

108TH CONGRESS  
1ST SESSION

# S. 1115

To amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products.

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## IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mrs. MURRAY (for herself, Mr. DAYTON, Ms. CANTWELL, Mr. BAUCUS, Mr. LEAHY, Mrs. BOXER, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing products.

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 “Ban Asbestos in Amer-  
5       ica Act of 2003”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) the Administrator of the Environmental  
9       Protection Agency has classified asbestos as a cat-

1       egory A human carcinogen, the highest cancer haz-  
2       ard classification for a substance;

3           (2) there is no known safe level of exposure to  
4       asbestos;

5           (3)(A) in hearings before Congress in the early  
6       1970s, the example of asbestos was used to justify  
7       the need for comprehensive legislation on toxic sub-  
8       stances; and

9           (B) in 1976, Congress passed the Toxic Sub-  
10      stances Control Act (15 U.S.C. 2601 et seq.);

11          (4) in 1989, the Administrator promulgated  
12      final regulations under title II of the Toxic Sub-  
13      stances Control Act (15 U.S.C. 2641 et seq.) to  
14      phase out asbestos in consumer products by 1997;

15          (5) in 1991, the United States Court of Appeals  
16      for the 5th Circuit overturned portions of the regula-  
17      tions, and the Government did not appeal the deci-  
18      sion to the Supreme Court;

19          (6) as a result, while new applications for as-  
20      bestos were banned, asbestos is still being used in  
21      some consumer and industrial products in the  
22      United States;

23          (7) the United States Geological Survey has de-  
24      termined that in 2000, companies in the United  
25      States consumed 15,000 metric tons of chrysotile as-

1       bestos, of which approximately 62 percent was con-  
2       sumed in roofing products, 22 percent in gaskets, 12  
3       percent in friction products, and 4 percent in other  
4       products;

5               (8) available evidence suggests that—

6                       (A) imports of some types of asbestos-con-  
7                       taining products may be increasing; and

8                       (B) some of those products are imported  
9                       from foreign countries in which asbestos is  
10                      poorly regulated;

11               (9) many people in the United States incor-  
12       rectly believe that—

13                       (A) asbestos has been banned in the  
14                       United States; and

15                       (B) there is no risk of exposure to asbestos  
16                       through the use of new commercial products;

17               (10) the Department of Commerce estimates  
18       that in 2000, the United States imported 51,483  
19       metric tons of asbestos-cement products;

20               (11) banning asbestos from being used in or  
21       imported into the United States will provide cer-  
22       tainty to manufacturers, builders, environmental re-  
23       mediation firms, workers, and consumers that after  
24       a specific date, asbestos will not be added to new

1 construction and manufacturing materials used in  
2 this country;

3 (12) asbestos has been banned in Argentina,  
4 Australia, Austria, Belgium, Chile, Croatia, the  
5 Czech Republic, Denmark, Finland, France, Ger-  
6 many, Iceland, Ireland, Italy, Latvia, Luxembourg,  
7 the Netherlands, Norway, Poland, Saudi Arabia, the  
8 Slovak Republic, Spain, Sweden, Switzerland, and  
9 the United Kingdom;

10 (13) asbestos will be banned throughout the  
11 European Union in 2005;

12 (14) in 2000, the World Trade Organization  
13 upheld the right of France to ban asbestos, with the  
14 United States Trade Representative filing a brief in  
15 support of the right of France to ban asbestos;

16 (15) the 1999 brief by the United States Trade  
17 Representative stated, “In the view of the United  
18 States, chrysotile asbestos is a toxic material that  
19 presents a serious risk to human health.”;

20 (16) people in the United States have been ex-  
21 posed to harmful levels of asbestos as a contaminant  
22 of other minerals;

23 (17) in the town of Libby, Montana, workers  
24 and residents have been exposed to dangerous levels  
25 of asbestos for generations because of mining oper-

1        ations at the W.R. Grace vermiculite mine located in  
2        that town;

3            (18) the Agency for Toxic Substances and Dis-  
4        ease Registry found that over a 20-year period,  
5        “mortality in Libby resulting from asbestosis was  
6        approximately 40 to 80 times higher than expected.  
7        Mesothelioma mortality was also elevated.”;

8            (19)(A) in response to this crisis, in January  
9        2002, the Governor of Montana requested that the  
10       Administrator of the Environmental Protection  
11       Agency designate Libby as a Superfund site; and

