

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



SIXTEENTH CONGRESS
First Regular Session

House Bill No. 2638

Introduced by TUCP Party-List Representative
Hon. Raymond Democrito C. Mendoza

EXPLANATORY NOTE

The International Association for Research on Cancer classified asbestos as one of the highest cancer-hazard substances with no known safe level of exposure. Lung cancer, mesothelioma and asbestosis are some fatal diseases attributed to exposure to this substance. Asbestos diseases have a latency period of 10 to 40 years.

Asbestos is a danger to everyone because the fibers penetrate deep into the lungs when inhaled. Workers are exposed and their families are at risk because of asbestos brought home with clothes and protective equipment from work.

Most exposed workers are those in shipbuilding, ship repair, ship breaking, boiler work, manufacturing of asbestos containing fibers and in building and construction – construction workers, plumbers, insulators, carpenters, pipe fitters, electricians, auto workers, insulators and sheet metal workers – among other workers.

Workers' families are also at risk because of asbestos brought home with clothes and protective equipment from work. Asbestos poses danger not only to workers and their families but also to the public exposed to houses, buildings, workplaces and materials with asbestos. Despite its dangers, asbestos remains in use in the Philippines.

More industrialized countries are banning the substance. Worldwide, 60 countries, including those in the European Union, have banned the use of asbestos, in whole or in part. In Asia-Pacific, South Korea, Japan and Australia have implemented a total asbestos ban. And if industrialized countries cannot 'control' the risks of asbestos, how are countries like the Philippines expected to do so?

The most efficient way to manage the risks and prevent asbestos diseases is to ban the use of all types of asbestos and asbestos containing materials. To protect workers and their families and the public against the hazards of asbestos, the enactment of this bill is earnestly sought.


HON. RAYMOND DEMOCRITO C. MENDOZA
TUCP Party-List

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AN ACT
BANNING THE IMPORTATION, MANUFACTURE, PROCESSING, USE OR DISTRIBUTION
IN COMMERCE OF ASBESTOS AND ASBESTOS-CONTAINING PRODUCTS.

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress Assembled:

Section 1. Short Title. -- This Act shall be known as the "Ban Asbestos Act of 2010."

Section 2. Declaration of Policy. -- It is the policy of the State to promote the general welfare of the people and to assure the rights of workers to just, humane and healthful working conditions in all places of work. Pursuant to this policy, this Act shall ban the importation, manufacture, processing or use of all types of asbestos and asbestos-containing products whether for commercial or non-commercial purposes.

Section 3. Definition of Terms. -- For purposes of this Act, the term:

(A) "Asbestos" means the fibrous form of mineral silicates belonging to rock-forming minerals of the serpentine group, i.e. chrysotile (white asbestos), and of the amphibole group, i.e. actinolite, amosite (brown asbestos, cummingtonite-grunite) anthophyllite, crocidolite (blue asbestos), tremolite, or any mixture containing one or more of these;

(B) "Asbestos-containing product" means any product (including any part) to which asbestos is deliberately or knowingly added or in which asbestos is deliberately or knowingly used in any concentration;

(C) "Asbestos dust" means airborne particles of asbestos or settled particles of asbestos which are liable to become airborne in the working environment.

(D) "Biopersistent durable fiber" means a silicate fiber that occurs naturally in the environment; and is similar to asbestos in resistance to dissolution; leaching; and other physical, chemical, or biological processes expected from contact with lung cells and other cells and fluids in the human body.

The term "biopersistent durable fiber" includes richterite; winchite; erionite; and non-asbestiform varieties of amosite, crocidolite, anthophyllite, tremolite, and actinolite.

(E) "Contaminant-asbestos product" means any product that contains asbestos as a contaminant of any mineral or other substance, in any concentration.

(F) "Distribute in commerce" means an action taken with respect to an asbestos-containing product in connection with the end use of the asbestos-containing product by a person that is an end user; or distribution of an asbestos-containing product by a person solely for the purpose of disposal of the asbestos-containing product in compliance with applicable laws;

(G) "Fiber" means an acicular single crystal or similarly elongated polycrystalline aggregate particle with a length to width ratio of 3 to 1 or greater; and

(H) "Person" means any individual, corporation, company, association, firm, partnership, joint venture, sole proprietorship, or other for-profit or nonprofit business entity (including any manufacturer, importer, distributor, or processor); or any government department, agency, or instrumentality.

