



*Reforming*  
**THE TOXIC SUBSTANCES  
CONTROL ACT**

**REFORMING OUTDATED REGULATIONS.  
STRENGTHENING SAFETY.  
SUPPORTING AMERICAN JOB CREATION.  
PROTECTING THE ENVIRONMENT.**



*U.S. Senate Environment and Public Works Committee*



# Why modernizing TSCA, a broken and outdated environmental law, can't wait.

## What is TSCA?

TSCA stands for the Toxic Substances Control Act, a law enacted in 1976 to regulate chemical substances and mixtures in commerce. The law was created to provide the Environmental Protection Agency (EPA) the authority to require reporting, record keeping, and testing of chemicals, as well as to restrict the production, importation, use, and disposal of substances that EPA determined pose a risk to health or the environment.

## Why is TSCA important?

More than 96 percent of all manufactured goods are directly touched by chemistry. TSCA is designed to regulate chemical substances that are being used to make millions of everyday products and materials, items such as automobiles, carpet, and household cleaners. As a law, TSCA has a wide-reaching and significant impact on the health of Americans, our environment, and our national economy.

## Why does TSCA need updating?

TSCA is the only major environmental law that has not yet been significantly updated since its enactment. TSCA became law in 1976 under President Gerald Ford. In the decades since, it is clear that TSCA has not operated as originally intended and has largely been viewed as a failure despite its good intentions.

In the past 40 years, EPA has only been able to effectively require testing of a few hundred of the chemicals in use. The agency has also encountered significant barriers in attempting to restrict or ban certain chemicals or uses. The most cited example of EPA's inability to implement TSCA was its unsuccessful effort in the 1980's to restrict the chemical substance asbestos. EPA's ban was overturned in court in 1991, and since then, EPA has not succeeded in using the law to regulate any existing chemicals.

## What's the solution?

In the Senate, the bipartisan **Frank R. Lautenberg Chemical Safety for the 21st Century Act** was introduced as S.697 on March 20, 2015, by Sens. Tom Udall (D-N.M.) and David Vitter (R-La.). It was passed out of the Senate Environment and Public Works Committee by a strong bipartisan vote of 15-5 on April 28, 2015. It is cosponsored by 61 members of the U.S. Senate made up of 35 Republicans and 26 Democrats that represent a total of 38 states. Since its introduction, the legislation has garnered the strong support of a wide range of stakeholders from the business, environmental, labor, and public health communities. Senate support for TSCA reform culminated in the passage of legislation by voice vote on Dec. 17, 2015.

The House introduced H.R. 2576, the TSCA Modernization Act on June 23, 2015. The Energy and Commerce Committee swiftly acted on the bill, and the legislation was passed by a near unanimous vote on June 23, 2015.

Together the two chambers came to the final, comprehensive solution to modernize TSCA that will achieve a more predictable and uniform federal regulatory program and will protect Americans' health and our environment while also supporting our economy and creating new job opportunities here at home.

