

110TH CONGRESS
1ST SESSION

S. 742

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

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2007

Mrs. MURRAY (for herself, Mrs. BOXER, Mr. BAUCUS, Mr. BROWN, Mrs. CLINTON, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. HARKIN, Mr. KENNEDY, Mr. KERRY, Mr. LEAHY, and Mr. REID) 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 reduce the health risks posed by asbestos-containing products, 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 “Ban Asbestos in Amer-
5 ica Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1)(A) the Administrator of the Environmental
2 Protection Agency has classified asbestos as a cat-
3 egory A human carcinogen, the highest cancer haz-
4 ard classification for a substance; and

5 (B) the International Agency for Research on
6 Cancer has classified asbestos as a class 1 human
7 carcinogen;

8 (2) many people in the United States incor-
9 rectly believe that—

10 (A) asbestos has been banned in the
11 United States; and

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

14 (3) the United States Geological Survey re-
15 ported that, in 2006, the United States used 2,000
16 metric tons of asbestos, of which approximately—

17 (A) 55 percent was used in roofing prod-
18 ucts;

19 (B) 26 percent was used in coatings; and

20 (C) 19 percent was used in other products,
21 such as friction products;

22 (4) the Department of Commerce estimates
23 that the United States imports more than
24 \$100,000,000 of brake parts per year;

25 (5) available evidence suggests that—

1 (A) imports of some types of asbestos-con-
2 taining products are increasing; and

3 (B) some of those products are imported
4 from foreign countries in which asbestos is
5 poorly regulated;

6 (6) there is no known safe level of exposure to
7 asbestos;

8 (7) even low levels of exposure to asbestos may
9 cause asbestos-related diseases, including mesothe-
10 lioma;

11 (8) millions of workers in the United States
12 have been, and continue to be, exposed to dangerous
13 levels of asbestos;

14 (9) worker deaths from noncancerous lung dis-
15 ease can occur at levels of exposure to asbestos
16 below the levels allowed by the Occupational Safety
17 and Health Administration as of the date of enact-
18 ment of this Act;

19 (10) families of workers are put at risk because
20 of asbestos brought home by the workers on the
21 shoes, clothes, skin, and hair of the workers;

22 (11) approximately $\frac{1}{3}$ of mesothelioma victims
23 were exposed to asbestos while serving the United
24 States on Navy ships or shipyards;

1 (12) the National Institutes of Health reported
2 to Congress in 2006 that mesothelioma is a difficult
3 disease to detect, diagnose, and treat;

4 (13) the Environmental Working Group esti-
5 mates that as many as 10,000 citizens of the United
6 States die each year from mesothelioma and other
7 asbestos-related diseases;

8 (14)(A) mesothelioma responds poorly to con-
9 ventional chemotherapy; and

10 (B) although new combination treatments for
11 mesothelioma have demonstrated some benefits—

12 (i) the median survival period for mesothe-
13 lioma is only 1 year after diagnosis of the dis-
14 ease; and

15 (ii) the majority of mesothelioma patients
16 die within 2 years of diagnosis of the disease;

17 (15) in hearings before Congress in the early
18 1970s, the example of asbestos was used to justify
19 the need for comprehensive legislation on toxic sub-
20 stances;

21 (16) in 1976, Congress passed the Toxic Sub-
22 stances Control Act (15 U.S.C. 2601 et seq.);

23 (17) in 1989, the Administrator promulgated
24 final regulations under title II of the Toxic Sub-

1 stances Control Act (15 U.S.C. 2641 et seq.) to
2 phase out asbestos in consumer products by 1997;

3 (18) in 1991, the United States Court of Ap-
4 peals for the 5th Circuit overturned portions of the
5 regulations, and the Federal Government did not ap-
6 peal the decision to the Supreme Court;

7 (19) as a result, while new applications for as-
8 bestos were banned, asbestos is still being imported
9 and used in some consumer and industrial products
10 in the United States;

11 (20) the National Cancer Institute recognizes a
12 clear need for new agents to improve the outlook for
13 patients with mesothelioma and other asbestos-re-
14 lated diseases;

15 (21) the National Institutes of Health should
16 continue to improve detection, treatment, and man-
17 agement of asbestos-related diseases, such as meso-
18 thelioma, including by providing continued support
19 for the pleural mesothelioma treatment and research
20 program and peritoneal surgical initiatives;