12            (B) on October 23, 2002, the Administrator  
13       placed Libby on the National Priorities List;

14            (20)(A) vermiculite from Libby was shipped for  
15       processing to 42 States; and

16            (B) Federal agencies are investigating potential  
17       harmful exposures to asbestos-contaminated  
18       vermiculite at sites throughout the United States;

19            (21) the Administrator has identified 14 sites  
20       that have dangerous levels of asbestos-tainted  
21       vermiculite and require cleanup efforts; and

22            (22) although it is impracticable to eliminate  
23       exposure to asbestos entirely because asbestos is a  
24       naturally occurring mineral in the environment and  
25       occurs in several deposits throughout the United

1 States, Congress needs to do more to protect the  
 2 public from exposure to asbestos and Congress has  
 3 the power to prohibit the continued, intentional use  
 4 of asbestos in consumer products.

5 **SEC. 3. ASBESTOS-CONTAINING PRODUCTS.**

6 (a) IN GENERAL.—Title II of the Toxic Substances  
 7 Control Act (15 U.S.C. 2641 et seq.) is amended—

8 (1) by inserting before section 201 (15 U.S.C.  
 9 2641) the following:

10 **“Subtitle A—General Provisions”;**

11 and

12 (2) by adding at the end the following:

13 **“Subtitle B—Asbestos-Containing**  
 14 **Products**

15 **“SEC. 221. DEFINITIONS.**

16 “In this subtitle:

17 “(1) ASBESTOS-CONTAINING PRODUCT.—The  
 18 term ‘asbestos-containing product’ means any prod-  
 19 uct (including any part) to which asbestos is delib-  
 20 erately or knowingly added or in which asbestos is  
 21 deliberately or knowingly used in any concentration.

22 “(2) CONTAMINANT-ASBESTOS PRODUCT.—The  
 23 term ‘contaminant-asbestos product’ means any  
 24 product that contains asbestos as a contaminant of

1 any mineral or other substance, in any concentra-  
 2 tion.

3 “(3) DISTRIBUTE IN COMMERCE.—

4 “(A) IN GENERAL.—The term ‘distribute  
 5 in commerce’ has the meaning given the term  
 6 in section 3.

7 “(B) EXCLUSIONS.—The term ‘distribute  
 8 in commerce’ does not include—

9 “(i) an action taken with respect to  
 10 an asbestos-containing product in connec-  
 11 tion with the end use of the asbestos-con-  
 12 taining product by a person that is an end  
 13 user; or

14 “(ii) distribution of an asbestos-con-  
 15 taining product by a person solely for the  
 16 purpose of disposal of the asbestos-con-  
 17 taining product in compliance with applica-  
 18 ble Federal, State, and local requirements.

19 “(4) DURABLE FIBER.—

20 “(A) IN GENERAL.—The term ‘durable  
 21 fiber’ means a silicate fiber that—

22 “(i) occurs naturally in the environ-  
 23 ment; and

24 “(ii) is similar to asbestos in—

25 “(I) resistance to dissolution;

1 “(II) leaching; and

2 “(III) other physical, chemical,  
3 or biological processes expected from  
4 contact with lung cells and other cells  
5 and fluids in the human body.

6 “(B) INCLUSIONS.—The term ‘durable  
7 fiber’ includes—

8 “(i) richterite;

9 “(ii) winchite;

10 “(iii) erionite; and

11 “(iv) nonasbestiform varieties of cro-  
12 cidolite, amosite, anthophyllite, tremolite,  
13 and actinolite.

14 “(5) FIBER.—The term ‘fiber’ means an acie-  
15 ular single crystal or similarly elongated  
16 polycrystalline aggregate particle with a length to  
17 width ratio of 3 to 1 or greater.

18 “(6) PERSON.—The term ‘person’ means—

19 “(A) any individual;

20 “(B) any corporation, company, associa-  
21 tion, firm, partnership, joint venture, sole pro-  
22 prietorship, or other for-profit or nonprofit  
23 business entity (including any manufacturer,  
24 importer, distributor, or processor);



1                   “(C) any Federal, State, or local depart-  
2                   ment, agency, or instrumentality; and

3                   “(D) any interstate body.

