

Michigan Network for Children's Environmental Health
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Senator Carl Levin
United States Senate
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RE: Chemical Safety Improvement Act (S. 1009)

Dear Senator Levin,

The undersigned Michigan organizations have been working hard to protect children from the impacts of unregulated toxic chemicals widely used in commerce, including in the products we use every day.

We are encouraged by the bi-partisan breakthrough and welcome the increased national attention to this critical public health issue. This reflects what we've known for a while: there is broad bipartisan support in the general public for action on this issue. However, we have deep concerns with the current bill and cannot recommend support for the proposed legislation without substantive changes to assure the measure is truly protective of health.

We are moved by mounting scientific evidence linking chemical exposures to widespread diseases and conditions, including cancers, learning and developmental disabilities, birth defects, and asthma. These diseases are increasing in the general population and place a significant and costly burden on the nation. They also place a significant burden on the Great Lakes and the \$7 billion fisheries and \$16 billion tourism industries in the basin. That's why any legislation needs to protect children and the Great Lakes from the worst toxic hazards.

Especially hazardous are toxic chemicals that persist and bioaccumulate in the environment, otherwise known as PBTs. For example, a group of flame retardants called PBDEs are now ubiquitous in the soil, sediment and fish of the Great Lakes. These chemicals continue to pose an economic threat to our region and put public health at risk. Action to prevent additional contamination is prudent and cost-effective.

Innovation in new greener chemicals is necessary if we are to make a transition to safer products and materials. Michigan's chemical and agricultural industries would benefit from more support for green chemistry. However, the CSIA omits support for green chemistry research and development that would advance the development of innovative, green solutions.

Attached is a list of changes minimally necessary to ensure the bill adequately protects public health from toxic chemicals. We are particularly concerned that the bill doesn't protect vulnerable populations such as pregnant women, children and heavily impacted communities. We are also concerned that the bill would undermine our state's ability to protect its residents from toxic chemical threats.

We would like to sit down with your staff to talk through the changes needed to strengthen this bill and would bring a diverse group of organizations from Michigan.

Please let us know when you are available talk about this important issue. We look forward to working with your office to maintain the bi-partisan support for the bill, while seeking the necessary improvements to ensure adequate protection.

Sincerely,

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Needed Improvements

Protect the most vulnerable populations

Vulnerable populations, including developing babies and infants, pregnant women, and people who live in communities with significant existing chemical and non-chemical environmental exposures, must be protected. Currently, the bill does not explicitly require protection of these groups when making a safety determination for a chemical. The legislation requires the Environmental Protection Agency (EPA) to assess exposures of sub-populations to chemicals during the course of a safety assessment, but it does not explicitly require that safety determinations protect vulnerable populations from those exposures. This is a critical omission. The National Academy of Sciences and a large body of accepted science have shown that the developing child, pregnant women, and other groups are biologically more susceptible to harm from exposure to toxic chemicals. Some populations are also more vulnerable because of disproportionate exposure, as in the case of communities with a legacy of heavy chemical contamination. The legislation should define "vulnerable populations" and explicitly require that they be protected from aggregate exposure to high priority chemicals. In addition, the safety standard itself needs more clarification to ensure it is strictly health-based and protective.

Preserve State Authority

In the absence of federal action, States have been adopting policies to protect the public from chemicals of concern, which has led to important protections for the general public. The proposed bill would preempt States from taking action simply by EPA's announcing its intent to do a safety assessment. EPA would not be required to regulate or engage in a safety assessment of a chemical before preempting State action. This would eliminate one of the most important avenues for public health protection and a safety net when the federal government fails to act. The preemption provisions in the bill would largely prevent states from taking action to address both "high priority" and "low priority" chemicals, even in the absence of federal regulation to protect the public. The waiver provisions included to address these concerns are insufficient and will likely prove cumbersome in practice. Longstanding and important state protections, including California's Prop 65 law, could be at risk of being preempted. State and local authority to inform and protect the public should be explicitly preserved.

Expedite Action on the Worst Chemicals

One of the flaws of the existing law is that the standard for action is so high that few chemicals have been phased out of commerce, despite clear evidence of the potential for harm from certain chemical exposures. This is particularly critical in the Great Lakes region, where persistent, bioaccumulative and toxic chemicals have contaminated major areas of the basin and cost taxpayers and businesses hundreds of millions of dollars to remediate. The legislation attempts to separate the decision about the health and environmental risks of a chemical from the economic and social decisions over how best to manage those risks. (The co-mingling of these decisions was a key failure of the Toxic Substances Control Act.) However, the legislation partially undermines that critical reform by requiring extra red tape before the EPA can phase out a chemical (as compared to other risk management measures.) As the EPA will only want to pursue this option for the very worst chemicals, these provisions could have the perverse impact of *slowing down* action on those chemicals.

The failure of our current policy is exemplified by the fact that the EPA was prevented from banning asbestos - one of the world's most notorious substances - after a lengthy rulemaking and subsequent court battle. Congress should not repeat the drafting mistakes that led to that decision in this legislation.

Establish Deadlines and Timetables

The Chemical Safety Improvement Act generally lacks deadlines and timetables for EPA to complete a minimum number of assessments and safety determinations. The history of environmental laws shows us that they achieve their clearest results with such provisions. The sponsors and the committee should develop clear deadlines and minimum work requirements to ensure that EPA has the incentive and resources it needs to implement the new law.

Require Adequate Data to Prioritize Chemicals

A thorough review of all chemicals for safety is necessary to assure that the chemicals used in commerce will be safe. Currently, the bill does not establish a minimum set of screening criteria in order to decide whether a chemical is of high or low priority. As written, the bill allows a chemical to be deemed of low priority based only on available data, which unfortunately are inadequate for that purpose for most chemicals. Once a chemical is designated a low priority, the U.S. Environmental Protection Agency (EPA) would not be able to require additional safety data, and States would be prohibited from taking action on that chemical. The legislation should specify that a chemical should only be designated as low priority in the presence of information sufficient to demonstrate a low risk to human health and the environment.