

November 12, 2013

The Honorable John Shimkus, Chairman
Subcommittee on the Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Paul Tonko, Ranking Member
Subcommittee on the Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko:

The undersigned consumer and patient safety organizations are writing to express opposition to the well-intentioned but deeply flawed Chemical Safety Improvement Act (CSIA), S.1009. While some of our organizations have expressed concern about various parts of this legislation, this letter addresses one section in particular: Section 15, Preemption.

Our organizations support 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.

As important as it is to improve federal regulation, however, it is equally important to preserve states' critical 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.

This 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, states would be unable to create or enforce its own laws after EPA had ruled on a chemical's safety. 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.

States have played a critical role in ensuring chemical safety. 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 traditional authority of states to protect their own citizens from harmful toxic chemicals must be preserved.

Moreover, Section 15's provision entitled "effect on private remedies" allows federal agency decisions to unacceptably interfere with state-court rules of evidence and the traditional authority of state courts. The bill should expressly clarify that it is not intended to preempt individual civil suits under state tort law. Language should be added specifying that TSCA will have no effect on state common-law duties or remedies available under state law, including enforcement of laws by state attorneys general.

We strongly support efforts to modernize TSCA so that it will more effectively reduce risks to health and the environment. However, preemption of state law will impede that endeavor. Thank you for considering our concerns.

Sincerely,

Center for Justice & Democracy
Environmental Working Group
Essential Information
National Consumers League
Public Citizen