4   **“SEC. 222. NATIONAL ACADEMY OF SCIENCES STUDY.**

5           “The Administrator shall enter into a contract with  
6 the National Academy of Sciences to study and, not later  
7 than 18 months after the date of enactment of this sub-  
8 title, provide the Administrator, and other Federal agen-  
9 cies, as appropriate—

10           “(1) a description of the current state of the  
11 science relating to the human health effects of expo-  
12 sure to asbestos and other durable fibers; and

13           “(2) recommendations for the establishment  
14 of—

15           “(A) a uniform system for the establish-  
16 ment of asbestos exposure standards for work-  
17 ers, school children, and other populations; and

18           “(B) a uniform system for the establish-  
19 ment of protocols for detecting and measuring  
20 asbestos.

21   **“SEC. 223. ASBESTOS POLICIES PANEL.**

22           “(a) PANEL.—

23           “(1) IN GENERAL.—The Administrator shall es-  
24 tablish an Asbestos Policies Panel (referred to in

1 this section as the ‘panel’) to study asbestos and  
2 other durable fibers.

3 “(2) MEMBERSHIP.—The panel shall be com-  
4 prised of representatives of—

5 “(A) the Secretary of Labor;

6 “(B) the Secretary of Health and Human  
7 Services; and

8 “(C) the Chairman of the Consumer Prod-  
9 uct Safety Commission;

10 “(D) nongovernmental environmental, pub-  
11 lic health, and consumer organizations;

12 “(E) industry;

13 “(F) school officials;

14 “(G) public health officials;

15 “(H) labor organizations; and

16 “(I) the public.

17 “(b) DUTIES.—The panel shall—

18 “(1) provide independent advice and counsel to  
19 the Administrator and other Federal agencies on  
20 policy issues associated with the use and manage-  
21 ment of asbestos and other durable fibers; and

22 “(2) study and, not later than 2 years after the  
23 date of enactment of this subtitle, provide the Ad-  
24 ministrator, other Federal agencies, and Congress  
25 recommendations concerning—

1 “(A) implementation of subtitle A;

2 “(B) grant programs under subtitle A;

3 “(C) revisions to the national emissions  
4 standards for hazardous air pollutants promul-  
5 gated under the Clean Air Act (42 U.S.C. 7401  
6 et seq.);

7 “(D) legislative and regulatory options for  
8 improving consumer and worker protections  
9 against harmful health effects of exposure to  
10 asbestos and durable fibers;

11 “(E) whether the definition of asbestos-  
12 containing material, meaning any material that  
13 contains more than 1 percent asbestos by  
14 weight, should be modified throughout the Code  
15 of Federal Regulations;

16 “(F) the feasibility of establishing a dura-  
17 ble fibers testing program;

18 “(G) options to improve protections  
19 against exposure to asbestos from asbestos-con-  
20 taining products and contaminant-asbestos  
21 products in buildings;

22 “(H) current research on and technologies  
23 for disposal of asbestos-containing products and  
24 contaminant-asbestos products; and

1           “(I) at the option of the panel, the effects  
2           on human health that may result from exposure  
3           to ceramic, carbon, and other manmade fibers.

4   **“SEC. 224. STUDY OF ASBESTOS-CONTAINING PRODUCTS**  
5           **AND CONTAMINANT-ASBESTOS PRODUCTS.**

6           “(a) IN GENERAL.—In consultation with the Sec-  
7   retary of Labor, the Chairman of the International Trade  
8   Commission, the Chairman of the Consumer Product  
9   Safety Commission, and the Assistant Secretary for Occu-  
10   pational Safety and Health, the Administrator shall con-  
11   duct a study on the status of the manufacture, processing,  
12   distribution in commerce, ownership, importation, and dis-  
13   posal of asbestos-containing products and contaminant-as-  
14   bestos products in the United States.

15          “(b) ISSUES.—In conducting the study, the Adminis-  
16   trator shall examine—

17           “(1) how consumers, workers, and businesses  
18           use asbestos-containing products and contaminant-  
19           asbestos products that are entering commerce as of  
20           the date of enactment of this subtitle; and

21           “(2) the extent to which consumers and work-  
22           ers are being exposed to unhealthful levels of asbes-  
23           tos through exposure to products described in para-  
24           graph (1).

1       “(c) REPORT.—Not later than 18 months after the  
 2 date of enactment of this subtitle, the Administrator shall  
 3 submit to the Committee on Energy and Commerce of the  
 4 House of Representatives and the Committee on Environ-  
 5 ment and Public Works of the Senate a report on the re-  
 6 sults of the study.

