

## **State Attorneys General**

### **A Communication from the Chief Legal Officers of the Following States:**

**Alabama \* Florida \* Kansas \* Louisiana  
\* Michigan \* North Dakota \* South Carolina \* South Dakota**

April 27, 2015

The Honorable James Inhofe  
Chair, Committee on Environment  
and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Barbara Boxer  
Ranking Member, Committee on  
Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510

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

Dear Chairman Inhofe, Ranking Member Boxer, and Senate Environment and Public  
Works Committee members:

On March 17, 2015, you received a letter from the Attorneys General of  
Alabama, Georgia, Louisiana, Michigan, North Dakota, South Carolina, and Utah in  
support of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S.697) (the  
“Act”). It is our understanding that the Senate Environment and Public Works  
Committee may be considering the bill at a markup that may be held on or around  
Tuesday, April 28, 2015. Accordingly, we are writing again to communicate our strong  
support of the Act and to urge its passage.

The Act, which is co-sponsored by seven Democrats and eight Republicans, will  
reform the Toxic Substances Control Act (“TSCA”) which was passed in 1976 and has  
not been substantively amended since that time. The TSCA is the primary law overseeing  
the safety of chemical products and providing EPA with authority to review and regulate  
chemicals. However, over time, the TSCA has failed to ensure chemical safety, resulting  
in fractured landscape of chemical regulation in the U.S. In fact, under the TSCA, EPA  
is unable to place proper health restrictions on even known carcinogens such as asbestos.  
S. 697 will make significant changes to the TSCA, giving EPA the tools it needs to  
ensure the safety of chemicals used in U.S. commerce and enhancing the protection of  
public health and the environment. S. 697 is the result of bi-partisan efforts of the late  
Senator Frank Lautenberg and Senator David Vitter, along with collaboration from  
stakeholders, and the Act has strong bi-partisan support.

S. 697 updates the current law and creates a national program in an effort to  
eliminate the piecemeal approach developed under the TSCA. Under the new law, there  
will be more regulatory certainty and predictability, both to the industry that

manufactures chemicals and to those that use and are exposed to chemicals. As the chief legal officers in the States, we are required to take the necessary actions to protect the health, safety, and welfare of the citizens as well as the natural resources and environment. There is real need to address and update the chemical safety in the U.S. and to create a balance between State and federal regulation. S. 697 strengthens the TSCA and advances our ability to protect our States.

Under S. 697, EPA will now, for the first time, subject all new and existing chemicals to a systematic review and require all chemicals in commerce, including those grandfathered under TSCA, undergo safety reviews based on hazard, exposure, and risk. This process establishes important milestones and sets aggressive, judicially enforceable deadlines for EPA decisions. EPA will create an initial list of at least 10 high priority and 10 low priority chemicals and designate at least 25 high priorities and 25 low priorities within five years. And once EPA takes final action on a chemical, a uniform federal standard is applied nationwide, creating increased regulatory certainty. Importantly, States will also retain the ability to address and restrict chemicals that have not undergone federal review.

For example, under this new Act, any State actions to prohibit or restrict a chemical substance, taken before January 1, 2015, and any state warning law in effect on August 31, 2003, will never be subject to preemption. Furthermore, S. 697 preserves the ability of States to regulate chemical substances that have not been designated as high priority substances or subjected to a safety assessment or determination. Importantly, it creates an explicit exception from preemption for State actions under authority of any other federal law, or under state law related to air or water quality, waste treatment or disposal, and for reporting and information collection requirements, and it does not limit State authority to regulate chemicals for reasons that do not directly relate to production, manufacturing, distribution, or use. Finally, in the event that a State has reason to regulate a chemical even after EPA has made an assessment or determination, S. 697 allows States to apply for a waiver of the preemptive effect of an EPA decision to address compelling local conditions, or when EPA's decision is unreasonably delayed.

S. 697 strengthens protections for the most vulnerable by placing greater emphasis on the effects of exposure to chemicals on infants, children, pregnant women, workers, and the elderly. For each safety evaluation, EPA must document and explain which susceptible populations were considered, why, and, where needed, how they will be protected. The modernized system that is created by S. 697 results in a chemical management program that incorporates a heightened safety standard and ensures that regulators, public health officials, manufacturers, consumers, and the public get information they need and deserve in a timely fashion.

S. 697 revises the restrictions on public dissemination of information about chemicals by setting reasonable limits on the ability of companies to make confidential business information ("CBI") claims. Currently, under the TSCA, approximately twenty percent of the chemicals on the inventory list are claimed to contain CBI and are shielded

from public view. By requiring increased disclosure of the identities of chemicals, EPA will be able to disclose CBI to physicians, first responders, environmental professionals, and public health officials during an emergency. The balance between providing the public critically needed information about chemical hazards, exposures and risks, and protecting intellectual property is a crucial aspect of the Act which is of significant importance to the States.

After operating under an outdated law passed nearly 40 years ago that hamstrings EPA's ability to properly regulate dangerous chemicals used in U.S. commerce, S. 697 offers a modern approach to establishing a consistent, national chemical regulatory program that still preserves the States' ability to address unique and pressing State concerns. The comprehensive reforms in S. 697 present an opportunity to improve the programs that protect the health of American families. We encourage Congress to quickly pass these important bi-partisan amendments to our nation's chemical safety laws.

Sincerely,



James D. "Buddy" Caldwell  
Attorney General of Louisiana



Luther Strange  
Attorney General of Alabama



Pam Bondi  
Attorney General of Florida



Derek Schmidt  
Attorney General of Kansas



Bill Schuette  
Attorney General of Michigan



Wayne Stenehjem  
Attorney General of North Dakota

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Handwritten signature of Marty J. Jackley in black ink.

Marty J. Jackley  
Attorney General of South Dakota

Handwritten signature of Alan Wilson in black ink.

Alan Wilson  
Attorney General of South Carolina