How the Asbestos Ban Legislation Protects the Health of Americans

On March 7, 2019, H.R. 1603 and S. 717, were introduced in the House and Senate. These bills, both titled the Alan Reinstein Ban Asbestos Now Act of 2019, would make critical, long overdue progress in addressing the ongoing public health threat caused by ongoing asbestos exposure.

On November 19, 2019, the House Energy and Commerce Committee approved H.R. 1603, the Alan Reinstein Ban Asbestos Now Act of 2019 (ARBAN), by a vote of 47-1. With strong bipartisan backing, ARBAN now advances to the floor of the House, where speedy passage is expected. An amendment to the Toxic Substances Control Act (TSCA), ARBAN would make historic, long-overdue progress in eliminating the importation and use of asbestos, which has caused hundreds of thousands of deaths in the U.S. and has remained a lawful substance even after scores of other countries have banned it. Here are several key reasons why this important public legislation should be enacted:

- All mining, importation, use and distribution in commerce of asbestos and products containing asbestos will cease within a year after the bill becomes law.
  - Nearly 70 countries have banned asbestos; however, the U.S. continues to allow asbestos imports and nearly all uses.
  - The United States Geological Survey (USGS) reported that in 2018 chlor-alkali industry imported 750 metric tons of asbestos.
  - The USGS also stated that an “unknown” quantity of asbestos was imported in asbestos-containing products, including asbestos-containing brake materials, rubber sheets for gaskets, tile, wallpaper, asbestos-cement pipe and contaminated knitted fabrics.
  - Although Congress gave EPA the authority to ban asbestos under the 2016 Toxic Substances Control Act (TSCA), its actions to date have been weak and disappointing.
  - Congress needs to remove asbestos from commerce because EPA cannot and will not ban asbestos on its own.

- A complete ban is the only effective way to prevent more death and disease from asbestos.
  - Annually, nearly 40,000 Americans die from asbestos-caused diseases such as asbestosis, mesothelioma, lung cancer, ovarian cancer, and laryngeal cancer.
  - Experts agree that there is no safe level of exposure to asbestos.
  - OSHA standards do not provide full protection to exposed workers -- OSHA recognizes that its workplace limits do not eliminate significant risk.
  - EPA decided that a sweeping ban on nearly all asbestos use was needed 30 years ago but a court blocked its ban -- it’s time for Congress to finally finish the job.

- The chlor-alkali industry -- which accounts for all asbestos imports to the U.S. -- will eliminate asbestos from its operations and convert its plants to asbestos-free technology.
  - The industry will have 5 years to stop importing asbestos and 5 more years to stop using it.
• This is a historic milestone for an industry that has defended the safe use of asbestos for decades.
• The 10-year transition period will set a non-negotiable end-date for eliminating asbestos while providing time to install new technology, a significant capital investment for the industry.
• The ARBAN chlor-alkali transition period is more aggressive than similar legislation in Canada and the EU.
• The industry and consumers will benefit by moving away from the dangerous and outdated asbestos diaphragm process to the safer, energy-efficient membrane process used by many other plants in Europe, Japan and the US.

• The ban will stringently control the presence of asbestos contaminants in consumer products and construction materials.

• Asbestos contamination has been detected in crayons, children's toys and other products used by kids and families.
• ARBAN would set a 0.1 percent limit on the presence of asbestos in products and a 0.25 percent limit on asbestos contamination in construction materials, such as sand, gravel and stone.
• As an amendment to TSCA, the bill would not apply to cosmetics, which are within the jurisdiction of the Food and Drug Administration (FDA).
• FDA is actively addressing asbestos contamination issues around talc-based baby powder and makeup and the bill will not affect these efforts.
• The bill is not intended to impact ongoing litigation over talc baby powder products and the strong “savings clause” in TSCA will limit use of the bill's provisions in court cases by plaintiffs or defendants.

• The definition of asbestos in the bill tracks existing statutory and legislative definitions, expanded to cover Libby amphibole.

• The first part of the definition is derived from The Asbestos Hazard Emergency Response Act (AHERA), enacted in 1986 as an amendment to TSCA
• In section 2642(3), AHERA provides that the term “asbestos” means asbestiform varieties of— (A) chrysotile (serpentine), (B) crocidolite (ribeckite), (C) amosite (cummingtonite-grunerite), (D) anthophyllite, (E) tremolite, or (F) actinolite.
• This definition is also incorporated in EPA's Asbestos-Containing Materials in Schools Rule (40 CFR Part 763, Subpart E), its Asbestos Ban and Phase-out Rule, the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) and the recent significant new use rule under TSCA.
• OSHA adopted a similar definition in 1992.
• The second part of the definition applies to the aciculæ and fibrous forms of winchite and richterite, which are referred to as “Libby Amphibole.”
• Mining and processing of vermiculite containing this form of asbestos in Libby, Montana caused widespread death and disease, resulting in EPA declaring a public health emergency in this small Western town in 2008.
• For decades, vermiculite mined in Libby was used throughout the U.S. to produce Zonolite attic insulation, which is found in an estimated 15 million homes.
• The bill will assure that Libby amphibole is never again mined and processed in the U.S. and Zonolite insulation is never installed again in U.S. homes.

• The bill will require industry to disclose all imports of raw asbestos and asbestos-containing products over the last three years and identify how they are used.
  • These “right to know” reports will provide essential information to EPA and the public about how, where and in what amounts asbestos and asbestos-containing products have been imported and used and who has been exposed during the three years before enactment.
  • This information is critical to protect the public until the ban takes effect and to make sure that the ban can be effectively enforced.
  • EPA would be required to make the reports available to the public and summarize all the data so the public has a full picture of asbestos exposure and risk.
  • EPA reporting rules now exempt asbestos and the Agency recently denied two petitions to require asbestos reporting under TSCA.
  • The bill will force EPA to step up and obtain information from the asbestos industry that it should have obtained years ago.

• The bill will take a big step forward in understanding and reducing the risks of “legacy” asbestos installed in millions of homes, schools and businesses across the U.S.
  • Under the bill, the National Academy of Sciences (NAS) will conduct a comprehensive study of the presence of asbestos in buildings, the number of people exposed and levels of exposure and the resulting threats to public health.
  • No study of legacy asbestos exposure has been conducted in the last 35 years despite the ongoing contribution of this exposure to asbestos-related disease and death by millions of Americans, including fire-fighters, other first responders, teachers and school children, homeowners and construction workers.
  • The study will recommend ways to strengthen current laws, policies and requirements to increase public health protection.
  • After refusing to examine the risks of legacy exposure in its ongoing asbestos risk evaluation under TSCA, EPA has now been directed to address legacy risks by the Ninth Circuit Court of Appeals.
  • The expert and independent guidance of the NAS will be immensely valuable in ensuring that EPA gives this critical health threat the attention it deserves.

• EPA’s proposed significant new use rule (SNUR) under TSCA is not a ban and is no substitute for the proposed legislation.
• The SNUR only requires industry to notify EPA before resuming certain discontinued uses of asbestos.
• Upon receiving these notices, EPA can decide to take no action and allow the manufacture and sale of the discontinued asbestos products to resume.
• The SNUR only covers 17 types of asbestos products -- no notification is required for other discontinued products and new asbestos products are not restricted.
• Imports of raw asbestos and currently imported asbestos-containing products would be outside the scope of the SNUR and could continue without restriction.
• A ban on all asbestos imports and uses avoids the uncertainty and limited scope of the SNUR and provides assurance that asbestos exposure will be permanently eliminated.