

State Attorneys General

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

**Alabama * Georgia * Louisiana * Michigan
North Dakota * South Carolina * Utah**

March 17, 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 10, 2015, Senators Tom Udall and David Vitter introduced the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S.697) (the “Act”). This 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. We strongly support and urge the passage of S. 697.

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 hamstringing 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,



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Attorney General of Louisiana



Wayne Stenehjem
Attorney General of North Dakota



Luther Strange
Attorney General of Alabama



Alan Wilson
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