the asbestos-containing product will not present an unreasonable risk of injury to health or the environment;

`(ii) there is no alternative to the asbestos-containing product that is the subject of the petition; and

`(iii) the use of the asbestos-containing product is in compliance with all Federal and State laws and regulations.

`(B) TERMS AND CONDITIONS- An exemption granted under this paragraph shall be in effect for such period (not to exceed a total of 3 years) and subject to such terms and conditions as the Administrator may prescribe.

`(C) INFORMATION ON USERS- Any person seeking an exemption under this paragraph from the requirements of subsection (a) for an asbestos-containing product shall include in the petition to the Administrator the names of any manufacturer, importer, distributor, or processor of the asbestos-containing product known to the person seeking the exemption at the time of submission of the petition.

`(2) GOVERNMENTAL USE-

`(A) IN GENERAL- An exemption from the requirements of subsection (a) shall apply, only to the extent necessary for the critical functions described in a certification provided under clause (i) or (ii), if the exemption is--

`(i) sought by the Secretary of Defense, and the Secretary provides a copy of a certification to the Administrator and Congress that--

`(I) describes the scope of each use of the asbestos-containing product, and certifies that each use is necessary to the critical functions of the Department of Defense;

`(II) certifies that no reasonable alternatives to the asbestos-containing product exist for the intended uses;

`(III) certifies that use of the asbestos-containing product will not present an unreasonable risk of injury to health or the environment; and

`(IV) certifies that the use of the asbestos-containing product is in compliance with all Federal laws and regulations; or

`(ii) sought by the Administrator of the National Aeronautics and Space Administration, and the Administrator of the National Aeronautics and Space Administration provides a copy of a certification to the Administrator and Congress that--

`(I) certifies that the asbestos-containing product is necessary to the critical functions of the National Aeronautics and Space Administration;

`(II) certifies that no reasonable alternatives to the asbestos-containing product exist for the intended use;

`(III) certifies that the use of the asbestos-containing product will not present an unreasonable risk of injury to health or the environment; and

`(IV) certifies that the use of the asbestos-containing product is in compliance with all Federal laws and regulations.

`(B) CONTENTS- A certification required under subparagraph (A) shall include a description of the critical functions, and shall identify any authorized manufacturer, importer, distributor, or contract-authorized user of the exemption on behalf of the Department of Defense or the National Aeronautics and Space Administration.

`(C) LIMITATION- A certification under this paragraph shall not be effective for more than 5 years, unless the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration recertifies within 5 years after a prior certification.

`(3) DIAPHRAGMS FOR EXISTING CHLOR-ALKALI ELECTROLYSIS INSTALLATIONS-

`(A) IN GENERAL- The requirements of subsection (a) shall not apply to any chlor-alkali electrolysis installation in existence and using asbestos diaphragms as of the date of enactment of this title, or to caustic soda produced at such an installation that contains asbestos in an amount less than .01 percent.

`(B) REVIEW-

`(i) IN GENERAL- Not later than 3 years after the date of enactment of this title, and every 6 years thereafter, the Administrator shall review the exemption provided under subparagraph (A) to determine the appropriateness of the exemption.

`(ii) SCOPE- In conducting the review of the exemption provided under subparagraph (A), the Administrator shall examine whether the chlor-alkali electrolysis installation presents or will present an unreasonable risk of injury to health or the environment, including the risk of injury to an individual relating to the operation by the individual of each chlor-alkali electrolysis installation described in subparagraph (A).

`(iii) PUBLIC PARTICIPATION- In conducting the review of the exemption provided under subparagraph (A), the Administrator shall provide public notice and a 30-day period of public comment.

`(C) DECISION RELATING TO EXTENSION OF EXEMPTION- Upon completion of a review of a chlor-alkali electrolysis installation under subparagraph (B)(i), if the Administrator determines that the chlor-alkali electrolysis installation presents or will present an unreasonable risk of injury

to health or the environment, the Administrator shall terminate the exemption provided to the electrolysis installation under subparagraph (A).

`(4) AGGREGATE PRODUCTS-

`(A) IN GENERAL- Subsection (a)(1) shall not apply to aggregate products (extracted from stone, sand, or gravel operations) that--

`(i) are imported, manufactured, processed, or distributed in commerce for the uses described in subparagraph (D) of this paragraph; and

`(ii) have been tested using a test method established under subparagraph (B) and determined to have an asbestos content that is less than--

`(I) 0.25 percent; or

`(II) if a lower asbestos content level has been established by the Administrator under subparagraph (C), such level.