# FRANK R. LAUTENBERG CHEMICAL SAFETY FOR THE 21ST CENTURY ACT



- **Subjects all new and existing chemicals to an EPA review.**
  - All chemicals in commerce will be reviewed for safety through a risk-based process.
- **Strengthens safety.**
  - EPA must conduct an extensive risk evaluation on any chemical deemed a “high-priority” using a health-based risk evaluation. These assessments are required to be based on sound and credible science through a transparent process and consider risk to potentially exposed or susceptible subpopulations identified by EPA. Should EPA find a chemical or particular use of a chemical poses significant risk, the agency must regulate it to protect against the risk to the general population and relevant subpopulations.
- **Requires EPA to focus on the highest priorities.**
  - EPA will establish a transparent, risk-based prioritization process to identify high and low priority chemicals for risk evaluations. It must increase the number of chemicals undergoing assessments over time.
  - EPA must use specific criteria to prioritize substances.
  - Manufacturers may request that EPA conduct a risk evaluation of a chemical subject to appropriate limitations if the manufacturer agrees to cover the costs (100 percent in most cases; 50 percent for certain chemicals).
- **Strengthens transparency and the quality of science used in EPA decisions.**
  - Throughout the safety review process, EPA must make its work available to the public and Congress. The agency must use the best-available science and based on the weight of the scientific evidence.
- **Expands EPA’s ability to require additional health & safety testing of chemicals, reduces unnecessary animal testing.**
  - Allows EPA to require testing without the current law “catch-22” that forced it to show a potential risk prior to initiating new testing.
  - Authorizes, subject to appropriate limits, EPA to require testing via orders in situations where the information is needed for EPA to prioritize chemicals or conduct chemical reviews.
- **Provides EPA a full range of regulatory options to address the risks of substances that are found to present an unreasonable risk.**
  - EPA will be required to restrict the use of any chemical substance that the agency finds to present an unreasonable risk unless the chemical meets specified criteria for a critical use exemption, like those essential to national defense. Any regulatory proposal must consider and make public its costs and benefits before any final regulation can be put into place.
  - For chemicals that present an unreasonable risk, EPA has multiple options, including imposing warning requirements, restrictions on specific uses, and chemical phase outs or bans.
  - Compliance with all rules must be as soon as practicable but generally within five years of being made final.
- **Sets aggressive and attainable deadlines.**
  - EPA must meet strict deadlines for action to ensure that regulators, public health officials, industry, and the public get information and decisions in a timely fashion.
- **Creates a more uniform regulatory system to ensure interstate commerce is not unduly burdened, while retaining a significant role for states in ensuring chemical safety.**
  - EPA’s final decisions will preempt all existing and future state laws that restrict chemicals or are in conflict with EPA action in order to create uniform regulations for the regulated community across the country, as well as ensure adequate and equal protection for all American families. Preemption of state restrictions, while robust, will be appropriately limited to the scope of EPA risk evaluations.
  - Any state prohibition or restriction of a chemical enacted before April 22, 2016, and any other state law enacted before August 31, 2003, will not be preempted.
  - New state chemical restrictions will not be able to be enacted while EPA conducts risk evaluations of a high-priority chemical without the state first obtaining a waiver from EPA. States will be free to continue to enforce existing state restrictions applicable to high-priority chemicals during EPA review.
  - States will be able to apply for waivers from the “pause” to finalize new state restrictions during EPA risk evaluations and from preemption by final EPA decisions.
  - State reporting, monitoring and other information requirements and requirements imposed under state laws are not preempted.
- **Protects substantiated Confidential Business Information (CBI) while increasing access to CBI by states and health professionals, subject to confidentiality agreements.**
  - The legislation promotes additional transparency by requiring up-front substantiation of claims to protect confidential commercial information while still ensuring protections for vital proprietary information.
  - Provides for CBI claims to expire after 10 years unless resubstantiated.
  - EPA will be required to enhance access to CBI for states, medical professionals, and first responders.
- **Provides EPA with resources to fund a workable national chemical management program.**
- **Protects small businesses.**
  - TSCA reduces fees for small businesses and ensures that reporting and other obligations don’t negatively impact small businesses.

# QUESTION & ANSWER ON TSCA REFORM

*Reforming chemical regulation. Strengthening safety. Supporting American job creation.*

## **QUESTION: Will states still be able to impose their own laws or regulations on chemicals?**

**ANSWER:** The *Frank R. Lautenberg Chemical Safety for the 21st Century Act* will create a strong and uniform approach to the regulation of chemicals that will not impede the free flow of interstate commerce and will protect American families regardless of which state they live in. TSCA reform also recognizes that state governments have an important role to play and that some states have already taken many steps to protect their citizens from the unsafe use of chemicals.

- Any state law, rule or restriction on a chemical in place before April 22, 2016, and any state law regarding chemicals enacted before August 31, 2003, will not be preempted by enactment of TSCA reform.
- EPA's final decisions regarding the safety or regulation of a chemical will preempt existing and future state regulations that conflict with EPA's action. EPA decisions will only preempt state restrictions to the extent they are addressed in the EPA risk evaluation of a chemical. Therefore, if a state has imposed a restriction on the same chemical for a use or risk that is not covered under the scope of EPA's review, it will not be preempted.
- States must "pause" from imposing new restrictions on a chemical for a specified time frame while EPA conducts a safety assessment, except where the State obtains a waiver.
- States will be able to apply for waivers from the "pause" on new state restrictions during EPA safety assessments and from preemption by final EPA decisions.
- State reporting, monitoring and other information requirements and requirements imposed under state laws are not preempted.

## **QUESTION: How will TSCA reform strengthen oversight of chemicals used in millions of everyday products?**

**ANSWER:** TSCA reform will make oversight of chemicals stronger and more timely while removing obstacles in current law that have made it difficult for EPA to act when there are concerns about specific chemicals by:

- Requiring the first-ever systematic review of all chemicals in commerce. Current law grandfathered thousands of chemicals already on the market when TSCA was enacted, and the vast majority of them have not been reviewed for safety.
- Making it easier for EPA to request additional testing or safety data from manufacturers.
- Under current law EPA must consider costs when determining whether a chemical is safe, a factor that should be irrelevant to the question of safety. Instead, TSCA reform requires EPA to consider costs and benefits only in applying risk management measures, after a risk evaluation is complete.
- Ensuring EPA makes an affirmative finding of safety of new chemicals before they come to market.
- Setting hard deadlines for EPA action. Current law does not hold EPA to deadlines, contributing to lengthy delays and years of inaction.
- Strengthening protections for the most vulnerable, including infants, children, pregnant women, workers and the elderly. Current law does not mandate that EPA consider exposures to or protect against risks from these vulnerable groups.

## **QUESTION: Will EPA have enough resources to carry out stronger chemical regulation?**

**ANSWER:** TSCA reform allows EPA to collect up to \$25 million in fees each year to help defray the costs of chemical regulation on top of annual congressional appropriations. TSCA reform mandates that congressional appropriations cannot fall below the amount provided in 2014 to ensure that user fees will be additive to, not a replacement, for congressional appropriations. These user fees can be used for any number of activities to help better implement the law, including prioritizing existing chemicals and conducting and completing safety assessments and determinations. Fees can be adjusted over time to ensure they are sufficient to defray 25 percent of relevant EPA costs.

