



ORAL STATEMENT OF  
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BEFORE

THE U.S. SENATE  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

AT A HEARING ON

S. 697  
THE FRANK R. LAUTENBERG  
CHEMICAL SAFETY FOR THE 21<sup>ST</sup> CENTURY ACT

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Thank you, Chairman Inhofe, Ranking Member Boxer and other Members of the Committee: EDF has been working to reform the badly broken and outdated TSCA for 20 years, and I have for the past 15 years. That is why EDF supports the Lautenberg Act as a solid compromise that fixes the biggest problems with our current law, is health-protective – and has the strong bipartisan support necessary to become law.

This legislation did not suddenly arise in this Congress; it is the culmination of a decade of legislative effort, most of it led by the late Senator Frank Lautenberg. He had the courage to recognize that reform would never happen without opening up a bipartisan path, and worked with Senator Vitter to introduce the first bipartisan reform bill in 2013. Since then, Senator Udall has led negotiations with Senator Vitter that have steadily and significantly strengthened the bill's health protections. Both have worked tirelessly to listen to and incorporate input from other Members and hundreds of stakeholders.

The need for reform is urgent: TSCA's core provisions haven't been updated for almost 40 years. Americans are exposed to thousands of chemicals every day, and only a small fraction have ever been adequately reviewed for safety. EPA can't regulate even known dangers such as lead, formaldehyde and asbestos.

The law hasn't kept pace with science, which increasingly links common chemicals to cancer, infertility, diabetes and Parkinson's and other illnesses. Pregnant woman, infants, and children are especially vulnerable.

I've spent much of my professional career pressing EPA to act under this flawed law. And I've been on the opposite side of the table from the chemical industry on nearly every issue.

But rare political circumstances have opened a narrow window to pass meaningful reform. This is because the industry finally realizes that a stronger federal system is necessary to restore Americans' confidence in the safety of chemicals.

EDF believes that Congress now has the best chance in a generation to bring TSCA into the 21st century. Let me mention just a few of the good things the Lautenberg Act does:

- It mandates safety reviews for all chemicals in use and for new chemicals before they can enter the market.
- It replaces TSCA's burdensome cost-benefit safety standard—which prevented EPA from banning asbestos—with a pure, health-based safety standard.
- It explicitly requires protection of vulnerable populations like infants and pregnant women.
- It enhances EPA authority to require testing of new and existing chemicals.
- It makes more information about chemicals available, by limiting companies' ability to claim information as confidential.

None of these provisions is perfect from our perspective – indeed, most of them clearly represent compromises. However, taken both individually and collectively, they are much more health-protective than current law.

Let me briefly address the most contentious issue in this debate: preemption. Striking the right balance has proven to be both exceedingly difficult and critical to garnering the bipartisan support needed to pass a law. The bill is more preemptive than current TSCA, but far narrower than the original 2013 bill. Here's what it does:

- All state actions taken on all chemicals before 2015 are grandfathered in and never preempted regardless of subsequent EPA action.
- State actions taken after 2015 on a chemical remain in effect until and unless EPA lists that same chemical as a high priority, and takes final action to address the same uses and the same health and environmental concerns.
- Low-priority designations no longer preempt State actions.
- Once EPA initiates and sets the scope of an assessment of a high-priority chemical, a state cannot take a *new* action to restrict that chemical.

- However, existing state actions not grandfathered in remain in effect until EPA completes its safety assessment and determination and any required regulation.
- Even after EPA takes final action on a chemical, federal preemption is limited:
  - Only states' *restrictions* on chemicals are pre-empted; other types of requirements for reporting, assessment, monitoring, and the like are never preempted.
  - Only state restrictions on uses and health or environmental concerns that *fall within the scope* of EPA's review of a chemical are preempted; states can still regulate that chemical for other uses and to address other concerns.

It should be noted that the current patchwork of state laws and regulations covers only a small number of chemicals and reaches only a fraction of the American public. While nearly 200 actions restricting chemicals have been taken by states, those actions have restricted only about a dozen chemicals or chemical categories.

Let me conclude with this: The failures of TSCA represent a serious and growing public health calamity. Congress must act now; American families can't afford to have the best opportunity ever to reform this broken law squandered.

EDF looks forward to working with this Committee and other stakeholders to move this bipartisan legislation forward and ensure the strongest possible bill becomes law.