`(B) ASBESTOS TEST METHOD- (i) Not later than 1 year after the date of enactment of this title, the Administrator shall issue guidance establishing the test method, including the sampling frequency, for purposes of compliance with this paragraph. In developing the test method under this clause, the Administrator shall evaluate and take into account--

`(I) the most accurate and precise test methods for sampling and analysis of asbestos-containing aggregate products;

`(II) actual and potential human exposures to asbestos-containing aggregate products; and

`(III) activity-based monitoring of asbestos-containing aggregate products.

`(ii) Not later than 3 years after the date of enactment of this title, and at least every 3 years thereafter, the Administrator shall promulgate final regulations establishing the test method, including the sampling frequency, for purposes of compliance with this paragraph. In establishing the test method under this clause, the Administrator shall evaluate and take into account the factors described in clause (i)(I) through (III).

`(iii) No person shall import or distribute in commerce any aggregate product (extracted from stone, sand, or gravel operations) unless a test has been performed on the product using the test method established under this subparagraph.

`(C) REVIEW AND REVISION OF CONTENT LEVEL- Not later than 3 years after the date of enactment of this title, and at least every 3 years thereafter, the Administrator shall review the currently effective asbestos content level under subparagraph (A)(i)(I) or (II) and determine whether the level for aggregate products results in asbestos exposures that are not protective of human health and the environment. If the Administrator

determines that the asbestos content level results in exposures that are not protective of human health and the environment, the Administrator shall promulgate regulations establishing a lower asbestos content level within 3 years of the Administrator's determination.

`(D) USES FOR EXEMPTED AGGREGATE PRODUCTS-

Aggregate products are exempted under subparagraph (A) only to the extent that they are imported, manufactured, processed, or distributed in commerce for use--

- `(i) as an integral part of asphalt concrete;
- `(ii) as an integral part of Portland cement concrete; or
- `(iii) as an integral part of other similarly cemented materials.

`(E) RECEIPT TO RECIPIENT- Any person who imports, manufactures, processes, or distributes in commerce aggregate products exempted pursuant to this paragraph shall provide to each recipient of such products a written receipt that includes the following information:

- `(i) The amount of such products provided to the recipient.
- `(ii) The date the products were provided to the recipient.
- `(iii) A certification that the products have been tested pursuant to this paragraph and determined to have an asbestos content of less than the currently effective asbestos content level under subparagraph (A)(i)(II) or (II).

`(5) CALCIUM CARBONATE, OLIVINE, TALC, VERMICULITE, AND WOLLASTONITE-

`(A) IN GENERAL- Except as provided in subparagraph (D), subsection (a)(1) shall not apply to calcium carbonate, olivine, talc, vermiculite, and wollastonite, including any product containing calcium carbonate, olivine, talc, vermiculite, or wollastonite, that has been tested using a test method established under subparagraph (B) and determined to have an asbestos content that is less than--

- `(i) 0.001 percent; or
- `(ii) if a lower asbestos content level has been established by the Administrator under subparagraph (C), such level.

`(B) ASBESTOS TEST METHOD- (i) Not later than 1 year after the date of enactment of this title, the Administrator shall issue guidance establishing the test method, including the sampling frequency, for purposes of compliance with this paragraph. In developing the test method under this clause, the Administrator shall evaluate and take into account--

- `(I) the most accurate and precise test methods for sampling and analysis of asbestos-containing calcium carbonate, olivine, talc, vermiculite, and wollastonite;

`(II) actual and potential human exposures to asbestos-containing calcium carbonate, olivine, talc, vermiculite, and wollastonite; and

`(III) activity-based monitoring of asbestos-containing calcium carbonate, olivine, talc, vermiculite, and wollastonite.

`(ii) Not later than 3 years after the date of enactment of this title, the Administrator shall promulgate final regulations establishing the test method, including the sampling frequency, for purposes of compliance with this paragraph. In establishing the test method under this clause, the Administrator shall evaluate and take into account the factors described in clause (i)(I) through (III).