21 (22) given the risk of asbestos exposure for
22 members and veterans of the Armed Forces, the De-
23 partment of Defense has an obligation to study dis-
24 eases related to asbestos exposure in the military
25 and veteran population, including by conducting re-

1 search in coordination with the National Institutes
2 of Health on the early detection and treatment of
3 mesothelioma;

4 (23) asbestos has been banned in 40 countries,
5 including Argentina, Australia, Austria, Belgium,
6 Chile, Croatia, the Czech Republic, Denmark, Esto-
7 nia, Finland, France, Germany, Iceland, Ireland,
8 Italy, Japan, Latvia, Luxembourg, the Netherlands,
9 Norway, Poland, Portugal, Saudi Arabia, the Slovak
10 Republic, Spain, Sweden, Switzerland, and the
11 United Kingdom;

12 (24) asbestos was banned throughout the Euro-
13 pean Union in 2005; and

14 (25) banning asbestos from being used in or
15 imported into the United States will provide cer-
16 tainty to manufacturers, builders, environmental re-
17 mediation firms, workers, and consumers that after
18 a specific date, asbestos will not be used or added
19 to new construction and manufacturing materials
20 used in this country.

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

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

24 (1) by inserting before section 201 (15 U.S.C.
25 2641) the following:

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

2 and

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

4 **“Subtitle B—Asbestos-Containing**
5 **Products**

6 **“SEC. 221. DEFINITIONS.**

7 “In this subtitle:

8 “(1) ASBESTOS-CONTAINING PRODUCT.—The
9 term ‘asbestos-containing product’ means any prod-
10 uct (including any part) to which asbestos is delib-
11 erately or knowingly added or in which asbestos is
12 deliberately or knowingly used in any concentration.

13 “(2) BIOPERSISTENT DURABLE FIBER.—

14 “(A) IN GENERAL.—The term ‘bioper-
15 sistent durable fiber’ means a silicate fiber
16 that—

17 “(i) occurs naturally in the environ-
18 ment; and

19 “(ii) is similar to asbestos in—

20 “(I) resistance to dissolution;

21 “(II) leaching; and

22 “(III) other physical, chemical,
23 or biological processes expected from
24 contact with lung cells and other cells
25 and fluids in the human body.

1 “(B) INCLUSIONS.—The term ‘bioper-
2 sistent durable fiber’ includes—

3 “(i) richterite;

4 “(ii) winchite;

5 “(iii) erionite; and

6 “(iv) non-asbestiform varieties of
7 amosite, crocidolite, anthophyllite,
8 tremolite, and actinolite.

9 “(3) CONTAMINANT-ASBESTOS PRODUCT.—The
10 term ‘contaminant-asbestos product’ means any
11 product that contains asbestos as a contaminant of
12 any mineral or other substance, in any concentra-
13 tion.

14 “(4) DISTRIBUTE IN COMMERCE.—

15 “(A) IN GENERAL.—The term ‘distribute
16 in commerce’ has the meaning given the term
17 in section 3.

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

20 “(i) an action taken with respect to
21 an asbestos-containing product in connec-
22 tion with the end use of the asbestos-con-
23 taining product by a person that is an end
24 user; or

1 “(ii) distribution of an asbestos-con-
 2 taining product by a person solely for the
 3 purpose of disposal of the asbestos-con-
 4 taining product in compliance with applica-
 5 ble Federal, State, and local requirements.

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

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

11 “(A) any individual;

12 “(B) any corporation, company, associa-
 13 tion, firm, partnership, joint venture, sole pro-
 14 prietorship, or other for-profit or nonprofit
 15 business entity (including any manufacturer,
 16 importer, distributor, or processor);

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

19 “(D) any interstate body.

20 **“SEC. 222. NATIONAL INSTITUTE FOR OCCUPATIONAL**
 21 **SAFETY AND HEALTH STUDY.**

22 “(a) IN GENERAL.—The National Institute for Occu-
 23 pational Safety and Health shall conduct a study and, not
 24 later than 18 months after the date of enactment of this
 25 subtitle, submit to the Administrator, the Committees on

1 Environment and Public Works and Health, Education,
2 Labor, and Pensions of the Senate, and other Federal
3 agencies, as appropriate, a report containing—

4 “(1) a description of the current state of the
5 science relating to—

6 “(A) the disease mechanisms and health
7 effects of exposure to asbestos and other bioper-
8 sistent durable fibers; and

9 “(B) methods for measuring and analyzing
10 asbestos;

11 “(2) a description of the current status of label-
12 ing practices relating to asbestos-containing mate-
13 rial; and

14 “(3) recommendations for future asbestos-re-
15 lated disease research and exposure assessment
16 practice needs.