7       **“SEC. 225. PROHIBITION ON ASBESTOS-CONTAINING PROD-**  
 8                               **UCTS.**

9       “(a) IN GENERAL.—Subject to subsection (b), the  
 10 Administrator shall promulgate—

11               “(1) not later than 1 year after the date of en-  
 12 actment of this subtitle, proposed regulations that—

13                       “(A) prohibit persons from manufacturing,  
 14 processing, or distributing in commerce asbes-  
 15 tos-containing products; and

16                       “(B) provide for implementation of sub-  
 17 sections (b) and (c); and

18       “(2) not later than 2 years after the date of en-  
 19 actment of this subtitle, final regulations that, effec-  
 20 tive 60 days after the date of promulgation, prohibit  
 21 persons from manufacturing, processing, or distrib-  
 22 uting in commerce asbestos-containing products.

23       “(b) EXEMPTIONS.—

24               “(1) IN GENERAL.—Any person may petition  
 25 the Administrator for, and the Administrator may

1 grant an exemption from the requirements of sub-  
2 section (a) if the Administrator determines that—

3 “(A) the exemption would not result in an  
4 unreasonable risk of injury to public health or  
5 the environment; and

6 “(B) the person has made good faith ef-  
7 forts to develop, but has been unable to develop,  
8 a substance, or identify a mineral, that—

9 “(i) does not present an unreasonable  
10 risk of injury to public health or the envi-  
11 ronment; and

12 “(ii) may be substituted for an asbes-  
13 tos-containing product.

14 “(2) TERMS AND CONDITIONS.—An exemption  
15 granted under this subsection shall be in effect for  
16 such period (not to exceed 1 year) and subject to  
17 such terms and conditions as the Administrator may  
18 prescribe.

19 “(c) DISPOSAL.—

20 “(1) IN GENERAL.—Except as provided in para-  
21 graph (2), not later than 3 years after the date of  
22 enactment of this subtitle, each person that pos-  
23 sesses an asbestos-containing product that is subject  
24 to the prohibition established under this section shall  
25 dispose of the asbestos-containing product, by a

1 means that is in compliance with applicable Federal,  
 2 State, and local requirements.

3 “(2) EXEMPTION.—Nothing in paragraph (1)—

4 “(A) applies to an asbestos-containing  
 5 product that—

6 “(i) is no longer in the stream of com-  
 7 merce; or

8 “(ii) is in the possession of an end  
 9 user; or

10 “(B) requires that an asbestos-containing  
 11 product described in subparagraph (A) be re-  
 12 moved or replaced.

13 **“SEC. 226. PUBLIC EDUCATION PROGRAM.**

14 “(a) IN GENERAL.—Not later than 2 years after the  
 15 date of enactment of this subtitle, and subject to sub-  
 16 section (c), in consultation with the Chairman of the Con-  
 17 sumer Product Safety Commission and the Secretary of  
 18 Labor, the Administrator shall establish a program to in-  
 19 crease awareness of the dangers posed by asbestos-con-  
 20 taining products and contaminant-asbestos products in  
 21 homes and workplaces.

22 “(b) GREATEST RISKS.—In establishing the pro-  
 23 gram, the Administrator shall—

24 “(1) base the program on the results of the  
 25 study conducted under section 224;

1           “(2) give priority to asbestos-containing prod-  
2       ucts and contaminant-asbestos products used by  
3       consumers and workers that pose the greatest risk  
4       of injury to human health; and

5           “(3) at the option of the Administrator on re-  
6       ceipt of a recommendation from the Asbestos Poli-  
7       cies Panel, include in the program the conduct of  
8       projects and activities to increase public awareness  
9       of the effects on human health that may result from  
10      exposure to—

11                   “(A) durable fibers; and

12                   “(B) ceramic, carbon, and other manmade  
13      fibers.

14      “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
15   are authorized to be appropriated such sums as are nec-  
16   essary to carry out this section.”.

17      (b) VERMICULITE INSULATION.—Not later than 180  
18   days after the date of enactment of this Act, the Adminis-  
19   trator of the Environmental Protection Agency and the  
20   Consumer Product Safety Commission shall begin a na-  
21   tional campaign to educate consumers concerning—

22           (1) the dangers of vermiculite insulation that  
23      may be contaminated with asbestos; and

24           (2) measures that homeowners and business  
25      owners can take to protect against those dangers.