`(iii) Not later than 3 years after the date of promulgation of final regulations under clause (ii), and at least every 3 years thereafter, the Administrator shall evaluate the currently effective test method established under those regulations to determine whether the test method should be revised, taking into account the factors described in clause (i)(I) through (III). If the Administrator determines that the test method should be revised, the Administrator shall promulgate regulations establishing a new test method for purposes of compliance with this paragraph.

`(iv) No person shall import or distribute in commerce any calcium carbonate, olivine, talc, vermiculite, or wollastonite unless it has been tested using the test method established under this subparagraph.

`(C) REVIEW AND REVISION OF CONTENT LEVEL- Not later than 3 years after the date of enactment of this title, and at least every 3 years thereafter, the Administrator shall review the asbestos content level under subparagraph (A)(i) or (ii) for calcium carbonate, olivine, talc, vermiculite, and wollastonite and determine whether the level is protective of human health and the environment. If the Administrator determines that the asbestos content level is not protective of human health and the environment, the Administrator shall promulgate regulations establishing a lower asbestos content level.

`(D) PROHIBITED USES- Notwithstanding subparagraph (A) and any other provision of this Act, subsection (a)(1) shall apply to asbestos-containing calcium carbonate, olivine, talc, vermiculite, and wollastonite imported, manufactured, processed, or distributed in commerce for use in, or for processing--

`(i) food that is intended for human consumption;

`(ii) products used by individuals for personal health or cosmetic reasons, including soaps and shampoos;

`(iii) drugs for use with respect to humans;

`(iv) consumer garden products;

`(v) cosmetics;

- `(vi) products designed or intended primarily for use by children 12 years of age or younger; or
- `(vii) any other product with respect to which the Administrator has determined the presence of asbestos-containing calcium carbonate, olivine, talc, vermiculite, or wollastonite endangers human health or the environment.

`(E) RECEIPT TO RECIPIENT- Any person who imports, manufactures, processes, or distributes in commerce calcium carbonate, olivine, talc, vermiculite, or wollastonite exempted pursuant to this paragraph shall provide to each recipient of such mineral products a written receipt that includes the following information:

- `(i) The amount of such mineral products provided to the recipient.
- `(ii) The date the mineral products were provided to the recipient.
- `(iii) A certification that the mineral products have been tested pursuant to this paragraph and determined to have an asbestos content of less than the currently effective asbestos content level under subparagraph (A)(i) or (ii), which shall include a statement indicating the asbestos content level found through such tests.

`(F) ADDITIONAL MINERALS- The Administrator may, by rule, add an additional mineral to the list of minerals subject to this paragraph if the Administrator determines that any mined deposit of the mineral is associated with asbestos.

`(6) TACONITE PELLETS- Subsection (a)(1) shall not apply to taconite pellets or iron ore that will be used to produce taconite pellets. The exemption under this paragraph shall not apply to tailings, waste material, or other byproducts of iron ore extraction.

`(c) Disposal-

`(1) IN GENERAL- Except as provided in paragraph (2), not later than 3 years after the date of enactment of this title, each person that is subject to the prohibition established under this section that possesses an asbestos-containing product shall dispose of the asbestos-containing product, by a means that is in compliance with applicable Federal, State, and local requirements.

`(2) EXEMPTION- Nothing in paragraph (1) requires that an asbestos-containing product be removed or replaced.

`(d) Compliance Testing-

`(1) IN GENERAL- In accordance with paragraph (2), not later than 1 year after the date on which the prohibition takes effect under subsection (a), and annually thereafter, to ensure compliance with this section, the Administrator shall carry out tests on an appropriate quantity of products, as determined by the Administrator, to determine if the products are asbestos-containing products.

`(2) APPROPRIATE TEST METHODOLOGIES- In carrying out the compliance testing under paragraph (1), the Administrator shall use the appropriate test methodology for each product that is the subject of the compliance testing.

`(3) ANNUAL REPORT-

`(A) IN GENERAL- Upon completion of each annual testing period described in paragraph (1), the Administrator shall prepare a report for the annual testing period covered by the report, describing those products that are asbestos-containing products.

`(B) PUBLIC AVAILABILITY- Not later than 90 days after the date of completion of each annual testing period described in paragraph (1), the Administrator shall make the report for the annual testing period covered by the report available to the public.