17 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated such sums as are nec-
19 essary to carry out this section.

20 **“SEC. 223. PROHIBITION ON ASBESTOS-CONTAINING PROD-**
21 **UCTS.**

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

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

1 “(A) prohibit persons from importing,
2 manufacturing, processing, or distributing in
3 commerce asbestos-containing products; and

4 “(B) provide for implementation of sub-
5 sections (b) and (c); and

6 “(2) not later than 2 years after the date of en-
7 actment of this subtitle, final regulations that, effec-
8 tive beginning 60 days after the date of promulga-
9 tion, prohibit persons from importing, manufac-
10 turing, processing, or distributing in commerce as-
11 bestos-containing products.

12 “(b) EXEMPTIONS.—

13 “(1) IN GENERAL.—Any person may petition
14 the Administrator for, and the Administrator may
15 grant, an exemption from the requirements of sub-
16 section (a) if the Administrator determines that—

17 “(A) the exemption would not result in an
18 unreasonable risk of injury to public health or
19 the environment; and

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

23 “(i) does not present an unreasonable
24 risk of injury to public health or the envi-
25 ronment; and

1 “(ii) may be substituted for an asbes-
2 tos-containing product.

3 “(2) TERMS AND CONDITIONS.—An exemption
4 granted under this subsection shall be in effect for
5 such period (not to exceed 1 year) and subject to
6 such terms and conditions as the Administrator may
7 prescribe.

8 “(3) GOVERNMENTAL USE.—The Administrator
9 shall provide an exemption from the requirements of
10 subsection (a), without review or limit on duration,
11 if the exemption for an asbestos-containing product
12 is—

13 “(A) sought by the Secretary of Defense
14 and the Secretary certifies, and provides a copy
15 of that certification to Congress, that—

16 “(i) use of the asbestos containing
17 product is necessary to the critical func-
18 tions of the Department;

19 “(ii) no reasonable alternatives to the
20 asbestos containing product exist for the
21 intended purpose; and

22 “(iii) use of the asbestos containing
23 product will not result in an unreasonable
24 risk to health or the environment; or

1 “(B) sought by the Administrator of the
2 National Aeronautics and Space Administration
3 and the Administrator of the National Aero-
4 nautics and Space Administration certifies, and
5 provides a copy of that certification to Con-
6 gress, that—

7 “(i) the asbestos-containing product is
8 necessary to the critical functions of the
9 National Aeronautics and Space Adminis-
10 tration;

11 “(ii) no reasonable alternatives to the
12 asbestos-containing product exist for the
13 intended purpose; and

14 “(iii) the use of the asbestos-con-
15 taining product will not result in an unrea-
16 sonable risk to health or the environment.

17 “(c) DISPOSAL.—

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

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

2 “(A) applies to an asbestos-containing
3 product that—

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

6 “(ii) is in the possession of an end
7 user; or

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

11 **“SEC. 224. PUBLIC EDUCATION PROGRAM.**

12 “(a) IN GENERAL.—Not later than 1 year after the
13 date of enactment of this subtitle, the Administrator, in
14 consultation with the Chairman of the Consumer Product
15 Safety Commission, the Director of the Centers for Dis-
16 ease Control and Prevention, and the Secretary of Labor,
17 shall establish a plan—

18 “(1) to increase awareness of the dangers posed
19 by—

20 “(A) asbestos-containing products and con-
21 taminants in homes and workplaces; and

22 “(B) asbestos-related diseases;

23 “(2) to provide current and comprehensive in-
24 formation to asbestos-related disease patients, family

1 members of patients, and front-line health care pro-
2 viders on—

3 “(A) the dangers of asbestos exposure;
4 “(B) asbestos-related labeling information;
5 “(C) health effects of exposure to asbestos;
6 “(D) symptoms of asbestos exposure; and
7 “(E) available and developing treatments
8 for asbestos-related diseases, including clinical
9 trials;

10 “(3) to encourage asbestos-related disease pa-
11 tients, family members of patients, and front-line
12 health care providers to participate in research and
13 treatment endeavors relating to asbestos; and

14 “(4) to encourage health care providers and re-
15 searchers to provide to asbestos-related disease pa-
16 tients and family members of patients information
17 relating to research, diagnostic, and clinical treat-
18 ments relating to asbestos.