1 **SEC. 4. ASBESTOS-CAUSED DISEASES.**

2 Subpart 1 of part C of title IV of the Public Health  
3 Service Act (42 U.S.C. 285 et seq.) is amended by adding  
4 at the end the following:

5 **“SEC. 417D. RESEARCH ON ASBESTOS-CAUSED DISEASES.**

6 “(a) IN GENERAL.—The Secretary, acting through  
7 the Director of NIH and the Director of the Centers for  
8 Disease Control and Prevention, shall expand, intensify,  
9 and coordinate programs for the conduct and support of  
10 research on diseases caused by exposure to asbestos, par-  
11 ticularly mesothelioma, asbestosis, and pleural injuries.

12 “(b) ADMINISTRATION.—The Secretary shall carry  
13 out this section—

14 “(1) through the Director of NIH and the Di-  
15 rector of the CDC (Centers for Disease Control and  
16 Prevention); and

17 “(2) in collaboration with the Administrator of  
18 the Agency for Toxic Substances and Disease Reg-  
19 istry and the head of any other agency that the Sec-  
20 retary determines to be appropriate.

21 “(c) MESOTHELIOMA REGISTRY.—Not later than 1  
22 year after the date of enactment of this section, the Direc-  
23 tor of the Centers for Disease Control and Prevention, in  
24 cooperation with the Director of the National Institute for  
25 Occupational Safety and Health and the Administrator of  
26 the Agency for Toxic Substances and Disease Registry,

1 shall establish a mechanism by which to obtain data from  
 2 State cancer registries and other cancer registries, which  
 3 shall form the basis for establishing a Mesothelioma Reg-  
 4 istry.

5 “(d) AUTHORIZATION OF APPROPRIATIONS.—In ad-  
 6 dition to amounts made available for the purposes de-  
 7 scribed in subsection (a) under other law, there are au-  
 8 thorized to be appropriated to carry out this section such  
 9 sums as are necessary for fiscal year 2004 and each fiscal  
 10 year thereafter.

11 **“SEC. 417E. MESOTHELIOMA RESEARCH AND TREATMENT**  
 12 **CENTERS.**

13 “(a) IN GENERAL.—The Director of NIH shall pro-  
 14 vide \$1,000,000 for each of fiscal years 2004 through  
 15 2008 for each of up to 10 mesothelioma disease research  
 16 and treatment centers.

17 “(b) REQUIREMENTS.—The Centers shall—

18 “(1) be chosen through competitive peer review;

19 “(2) be geographically distributed throughout  
 20 the United States with special consideration given to  
 21 areas of high incidence of mesothelioma disease;

22 “(3) be closely associated with Department of  
 23 Veterans Affairs medical centers to provide research  
 24 benefits and care to veterans, who have suffered ex-  
 25 cessively from mesothelioma;

1           “(4) be engaged in research to provide mecha-  
 2           nisms for detection and prevention of mesothelioma,  
 3           particularly in the areas of pain management and  
 4           cures;

5           “(5) be engaged in public education about  
 6           mesothelioma and prevention, screening, and treat-  
 7           ment;

8           “(6) be participants in the National Mesothe-  
 9           lioma Registry;

10           “(7) be coordinated in their research and treat-  
 11           ment efforts with other Centers and institutions in-  
 12           volved in exemplary mesothelioma research; and

13           “(8) be focused on research and treatments for  
 14           mesothelioma that have historically been under-  
 15           funded.

16           “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
 17           is authorized to be appropriated to carry out this section  
 18           \$10,000,000 for each of fiscal years 2004 through 2008.”.

19   **SEC. 5. CONFORMING AMENDMENTS.**

20           The table of contents in section 1 of the Toxic Sub-  
 21           stances Control Act (15 U.S.C. prec. 2601) is amended—

22           (1) by inserting before the item relating to sec-  
 23           tion 201 the following:

                    “Subtitle A—General Provisions”;

24           and

- 1                   (2) by adding at the end of the items relating  
2           to title II the following:

“Subtitle B—Asbestos-Containing Products

“Sec. 221. Definitions.

“Sec. 222. National Academy of Sciences Study.

“Sec. 223. Asbestos Policies Panel.

“Sec. 224. Study of asbestos-containing products and contaminant-asbestos products.

“Sec. 225. Prohibition on asbestos-containing products.

“Sec. 226. Public education program.”.

