

# Alerts & Publications

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## Senate Approves Changes to Toxic Substances Control Act

December 18, 2015

After a long delay, and with uncommon bi-partisan support, the U.S. Senate passed legislation aimed at overhauling the 1976 Toxic Substances Control Act (“TSCA”), the main U.S. law regulating chemicals in the marketplace. “The Frank R. Lautenberg Chemical Safety for the 21st Century Act” (named after its now-deceased sponsor) is intended to strengthen TSCA, which has not been materially updated during its 39 year history. The original law created an inventory of 62,000 chemical substances already “in commerce” (between 1975 to 1978) and required pre-manufacture notification (and potentially toxicity testing) for new substances not on the inventory. The last inventory was published in 1982. The American Chemistry Counsel and public interest groups alike criticized the effectiveness of TSCA, primarily for its failure to provide meaningful evaluation of the safety of chemical substances on the original inventory. In contrast, the much more recent European Union counterpoint to TSCA, Registration, Evaluation, Authorization and Restriction of Chemicals (“REACH”), mandates safety testing of all chemical substances in commerce under a phase-in period now substantially completed. Additional information on REACH can be found here (“Changes Coming to the EU’s REACH Program” September 29, 2015), here (“The European Chemicals Agency Lists 38 Chemicals as Potential Substances of Very High Concern,” August 24, 2012) and here (“EU Adopts REACH Chemical Regulation Law,” July 28, 2008). Many state and local governments had begun to enact their own laws increasing scrutiny on chemical exposure and safety.

The centerpiece of the amendment is a broad new authority for the U.S.

Environmental Protection Agency (“EPA”) to obtain new information on safety of chemical substances, including those in commerce. The EPA’s authority can be exercised by rule, order and consent agreement. Federal agencies will be granted authority to investigate potential clusters of cancer. The amendments also expand focus on especially vulnerable populations, including the young, old, predisposed, pregnant women and chemical manufacturing worker populations.

The bill requires a safety review for all chemicals in commerce and requires that new chemicals pass a safety check before they can be sold.

Of concern to California and certain other states, the bill allows states to retain enacted state regulations and laws for chemicals, but temporarily stops new regulations while the EPA performs a risk assessment on the chemical.

The bill must now be reconciled with the U.S. House of Representatives-passed legislation on the same topic.

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