

June 12, 2013

The Honorable Barbara Boxer
Chairman
Committee on Environment & Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable David Vitter
Ranking Member
Committee on Environment & Public Works
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Ranking Member Vitter:

The undersigned consumer safety and public interest organizations write to share our views regarding proposed requirements set forth in S. 1009, the Chemical Safety Improvement Act. Our organizations have supported robust efforts to update the Toxic Substances Control Act (TSCA) to close troublesome knowledge gaps about widely used chemicals and to promulgate rules accordingly, including improving testing and transparency requirements.

We also believe, however, that states play an important role in providing oversight and controls to protect their residents and environment from hazards posed by toxic chemicals. Consequently, we are deeply concerned about the bill's proposal to vastly expand the preemptive effect of Environmental Protection Agency (EPA) actions under TSCA.

The legislation would generally preempt state efforts to protect the public from harmful chemicals. The bill would preempt state restrictions relating to requirements for chemical testing information that is similar to information required under TSCA; restrictions on chemical manufacturing, processing, distribution, or use after an EPA safety determination; or any notification requirements on chemical use for which EPA has specified a significant new use and has required notification. In addition, the bill would bar states from creating new restrictions on the manufacture, processing, distribution, or use of a chemical that EPA has classified as high-priority or low-priority.

Under these terms, current and prospective state laws would be at risk, even in some areas in which the EPA has not acted. States would be unable to create or enforce restrictions after EPA had made a safety determination on a chemical. At the same time, the legislation would limit the EPA's ability to make safety determinations and add unnecessary hurdles

to current law that would make it more difficult for the EPA to grant waivers for states to act on their own. The broadly stated provisions may even be read to preempt state laws that require disclosure of information to consumers or require product warnings.

Blocking state standards for chemical safety oversight would eliminate the states as important actors in ensuring chemical safety, although they have traditionally played an important role. For example, in 2007, prior to promulgation of any federal safety standard on phthalates in toys, California enacted a statute prohibiting the manufacture, sale, or distribution of certain toys and child care articles if the products contained excessive concentrations of phthalates.

The bill's section entitled "effect on private remedies" is also of considerable concern. The provision allows federal agency decisions to unacceptably interfere with state-court rules of evidence and the traditional authority of state courts.

Likewise, the bill expressly preempts certain state-law "restrictions," a word that does not seem to include state common-law standards but is broad enough to invite unnecessary litigation over its preemptive scope. At the very least, the legislation should be modified to clarify that it is not intended to impede the state-law right of individuals to bring civil suit to seek redress under state tort law.

The preemption and "private remedies" provisions in the legislation should be replaced with language specifying that the act will have no effect on state common-law duties or remedies available under state law, including enforcement of laws by state attorneys general. In addition, we suggest that the bill provide a federal remedy for violations of TSCA, as proposed in S. 696.

We strongly support efforts to modernize TSCA so that it will more effectively reduce risks to health and the environment. Various requirements in S. 1009, however, may impede that endeavor. Thank you for considering our concerns.

Sincerely,

Alliance for Justice

Center for Justice and Democracy

National Consumers League

Public Citizen

U.S. Public Interest Research Group (PIRG)