19 “(b) GREATEST RISKS.—In establishing the pro-
20 gram, the Administrator shall give priority to asbestos-
21 containing products and contaminant-asbestos products
22 used by consumers and workers that pose the greatest risk
23 of injury to human health.

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

4 (b) CONFORMING AMENDMENT.—The table of con-
5 tents in sections 1 of the Toxic Substances Control Act
6 (15 U.S.C. prec. 2601) is amended—

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

 “Subtitle A—General Provisions”;

9 and

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

 “Subtitle B—Asbestos-Containing Products

 “Sec. 221. Definitions.

 “Sec. 222. National Institute for Occupational Safety and Health study.

 “Sec. 223. Prohibition on asbestos-containing products.

 “Sec. 224. Public education program.”.

12 **SEC. 4. ASBESTOS-RELATED DISEASES.**

13 (a) IN GENERAL.—Subpart 1 of part C of title IV
14 of the Public Health Service Act (42 U.S.C. 285 et seq.)
15 is amended by adding at the end the following:

16 **“SEC. 417E. RESEARCH ON ASBESTOS-RELATED DISEASES.**

17 “(a) IN GENERAL.—The Secretary, acting through
18 the Director of NIH and the Director of the Centers for
19 Disease Control and Prevention, shall expand, intensify,
20 and coordinate programs for the conduct and support of
21 research on diseases caused by exposure to asbestos, par-
22 ticularly mesothelioma, asbestosis, and pleural injuries.

1 “(b) ADMINISTRATION.—The Secretary shall carry
2 out this section in collaboration with—

3 “(1) the Administrator of the Agency for Toxic
4 Substances and Disease Registry;

5 “(2) the Director of the National Institute for
6 Occupational Safety and Health; and

7 “(3) the head of any other agency, as the Sec-
8 retary determines to be appropriate.

9 “(c) ASBESTOS-RELATED DISEASE REGISTRY.—

10 “(1) IN GENERAL.—Not later than 1 year after
11 the date of enactment of this section, the Director
12 of the Centers for Disease Control and Prevention,
13 in cooperation with the Director of the National In-
14 stitute for Occupational Safety and Health and the
15 Administrator of the Agency for Toxic Substances
16 and Disease Registry, shall establish a mechanism
17 by which to obtain, coordinate, and provide data and
18 specimens from—

19 “(A) State cancer registries and other can-
20 cer registries;

21 “(B) the National Mesothelioma Virtual
22 Registry and Tissue Bank; and

23 “(C) each entity participating in the asbes-
24 tos-related disease research and treatment net-
25 work established under section 417F(a).

1 “(2) TREATMENT.—The data and specimens
2 described in paragraph (1) shall form the basis for
3 establishing a national clearinghouse for data and
4 specimens relating to asbestos-related diseases, with
5 a particular emphasis on mesothelioma.

6 “(d) AUTHORIZATION OF APPROPRIATIONS.—In ad-
7 dition to amounts made available for the purposes de-
8 scribed in subsection (a) under other law, there are au-
9 thorized to be appropriated to carry out this section such
10 sums as are necessary for fiscal year 2008 and each fiscal
11 year thereafter.

12 **“SEC. 417F. ASBESTOS-RELATED DISEASE RESEARCH AND**
13 **TREATMENT NETWORK.**

14 “(a) ESTABLISHMENT.—For each of fiscal years
15 2008 through 2012, the Director of NIH, in collaboration
16 with other applicable Federal, State, and local agencies
17 and departments, shall establish and maintain an asbes-
18 tos-related disease research and treatment network (re-
19 ferred to in this section as the ‘Network’) to support the
20 detection, prevention, treatment, and cure of asbestos-re-
21 lated diseases, with particular emphasis on malignant
22 mesothelioma.