Section 4. Research and Reporting. - The Department of Health in coordination with concerned government departments shall conduct a study and, not later than eighteen (18) months after the date of enactment of this Act, submit to Congress, and government departments and agencies, as appropriate,

(A) A report containing a description of the current state of the science relating to the disease mechanisms and health effects of exposure to asbestos and other biopersistent durable fibers; and methods for measuring and analyzing asbestos;

(B) Recommendations for proper medical surveillance of exposed workers, including continuing monitoring after exposure has ceased, a national registration system for exposed workers that is accessible or open to the public and a national health service system for asbestos;

(C) A description of the current status of labeling practices relating to asbestos-containing material;

(D) A description of the current usage, handling and disposal of asbestos and asbestos-containing products in Philippine industry and in construction;

(E) Recommendations for the development of the framework for the identification, management and removal of asbestos raw materials, installed products and wastes.

(F) Recommendations for the effective dissemination of information in the education of all concerns with regard to health hazards due to exposure to asbestos and to methods of prevention and control;

(G) Recommendations for a national program on occupational safety and health for the protection of workers;

(H) Recommendations for the establishment of a compliance monitoring program to enforce the provisions of this act;

(I) Recommendations for future asbestos-related disease research and exposure assessment practice needs; and

(J) Recommendations for the development of a reporting mechanism on the presence of asbestos in buildings and in construction materials.

Section 5. Prohibition on asbestos and Asbestos-containing Products. - The Secretary of Health, in coordination with the member agencies of the Inter-Agency Technical Advisory Council, shall promulgate not later than one (1) year after the date of enactment of this Act, proposed regulations that prohibit persons from importing, manufacturing, processing, using or distributing in commerce asbestos-containing products; and provide for implementation of paragraphs B TO J of Section 4. Not later than 2 years after the date of enactment of this Act, he or she shall also issue final regulations that, effective beginning sixty (60) days after the date of promulgation, prohibit persons from importing, manufacturing, processing, using or distributing in commerce asbestos and asbestos-containing products.

Section 6. Exemptions. - Any person may petition the Secretary of Health for, and the Secretary may grant, an exemption from the requirements set forth in the preceding Section if the Secretary determines that the exemption would not result in an unreasonable risk of injury to public health or the environment; and there is no alternative to the asbestos-containing product that is the subject of the petition as certified by the Secretary of Science and Technology.

An exemption granted under this Section shall be in effect for such period, not to exceed one (1) year, and subject to such terms and conditions as the Secretary of Health may prescribe.

The Secretary of Health shall provide an exemption from the requirements of Section 5, only to the extent necessary for the critical functions described in a certification provided under subparagraph (A), if:

(A) The exemption for an asbestos-containing product is sought by the Secretary of National Defense and the Secretary of Defense certifies, and provides a copy of that certification to Congress, that the use of the asbestos-containing product is necessary to the critical functions of the Department of National Defense;

(B) No reasonable alternatives to the asbestos-containing product exist for the intended purpose;

(C) The use of the asbestos-containing product will not result in an unreasonable risk to health or the environment; and

(D) The use of the product is in compliance with applicable laws and regulations.

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 National Defense.

A certification under this section shall not be effective for more than 3 years, unless the Secretary of Defense recertifies within 3 years after a prior certification.

Except as provided in the next preceding paragraph, and not later than two (2) years after the date of enactment of this Act, each person that possesses an asbestos-containing product that is subject to the prohibition established under this Section shall dispose of the asbestos-containing product, by a means that is in compliance with applicable national and local requirements.

Nothing in paragraph this Section applies to an asbestos-containing product that is no longer in the stream of commerce; or is in the possession of an end user; or requires that an asbestos-containing product be removed or replaced.

Notwithstanding the aforementioned sections, a total ban on asbestos and asbestos containing materials shall be in place three (3) years after the enactment of this law.

Section 7. Demolition of Buildings. - Demolition of buildings containing asbestos, and removal of asbestos from buildings in which asbestos is liable to become airborne, shall be undertaken only by employers or demolition contractors as certified in accordance with existing laws and regulations.

No demolition shall be allowed without safety measures formulated by the employer or contractor. The employer or contractor shall specify measures to be taken, including measures to provide all necessary protection to the workers, limit the release of asbestos dust into the air, and provide for the disposal of waste containing asbestos. Workers involved in demolition shall be subject to regular monitoring as to exposure to asbestos.

The disposal of waste containing asbestos shall conform to safety standards established in accordance with this act and shall take into account the health risk to the workers concerned, including to the population in the vicinity of the building.

