

BlueGreen Alliance Policy on the Toxic Substances Control Act (TSCA)

The BlueGreen Alliance, a partnership of U.S. labor and environmental groups representing nearly 16 million members and supporters building a cleaner, fairer and more competitive American economy, has worked for many years to support reform of our nation’s outdated chemical policies. While the Frank R. Lautenberg Chemical Safety for the 21st Century Act, S. 697, aims to provide this reform and we applaud this latest effort at finding a bi-partisan solution to the antiquated and health-damaging current federal law regulating chemicals—the Toxic Substances Control Act of 1976 (TSCA)—we do not support S. 697 because this new legislation will not protect workers, families and children from toxic chemicals.

We do recognize that S.697 features several important improvements to current law:

- The Environmental Protection Agency (EPA) would be able to determine the safety of a chemical based on health criteria;
- The safety standard used by EPA must consider vulnerable populations and workers are included in that definition of vulnerable populations;
- EPA is given more authority to collect information on chemicals;
- EPA would be required to set priorities and create time frames for chemical safety assessments.

However, despite this progress, we do not support S. 697 in its present form as it continues to have serious flaws that give rise to concern over its ability to adequately protect public health. Among the most important of these problems are:

EPA’s Authority to Act

- While S.697’s proposed safety standard sets out to ensure that EPA can determine if a chemical is unsafe without “taking into consideration cost or other non-risk factors” it then requires EPA to decide if “no unreasonable risk of harm to health or the environment will result from exposure to a chemical.” Unreasonable risk is not defined in the bill.
- S.697 does not give EPA the clear authority to restrict chemicals that do not meet the safety standard. Before EPA can issue any restriction, the agency must show the costs and benefits of any regulatory action, the costs and benefits of one or more alternative action and the costs and benefits of available alternatives to the chemical that has failed the safety test.

- S. 697 does not require EPA to expedite screening and risk management for those chemicals already known to be extremely hazardous—particularly those which are persistent and bio-accumulative.

Enforcement and Resourcing Issues

- The bill would ban states from co-enforcing restrictions put into place at the state level identical to federal restrictions. As a complementary, and often primary, mode for enforcement, the practical effect of this ban would be to remove “cops on the beat” thus undermining the ability of government to give real meaning to laws intended to protect public health and safety.
- The fees authorized under the bill would be capped at \$18 million per year, a relatively small amount given the enormous number of chemical substances requiring review.
- Five years after enactment, only 25 high-priority and 25 low-priority chemicals would be required to be moving through EPA assessment in a given year—a slow pace given the tens of thousands of chemicals to be evaluated.

Preemption of State and Local Action

- As written, the bill would preempt state or local restrictions on chemical substances at the point when the EPA has identified the scope of a proposed assessment of a given chemical. This preemption would occur years before a final agency action could be taken to restrict a chemical and protect the public. The preemption broadly includes state or local laws that limit a chemical’s “distribution in commerce” which may impact a jurisdiction’s green procurement policies.
- While state laws that only require reporting or monitoring or are designed to protect water or air quality are exempted from the pre-emption clauses in S.697, state public health protections are not afforded the same exemption. As a result, for example, state exposure limits (PELs) that are stronger than federal law will be pre-empted.
- Manufacturers can petition the EPA to force a high priority designation for a given chemical, seeking a decision that would preempt state action on the chemical. Though a company would be required to pay the costs of assessment, it would push a chemical toward a preemptive decision that might otherwise be subject to state regulation for many years.
- The bill would require that state or local actions to restrict a chemical substance be reported to the EPA, triggering the preemption process. This would have the practical effect of chilling state action aimed at restricting chemicals as states would have a disincentive to

expend resources seeking to enact regulations that would be likely be preempted in any event.

- The bill removes the right of judicial review for EPA decisions to designate a chemical as “low priority.” This would eliminate the ability of the public to police EPA decisions that a chemical is “likely to meet the safety standard” and, therefore, be placed on the low priority list.

Regulation of Chemicals in Products

- Having made a determination that a particular chemical is unsafe, the current bill would require additional burdensome steps be taken to demonstrate substantial exposure in order to regulate the use of that chemical in a given product in which it may be used, requiring a challengeable EPA finding in each instance. This would slow the EPA at precisely the point most important to consumers—ensuring the safety of products on the shelves.
- The bill would also reduce the EPA’s ability to ensure that products manufactured overseas do not contain restricted chemicals, again slowing the EPA at the point most visible and, thus, most important to American consumers while weakening the legal standard to hold importers accountable. This puts domestic manufacturers who comply with TSCA restrictions at a disadvantage.

“TSCA is a fundamentally flawed law that needs to be reformed to protect workers, families and children from toxic chemicals, but this is not the right way to do it,” said Charlotte Brody, Vice President of Health Initiatives for the BlueGreen Alliance.