

Reforming the Toxic Substances Control Act

***How well do the Senate and House bills
fix America's 40-year-old chemical law?***

December 2015

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Main U.S. chemical safety legislation

- Toxic Substances Control Act of 1976 (TSCA)
 - Covers most chemicals used in industry and in commercial/consumer products
 - Excludes:
 - uses in drugs, cosmetics, food and food packaging regulated by FDA
 - uses in pesticides covered by EPA under FIFRA
 - Basic provisions have never been amended


Drivers for chemical policy reform



Chemicals are ubiquitous

- 10 trillion pounds produced per year in the U.S.
 - 90 pounds per person per day
- Used to make 96% of all materials and products
- 85,000 chemicals on Toxic Substances Control Act (TSCA) Inventory – not all in use today
- Chemical production:
 - 25x ↑ globally since '76
 - Projected to grow by more than 4x by 2050
- ↑ diversity of use in products, building materials

Science drivers: Connecting the dots

- Certain chronic diseases are on the rise
 - Certain chemicals are linked to those same chronic diseases
 - Many of those same chemicals are in us
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Diseases linked to chemical exposures

- Cancer
 - Learning and Developmental Disabilities
 - Parkinson's and Alzheimer's Disease
 - Reproductive Health and Fertility Problems
 - Asthma
 - Diabetes
 - Obesity
 - Immune disorders
 - Cardiovascular disease
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Why legislative reform?



TSCA: Problems with current paradigm

- Presumption of innocence: TSCA grandfathered 62,000 chemicals
- High hurdle to require testing
- Even higher hurdle to regulate
- Government must prove harm
 - Contrast to pesticides, drugs
- Excessive trade secret allowances

TSCA, the dog that didn't even bark



By the numbers:

- **62,000** chemicals grandfathered in when TSCA was passed in 1976
- Required testing on **<300** in 39 years
- **5** chemicals have been regulated in limited ways
- **24 years** since EPA last tried (and failed) to regulate a chemical: *asbestos*

Why now?



Drivers for TSCA reform

- State legislation
- Top priority of last 2 EPA Administrators
- Market demand, esp. from downstream users
- Retail regulation: Walmart, Target, CVS
- Major reform of others' policies:
 - European Union's REACH Regulation (2006)
 - Canadian Environmental Protection Act (1999)

Industry position shifts

“The public’s confidence in the federal chemical management system has been challenged.”

Cal Dooley, President, American Chemistry Council
Congressional testimony, February 26, 2009

“In the absence of reforms to TSCA we are seeing a plethora of State actions that are serving to create tremendous uncertainty in our markets.”

Linda Fisher, Chief Sustainability Officer, DuPont
Congressional testimony, March 9, 2010

TSCA reform bills

- Frank Lautenberg was key champion
- First bill: Kid-Safe Chemicals Act of 2005
- Bills in 6 successive Congresses
- No bipartisan support until May '13
- Lautenberg negotiated a bill with Sen. David Vitter
 - First bipartisan TSCA reform legislation
 - Introduced 11 days before his death
 - Gained 26 cosponsors (13 D, 13 R)

The Lautenberg Act (S. 697)

The Frank R. Lautenberg Chemical Safety for the 21st Century Act

- Introduced on March 10, 2015
- Sens. Tom Udall, David Vitter main sponsors
- Heavily renegotiated version of 2013 Lautenberg-Vitter bill
- Passed Senate EPW Cmte on April 28 on a bipartisan 15-5 vote
- Now has 25 D+35 R very diverse cosponsors

Basic framework of Lautenberg Act

- Identify all chemicals in active commerce
- Prioritize them as high- or low-priority
- Low-priority chemicals are set aside until and unless new information emerges
- High-priority chemicals must undergo:
 - safety assessments
 - safety determinations as to whether they meet safety standard
- If a chemical fails the standard, EPA must issue a regulation banning or restricting the chemical

The TSCA Modernization Act (H.R. 2576)

- First draft issued on April 7, 2015
- Bill formally introduced May 26
- Reps. Shimkus, Pallone main sponsors
- Passed House E&C Cmte on June 3
- Passed full House on June 24 on a 398-1 vote on suspension
- Far more skeletal reform of TSCA