## **QUESTION: Will TSCA reform address asbestos?**

**ANSWER:** TSCA reform takes a clear "worst-first" approach. The bill gives EPA the authority to immediately begin a risk evaluation of asbestos or any other chemicals it designates as a high priority. Asbestos would clearly meet the criteria EPA is to use to identify such chemicals. Furthermore, TSCA reform removes the two procedural hurdles in current law that prevented EPA from regulating asbestos in the past: 1) the requirement that costs be considered when determining if a chemical is safe, and 2) the requirement that EPA adopt the least burdensome regulatory requirement. Under the new law, EPA will consider costs only in relation to deciding among necessary risk management measures, after a risk evaluation is complete.

# A CALL FOR TSCA REFORM

*Reforming chemical regulation. Strengthening safety. Supporting American job creation.*

## EXXON MOBILE IN ROLL CALL OP/ED: BIPARTISAN EFFORTS AT JUST THE RIGHT TIME

*"...[T]he future successes of the shale revolution and America's manufacturing renaissance are not forgone conclusions. We need policies equal to this historic opportunity. The good news is that the sector may be getting some timely help from a rare instance of Washington bipartisanship... Democrats and Republicans in Congress have come together in an effort to modernize the Toxic Substances Controls Act (TSCA), the outdated regulations affecting the chemical industry. The proposed reforms will help bring that 1970s legislation into the 21st century. It's taken years of bipartisan work and negotiation, but the changes are just the comprehensive overhaul we need."*

## NEW YORK TIMES COLUMNIST JOE NOCERA: THE CASE FOR COMPROMISE

*"Senator Tom Udall, another Democrat, picked up where Lautenberg left off, and over the next two-plus years, he and Vitter continued to improve the bill while also making compromises to gain additional Senate support. In just the last week, the bipartisan bill, which the Senate is expected to vote on soon, has gained enough co-sponsors to be filibuster-proof. In this era of polarized politics, it is something of a miracle..."*

## WASHINGTON POST EDITORIAL: TIME FOR OVERSIGHT OF DANGEROUS CHEMICALS

*"The Senate's version isn't some giveaway to industry; among other things, it allows states to apply for easily obtainable waivers from the federal government that would allow them to continue regulating even while the EPA does its work. Moreover, the Senate's version has several valuable provisions that the House's doesn't, including one that raises money from industry fees to pay for chemical evaluations and another tasking EPA to prioritize its reviews."*

## MARCH OF DIMES DR. MCCABE IN CNN OP/ED: HOW SCARY ARE THE CHEMICALS AROUND YOU?

*"In recent decades, the presence of chemicals in household products, consumer goods, building materials, furnishings, transportation and even sporting goods has increased dramatically. That means that the average individual, whether adult or child, is coming into contact with hundreds of chemicals throughout each day..."*

*"We have a long way to go in catching up on 40 years of inaction, and we cannot afford any further delay. Congress should pass TSCA reform speedily, and President Barack Obama should sign it into law, so that scientists, manufacturers and the EPA can protect the public health under a sensible, meaningful chemicals regulation law."*

## BLOOMBERG EDITORIAL: IS YOUR SOFA TOXIC?

*"If a chemical is proved to be dangerous to you or your children, protection from it shouldn't depend on what state you live in. Meanwhile, manufacturers are left trying to follow sometimes contradictory regulations. A better fix is to update federal law to give the EPA the authority and resources it needs to investigate -- and when necessary, restrict or ban -- chemicals used in commercial and industrial products. Bipartisan legislation in Congress would move in this direction by making it easier for the EPA to impose restrictions on chemicals it deems unsafe and requiring the agency to review at least 25 chemicals every five years."*

## PHYSICIANS COMMITTEE FOR RESPONSIBLE MEDICINE IN THE HILL OP/ED: REFORM PROTECTS HEALTH

*"Six million dollars and three years. That's what it takes for the Environmental Protection Agency to test the safety of just one chemical on animals—and there are tens of thousands of chemicals waiting to be tested. The Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697) is the only bill under consideration by Congress that will make that process faster and cheaper by requiring modern testing methods that better protect public health."*

## MAT BRAINERD, MEMBER OF NATIONAL ASSN. OF CHEMICAL DISTRIBUTORS, TULSA WORLD OP/ED

*"When I became the president of Brainerd Chemical in 1979, the federal law was still in its infancy. Over the last 30-plus years, the role of chemicals in our daily lives has grown exponentially. Chemicals are used in virtually every household product and are essential to maintaining our society's advancements in health care and public safety. Unfortunately, the government's ability to review those chemicals has not kept up...Fortunately, Inhofe has worked tirelessly to build support for the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Once passed, the greatest accomplishment of the Lautenberg Act will be its update to the rules for assessing and regulating chemical substances, ensuring that scientists have the appropriate tools necessary to make certain the safety of everyday products used by Oklahoma families."*