Section 8. Public Education and safety Program. - Not later than one (1) year after the date of enactment of this Act, the Secretary of Health, in consultation with the Secretary of Environment and Natural Resources, the Secretary of Labor and Employment and the Secretary of Trade and Industry shall establish a plan and implementing programs and activities to:

(A) Increase awareness of the dangers posed by asbestos-containing products and contaminants in homes and workplaces; and asbestos-related diseases;

(B) Ensure that work involving potential exposure to asbestos and asbestos-containing products are carried out only by accredited employers or contractors and whose workers have prior instruction or training regarding health risks and work methods;

(C) Provide information about safer asbestos substitutes, alternative technologies and technical solutions and introduce incentives for conversion to non-asbestos products and technologies;

(D) Provide guidelines for safe use, handling, cleaning and maintenance of protective clothing and equipment and management of asbestos-related health risks in work processes;

(E) Provide and update occupational exposure limits of asbestos, e.g., establish resources for determining the mineralogical form of asbestos and for measuring and monitoring its concentration in the air, introduce practical tools for assessment and management of the risk from potential exposure;

(F) Provide an effective system of inspection and enforcement of technical standards and safety measures involving labor and working conditions, building maintenance and construction, environment, public health, accreditation and standardization;

(G) Provide current and comprehensive information to asbestos-related disease patients, family members of patients, and front-line health care providers on the dangers of asbestos exposure; asbestos-related labeling information; health effects of exposure to asbestos; symptoms of asbestos exposure; and available and developing treatments for asbestos-related diseases, including clinical trials;

(H) Encourage asbestos-related disease patients, family members of patients, and frontline health care providers to participate in research and treatment endeavors relating to asbestos;

(I) 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; and

(J) Provide for the consideration of asbestos related diseases as under the category of catastrophic illness and therefore eligible for additional compensation and / or increased benefits under PHIC/ECC.

In establishing the program, the Secretary of Health shall give priority to asbestos-containing products and contaminant-asbestos products used by consumers and workers that pose the greatest risk of injury to human health.

Section 9. Research on Asbestos-related Diseases; Asbestos-related Disease Registry; Registry of Workers Exposed to Asbestos. -- The Secretary of Health shall expand, intensify, and coordinate programs for the conduct and support of research on diseases caused by exposure to asbestos, particularly mesothelioma, asbestosis, and pleural injuries.

Not later than one (1) year after the date of enactment of this Act, the Secretary of Health shall establish a mechanism by which to obtain, coordinate, and provide data and specimens from cancer registries; public and private hospitals; and entities participating in the asbestos-related disease research and treatment network in Section 10. The data and specimens obtained shall form the basis for establishing a national clearinghouse for data and specimens relating to asbestos-related diseases, with a particular emphasis on mesothelioma.

A central registry of all workers exposed or potentially exposed to asbestos, including past exposures shall be established and maintained in coordination with appropriate government agencies. The registry shall contain information about the company, occupation, form of asbestos, level and duration of exposure. the registry shall be accessible to the public and labor unions.

Section 10. Asbestos-related Disease Research and Treatment Network. - (A) For each of fiscal years 2010 through 2014, the Secretary of Health, in collaboration with other applicable government agencies and instrumentalities, shall establish and maintain an asbestos-related disease research and treatment network (hereinafter, Network) to support the detection, prevention, treatment, and cure of asbestos-related diseases, with particular emphasis on malignant mesothelioma.

The Network shall include intramural research initiatives of the Department of Health; and at least ten (10) extramural asbestos-related disease research and treatment centers, as selected by the Secretary of Health in accordance with the immediately succeeding paragraph.

(B) *Extramural Asbestos-Related Disease Research and Treatment Centers.* - For each fiscal year during which the Network is operated and maintained, the Secretary of Health shall select for inclusion in the Network not less than ten (10) nonprofit

hospitals, universities, or medical or research institutions incorporated or organized in the Philippines that, as determined by the Secretary of Health, have exemplary experience and qualifications in research and treatment of asbestos-related diseases; access to an appropriate population of patients with asbestos-related diseases; and are geographically distributed throughout the Philippines, with special consideration given to areas of high incidence of asbestos-related diseases.

(C) *Requirements.* - Each center selected under paragraph B above shall be chosen by the Secretary of Health after competitive peer review; the conduct of laboratory and clinical research, including clinical trials, relating to mechanisms for effective therapeutic treatment of asbestos-related diseases; early detection and prevention of asbestos-related diseases; palliation of asbestos-related disease symptoms; and pain management with respect to asbestos-related diseases; offer to asbestos-related disease patients travel and lodging assistance as necessary to accommodate the maximum number of patients practicable; and to serve a number of patients at the center sufficient to conduct a meaningful clinical trial; coordinate the research and treatment efforts of the center with other entities included in the Network.