How S 697 & HR 2576 Address Problems in TSCA

Problem in TSCA	Senate Bill	House Bill
<p>Paralyzing Regulatory Hurdle, Failure to Protect Most Vulnerable</p> <p>Requires onerous cost-benefit analysis that has left dangerous chemicals unregulated.</p> <p>No requirement to consider elevated risks to children, pregnant women, the elderly.</p>	<p>Health-Only Safety Standard that Protects Vulnerable Populations</p> <p>Prohibits EPA from considering costs in safety determinations.</p> <p>Expressly requires the protection of those most susceptible to harm from chemicals.</p>	<p>Health-only Safety Standard that Protects Vulnerable Populations</p> <p>Prohibits EPA from considering costs in risk evaluations.</p> <p>Precludes finding a chemical does not present unreasonable risk if any potentially exposed populations face such risk.</p>
<p>Chemicals are Presumed Innocent</p> <p>No requirement to review the safety of existing chemicals.</p>	<p>Mandate to Review All Chemicals</p> <p>Requires prioritization of all chemicals, safety determinations on all those not deemed low-priority.</p> <p>Limited pathway for industry-requested reviews.</p>	<p>Limited Mandate to Review Chemicals</p> <p>Limited process, evidentiary burden, to identify chemicals for reviews.</p> <p>Virtually unlimited pathway for industry-requested reviews.</p>

How S 697 & HR 2576 Address Problems in TSCA

Problem in TSCA	Senate Bill	House Bill
New Chemicals Lack Adequate Safety Check New chemicals are allowed onto market without affirmative EPA safety decision.	Safety Finding for New Chemicals Before Use New chemicals can enter the market only after an affirmative safety finding standard by EPA.	No Change Is Made to Status Quo Draft makes no changes to TSCA Section 5.
Weak Testing Powers Test rules take years. EPA must first show potential risk/high exposure, a Catch-22.	New Testing Authority EPA can order testing, with justification. Catch-22 is eliminated.	Some New Testing Authority EPA can order testing. Catch-22 NOT eliminated except for tests needed to do risk evaluations.
Insufficient Funding Fees only for new chems, \$2,500/co cap. Don't go to EPA.	Broad Dedicated Fees Fees cover all parts of program. Go directly to EPA.	Limited Fees Fees only for industry-requested chemicals. Go directly to EPA.


How S 697 & HR 2576 Address Problems in TSCA

Problem in TSCA	Senate Bill	House Bill
<p>Excessive CBI Claims</p> <p>Companies can claim virtually any info CBI.</p> <p>Rare EPA reviews.</p> <p>Can't share with public, states, health providers.</p>	<p>Greater Transparency</p> <p>Upfront justification for most claims. EPA review of most claims, past and future.</p> <p>State must be given access, no prior notification.</p> <p>Health providers are given access, prior notification except in emergencies.</p>	<p>Partial Transparency</p> <p>Upfront justification for all new claims. No EPA review of past or future claims mandated.</p> <p>State may be given access, prior notification required.</p> <p>Health providers are given access, no prior notification required.</p>
<p>CBI Kept Indefinitely</p> <p>Claims have no time limits, and remain in place unless the EPA challenges them.</p>	<p>Time Limits, Reviews for Past and New Claims</p> <p>Claims expire after 10 years if not re-justified.</p> <p>EPA to review most past and new claims.</p>	<p>Time Limits Only for New Claims, No EPA Reviews</p> <p>Past claims don't expire, no EPA review.</p> <p>New claims subject to 10 years, but no EPA review.</p>

How S 697 & HR 2576 Address Problems in TSCA

Problem in TSCA	Senate Bill	House Bill
<p data-bbox="156 265 606 311">Limited preemption</p> <p data-bbox="156 358 664 665">EPA requirements on new or existing chemicals generally preempt states' existing or new requirements.</p> <p data-bbox="156 712 664 758">EPA may grant waivers.</p>	<p data-bbox="709 265 1103 311">More preemption</p> <p data-bbox="709 358 1186 601">Preemption after EPA final action limited to state <u>restrictions</u> (e.g., not disclosure).</p> <p data-bbox="709 648 1228 758">Preemption applies only to existing chemicals.</p> <p data-bbox="709 805 1147 1112">No <u>new</u> state restrictions on a chemical under EPA review except via a waiver.</p> <p data-bbox="709 1159 1108 1340">Higher bar for final waiver; state can challenge denial.</p>	<p data-bbox="1259 265 1653 311">More preemption</p> <p data-bbox="1259 358 1736 665">Preemption after EPA final action extends to any <u>requirements</u> “designed to protect against exposure.”</p> <p data-bbox="1259 712 1731 893">Preemption applies to new and existing chemicals.</p> <p data-bbox="1259 941 1756 1051">No early preemption of new requirements.</p> <p data-bbox="1259 1159 1736 1340">Lower bar for final waiver; but state can't challenge denial.</p>

Start of a paradigm shift

- Current: Unless there is evidence of harm, assume safety and don't look any further
 - Needed: Require affirmative evidence of safety to enter or remain on the market
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For more information

EDF's Chemicals Policy Webpage

www.edf.org/health/policy/chemicals-policy-reform

EDFHealth Blog

<http://blogs.edf.org/health/>

