


October 12, 1967

Mr. W. E. Haines — Washington

J. A. Gallagher — Charlotte

H.R. 12913 - "Asbestos Workers' Health Protection Act".

I am submitting the following comments in regard to this bill:

1. It would seem that there would be more justification for a bill covering all industry or all industry involved in dusty trades than a bill singling out the asbestos industry. Why asbestos when there are other industries handling materials which could be detrimental to workers' health?

2. The U. S. Public Health Service is presently not organized to handle the inspection requirements this bill establishes. The cost of developing the required procedures by the U. S. Public Health Department would be great. At the same time, many states already have agencies which inspect and regulate dusty trades, for instance, North Carolina. On this basis, why not let the states continue their responsibility in these areas for efficiency and economy?

3. Section 4-B requires the inspector to present a report before leaving the premises following an inspection concerning the deficiencies in conditions or practices. This is not practical. Normally dust measuring techniques require weeks and sometimes months to interpret and develop results, which would not permit conformance to this requirement.

4. I am not sure I understand the proposed method of appeal and subsequent penalties in the event the appeal is denied. I would strongly oppose a situation whereby we would be penalized in the event of a denied appeal for violations occurring during the course of appeal.

Generally, I believe it may be premature to consider legislation in regard to this subject since many investigations are underway to develop more extensive knowledge in regard to asbestos dust effects on health. While many assertions have been made, it remains to be proven just how much, if any, asbestos particles contribute to the diseases now being attributed to this material. I would think the investigation which is well established in the U. S. Public Health Department should be given an opportunity to fully explore the matter before legislation, which may be unneeded or off-center, is developed. It is my understanding, the U. S. Public Health Service has reviewed this proposed bill and their comments follow much of the pattern stated above.

J. A. Gallagher

JAG:dmw

cc: Mr. E. M. Nesvig

PLAINTIFF'S EXHIBIT S-55A

90TH CONGRESS
1ST SESSION

# H. R. 12913

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 1967

Mr. PATTEN introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

# A BILL

To promote the safety of workers engaged in making asbestos products for shipment in commerce, and for other purposes.

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Asbestos Workers' Health Protection Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "commerce" means commerce (A) between any State and any point outside thereof or (B) be-

tween points in the same State, but through any point outside thereof.

(3) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

(4) The term "asbestos product" means asbestos or any article made in whole or in part of asbestos.

(5) The term "person" means an individual, partnership, corporation, association, or other form of business enterprise.

RULES AND REGULATIONS

SEC. 3. (a) Not later than one year after the date of enactment of this Act, the Secretary shall prescribe and publish in the Federal Register rules and regulations for the protection of the health of persons handling asbestos or asbestos products or engaged in the manufacturing of such products, including (1) rules and regulations for the labeling of asbestos products so as to fully inform handlers and ultimate users of such products of the health hazards of such products and any measures which should be taken with respect thereto and (2) standards establishing limits on the number of particles of asbestos which may be in suspension in the air breathed by humans.

(b) In addition to the rules and regulations prescribed pursuant to subsection (a) of this section, the Secretary is authorized to prescribe such rules and regulations, including

rules and regulations for the making and maintenance of records, as may be necessary for the administration and enforcement of this Act.

INSPECTION

SEC. 4. (a) For purposes of enforcing this Act, officers and employees of the Department of Health, Education, and Welfare designated by the Secretary, upon presenting appropriate credentials and a written notice to the person owning, operating, or in charge of any place where any asbestos or asbestos product is held for introduction into commerce or after such introduction are authorized (1) to enter such place at reasonable times, and to inspect such place and carry out such tests as may be necessary to determine conformity with standards prescribed pursuant to section 3 of this Act. Such inspection and testing shall in all cases be carried out at reasonable times, within reasonable limits, and in a reasonable manner.

(b) Upon completion of any inspection carried out pursuant to subsection (a), the officer or employee making it, before leaving the premises shall give to the person to whom notice was presented pursuant to such subsection a report in writing setting forth any conditions or practices which are in violation of standards, rules, or regulations prescribed pursuant to this Act. A copy of such report shall be sent promptly to the Secretary.

PROHIBITED ACTS

SEC. 5. No person engaged in the business of refining or selling asbestos, or of manufacturing or selling asbestos products, for introduction into commerce shall violate any rule or regulation prescribed by the Secretary pursuant to section 3 of this Act.

ENFORCEMENT

SEC. 6. (a) If the Secretary, after reasonable notice and opportunity for a hearing, determines that any person is violating section 5 of this Act, he shall issue an order requiring such person to cease and desist from continuing such violation within such time as may be specified in such order, but in no event less than thirty days from receipt of notice of such order by such person.

(b) Any person required by an order of the Secretary to cease and desist from violation of any such standards, rules, or regulations may obtain judicial review of such order by filing a petition for review, within sixty days after service of such order, in the United States court of appeals either for the circuit in which such person resides or has his principal place of business or for any circuit in which the violation is found to have occurred, or in the United States Court of Appeals for the District of Columbia Circuit. A copy of the petition shall forthwith be transmitted by the clerk of the court to the Secretary or to any officer designated by him

for that purpose and to the Attorney General, and thereupon the Secretary shall certify and file in the court through the Attorney General the record of the proceedings upon which the order is based, as provided in section 2112 of title 28, United States Code.

(c) Upon the filing of such petition, such court shall have jurisdiction of the proceeding (which jurisdiction shall upon the filing of the record be exclusive) and shall have power to affirm the order of the Secretary, or to set it aside in whole or in part, temporarily or permanently, and to enforce such order to the extent that it is affirmed, and to issue such orders pendente lite as in its judgment are necessary to prevent injury to the public. The commencement of proceedings under this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(d) No objection to the order of the Secretary shall be considered by the court unless such objection was urged before the Secretary or unless there were reasonable grounds for failure so to do. The findings of the Secretary as to the facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary for the taking of additional evidence in such manner and upon such terms and conditions as the court may deem proper.

in which event the Secretary may make new or modified findings and shall file such findings (which, if supported by substantial evidence on the record considered as a whole, shall be conclusive) and his recommendation, if any, for the modification of setting aside of his original order, with the return of such additional evidence.

(e) The judgment of the court affirming or setting aside, in whole or in part, any order under this subsection shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(f) (1) Any person who violates a cease and desist order of the Secretary after it has become final and while such order is in effect, shall forfeit and pay to the United States a civil penalty of $5,000 for each violation, which shall accrue to the United States and may be recovered in a civil suit in the name of the United States brought in the district where such person has his principal office or in any district in which he does business. Each separate violation of such an order or failure to file such a report shall be a separate offense, except that in the case of a violation through continuing failure to obey a final order of the Secretary each day of continuance of such failure shall be deemed a separate offense. The Secretary may, upon application therefor, remit or mitigate any forfeiture provided

for in this paragraph, and he shall have authority to determine the facts upon all such applications.

(2) It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of such forfeitures.

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