A center selected by the Secretary of Health shall be included in the Network for the one(1) year period beginning on the date of selection of the center; or such longer period as the Secretary of Health determines to be appropriate.

(D) *Grants.* - The Secretary of Health shall provide to each center selected for inclusion in the Network for the fiscal year a financial grant to support the detection, prevention, treatment, and cure of asbestos-related diseases, with particular emphasis on malignant mesothelioma.

Section 11. *Inter-Agency Technical Advisory Council.*

(A) There is hereby created an Inter-Agency Technical Advisory Council attached to the Department of Health which shall be composed of the Secretary of Health or his or her representative as chairperson and the following officials or their duly authorized representatives as members:

- (1) Secretary of Labor and Employment;
- (2) Secretary of Environment and Natural Resources;
- (3) Secretary of Trade and Industry;
- (4) Secretary of Science and Technology;
- (5) Secretary of Finance;
- (6) Secretary of National Defense;
- (7) Secretary of Interior and Local Government;
- (8) Representative from Philippine Health Insurance Corporation (PHIC);
- (9) Representative from Employees' Compensation Commission (ECC);
- (10) Representative from the workers' organized sector; and
- (11) Representative from the employers' sector.

The representatives from the private sector shall be appointed by the President for a term of three (3) years.

(B) The Council shall have the following functions:

- (1) To assist the Department of Health in the formulation of the pertinent rules and regulations for the effective implementation of this act;
- (2) To assist the Department of Health in the preparation and conduct of the research and reporting, the public education and safety program and other requirements that fall within the coverage of this act; and
- (3) To perform such other functions as the Secretary of Health may, from time to time, require.

Section 12. *Issuance of Cease and Desist Orders by the Department.* - Immediately upon receipt of a report of violation of this Act, whether written or verbal, the Department of Health shall conduct an *ex parte* examination of the evidence presented. If a *prima facie* case is established, a Cease and Desist Order (CDO) shall be issued by the Secretary of Health or the DOH Regional Director, as the case may be.

Non-compliance with the CDO shall be ground for the imposition of administrative sanctions. The issuance of the CDO shall be without prejudice to the imposition of the appropriate administrative sanction, if so warranted, after due notice and hearing.

Section 13. Citizen Suits. - For purposes of enforcing the provisions of this Act or its implementing rules and regulations, any citizen may file an appropriate civil, criminal, or administrative action, including one for damages for any harm suffered as a result of a violation of any provision of this Act, in the proper courts against:

- (a) Any person who violates or fails to comply with the provisions of this Act or its implementing rules and regulations;
- (b) Any public officer who willfully or grossly neglects the performance of an act especially required as a duty by this Act or its implementing rules and regulations; or abuses his authority in the performance of his duty; or, in any manner, improperly performs his duties under this Act or its implementing rules and regulations: Provided, however, That no suit can be filed until after thirty (30) days from notice given to the concerned public officer and the alleged violator or violators, and no appropriate action has been taken thereon.

The court shall exempt such action from the payment of filing fees, except fees for actions not capable of pecuniary estimation, and shall, likewise, upon prima facie showing of the non-enforcement or violation complained of, exempt the plaintiff from the filing of an injunction bond for the issuance of a preliminary injunction.

Within thirty (30) days, the court shall make a determination if the complaint filed herein is malicious and baseless and shall accordingly dismiss the action and award attorney's fees and damages, as it may seem appropriate.

Section 14. Independence of action. - The filing of an administrative suit against any person or entity under the preceding section does not preclude the right of any other person to file any criminal or civil action. Such civil and/or criminal action shall proceed independently.

Section 15. Penalties. - Any violation of the provisions of this Act shall be punished with a fine of not less than One Hundred Thousand Pesos (P100,000.00) nor more than One Million Pesos (P1,000,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court. In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence.

If the violation is committed by a corporation, trust, firm, partnership, association or any other entity, the penalty shall be imposed upon the officer or officers directly responsible therefore.

Section 16. Appropriations. - Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the Department of Health. Thereafter, the fund necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

Section 17. Repealing Clause. - Any law, presidential decree or issuance, executive order, presidential proclamation, rule and regulation or parts thereof inconsistent with the provisions of this Act, are hereby repealed, modified, or amended accordingly.

Section 18. Separability Clause. - If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

Section 19. Effectivity. - This Act shall take effect fifteen (15) days after its publication in at least two newspapers of general circulation.

Approved,