`(e) Savings Clause- Except as specifically provided in this title, nothing in this title shall be construed to override, change, or otherwise affect the obligations of any person, including a Federal agency, to comply with the regulations contained in part 763 of title 40 of the Code of Federal Regulations.

`SEC. 604. CRIMINAL PENALTY.

`Notwithstanding section 16(b), any person who knowingly or willfully violates any provision of this title shall, in addition to or in lieu of any civil penalty which may be imposed under section 16(a) for such violation, be subject, upon conviction, to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than 5 years, or both.

`SEC. 605. CITIZEN PETITIONS.

`(a) In General- Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule or order under this title.

`(b) Filing and Contact- Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule or order under this title.

`(c) Hearing or Investigation- The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

`(d) Granting or Denial- Within 90 days after filing of a petition described in subsection (a), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with this title. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial. The granting or denial of a petition under this subsection shall not affect any deadline or other requirement of this title.

`SEC. 606. STATE AND FEDERAL LAW.

`(a) No Preemption- Nothing in this title or any regulation issued under this title shall be construed, interpreted, or applied to--

`(1) preempt, displace, or supplant any other State or Federal law, whether statutory or common, or any action based on such a law; or

`(2) preempt a State from establishing any additional liability or more stringent requirements with respect to asbestos within such State.

`(b) No Federal Cause of Action- Nothing in this title creates a cause of action, or in any other way increases or diminishes the liability of any person, under any other law.

`(c) Intent of Congress- It is not the intent of Congress that this title or rules, regulations, or orders issued pursuant to this title be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to asbestos.

`(d) Drinking Water- Nothing in this title shall be construed, interpreted, or applied to prohibit the importation, manufacture, processing, or distribution in commerce of drinking water in a manner that complies with the requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and regulations issued under that Act.'

(b) Definition Amendments- Section 202(3) of such Act (15 U.S.C. 2642(3)) is amended--

(1) in each of subparagraphs (A) through (D), by striking the commas at the end of the subparagraphs and inserting semicolons;

(2) in subparagraph (E), by striking `, or' and inserting a semicolon;

(3) in subparagraph (F), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

`(G) any material formerly classified as tremolite, including--

`(i) winchite asbestos; and

`(ii) richterite asbestos; and

`(H) any asbestiform amphibole mineral.'

(c) Conforming Amendments- (1) The table of contents in sections 1 of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended by adding at the end the following:

`TITLE VI--ASBESTOS-CONTAINING PRODUCTS

`Sec. 601. Definitions.

`Sec. 602. Public education program.

`Sec. 603. Prohibition on asbestos-containing products.

`Sec. 604. Criminal penalty.

`Sec. 605. Citizen petitions.

`Sec. 606. State and Federal law.'

(2) Section 7(a) of such Act (15 U.S.C. 2606(a)) is amended by inserting `or title VI' after `or title IV' both places it appears.

(3) Section 11(a) and (b) of such Act (15 U.S.C. 2610(a) and (b)) are amended by inserting `or title VI' after `to title IV' both places it appears.

- (4) Section 13(a)(1)(B) of such Act (15 U.S.C. 2612(a)(1)(B)) is amended by inserting `or title VI' after `or title IV' each place it appears.
- (5) Section 15(1) of such Act (15 U.S.C. 2614(1)) is amended by inserting `or title VI' after `title II' both places it appears.
- (6) Section 15(2) of such Act (15 U.S.C. 2614(2)) is amended--
- (A) by inserting `or title VI' after `section 5 or 6' both places it appears;
 - and
 - (B) by inserting `or title VI' after `section 5 or 7'.
- (7) Section 17 of such Act (15 U.S.C. 2616) is amended by inserting `or title VI' after `title IV' each place it appears.
- (8) Section 19(a)(1)(A) of such Act (15 U.S.C. 2618(a)(1)(A)) is amended by striking `title II or IV' and inserting `title II, IV, or VI'.
- (9) Section 19(a)(3)(B) of such Act (15 U.S.C. 2618(a)(3)(B)) is amended by inserting `or title VI' after `under title IV'.
- (10) Section 20(a)(1) of such Act (15 U.S.C. 2619(a)(1)) is amended by striking `title II or IV' both places it appears and inserting `title II, IV, or VI'.

END

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