23 “(b) INCLUSIONS.—The Network shall include—

24 “(1) intramural research initiatives of the Na-
25 tional Institutes of Health; and

1 “(2) at least 10 extramural asbestos-related dis-
2 ease research and treatment centers, as selected by
3 the Director of NIH in accordance with subsection
4 (c).

5 “(c) EXTRAMURAL ASBESTOS-RELATED DISEASE
6 RESEARCH AND TREATMENT CENTERS.—

7 “(1) IN GENERAL.—For each fiscal year during
8 which the Network is operated and maintained
9 under subsection (a), the Director of NIH shall se-
10 lect for inclusion in the Network not less than 10
11 nonprofit hospitals, universities, or medical or re-
12 search institutions incorporated or organized in the
13 United States that, as determined by the Director of
14 NIH—

15 “(A) have exemplary experience and quali-
16 fications in research and treatment of asbestos-
17 related diseases;

18 “(B) have access to an appropriate popu-
19 lation of patients with asbestos-related diseases;
20 and

21 “(C) are geographically distributed
22 throughout the United States, with special con-
23 sideration given to areas of high incidence of
24 asbestos-related diseases.

1 “(2) REQUIREMENTS.—Each center selected
2 under paragraph (1) shall—

3 “(A) be chosen by the Director of NIH
4 after competitive peer review;

5 “(B) conduct laboratory and clinical re-
6 search, including clinical trials, relating to—

7 “(i) mechanisms for effective thera-
8 peutic treatment of asbestos-related dis-
9 eases;

10 “(ii) early detection and prevention of
11 asbestos-related diseases;

12 “(iii) palliation of asbestos-related dis-
13 ease symptoms; and

14 “(iv) pain management with respect
15 to asbestos-related diseases;

16 “(C) offer to asbestos-related disease pa-
17 tients travel and lodging assistance as nec-
18 essary—

19 “(i) to accommodate the maximum
20 number of patients practicable; and

21 “(ii) to serve a number of patients at
22 the center sufficient to conduct a meaning-
23 ful clinical trial;

24 “(D) seek to collaborate with at least 1
25 medical center of the Department of Veterans

1 Affairs to provide research benefits and care to
2 veterans who have suffered excessively from as-
3 bestos-related diseases, particularly mesothe-
4 lioma; and

5 “(E) coordinate the research and treat-
6 ment efforts of the center (including specimen
7 sharing and use of common infomatics) with
8 other entities included in—

9 “(i) the Network; and

10 “(ii) the National Virtual Mesothe-
11 lioma Registry and Tissue Bank.

12 “(3) PERIOD OF INCLUSION.—A center selected
13 by the Director of NIH under this subsection shall
14 be included in the Network for—

15 “(A) the 1-year period beginning on the
16 date of selection of the center; or

17 “(B) such longer period as the Director of
18 NIH determines to be appropriate.

19 “(d) GRANTS.—The Director of NIH shall provide to
20 each center selected for inclusion in the Network under
21 subsection (c) for the fiscal year a grant in an amount
22 equal to \$1,000,000 to support the detection, prevention,
23 treatment, and cure of asbestos-related diseases, with par-
24 ticular emphasis on malignant mesothelioma.

1 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
2 is authorized to be appropriated to carry out this section
3 \$10,000,000 for each of fiscal years 2008 through 2012.

4 **“SEC. 417G. DEPARTMENT OF DEFENSE RESEARCH.**

5 “(a) IN GENERAL.—The Secretary, acting through
6 the United States Army Medical Research and Materiel
7 Command, shall support research on mesothelioma and
8 other asbestos-related diseases that has clear scientific
9 value and direct relevance to the health of members and
10 veterans of the Armed Forces, in accordance with the ap-
11 propriate congressionally directed medical research pro-
12 gram, with the goal of advancing the understanding, early
13 detection, and treatment of asbestos-related mesothelioma
14 and other asbestos-related diseases.

15 “(b) ADMINISTRATION.—The Secretary shall carry
16 out this section in collaboration with—

17 “(1) the Director of NIH;

18 “(2) the Director of the National Institute of
19 Occupational Safety and Health; and

20 “(3) the head of any other agency, as the Sec-
21 retary determines to be appropriate.

22 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated to carry out this section

- 1 such sums as are necessary for fiscal year 2008 and each
- 2 fiscal year thereafter.”

○