

**Statement by Senator Bernie Sanders on J.R.H. 26:  
Relating to the Preemption Provisions of the Federal Toxic Substances Control Act**

Let me begin by thanking this committee for its leadership on regulating dangerous toxic chemicals. As a member of the U.S. Senate Environment and Public Works Committee, I strongly agree with you that reform of the Toxic Substances Control Act is long overdue, and that any reform should not prevent Vermont and other states from regulating toxic chemicals.

Soon after I was elected to the U.S. House in 1990, I received a call from a woman from Montpelier who described how she and her kids became ill after a brand new carpet was installed in her home. Initially, I thought, how can that be? We talked with scientists, doctors and environmental health experts, and we visited carpet factories in Georgia – and what we found is that the chemicals used in manufacturing some carpets were making factory workers sick, and they were making families sick. So as it turns out, one of the very first issues I worked on in Congress was off-gassing of volatile organic compounds and indoor air quality.

For me, it was eye opening to learn how prevalent toxic chemicals are, and how often they cause problems for people all across the country. To my mind, it is not unreasonable to expect that the building materials used in our homes, the toys our children play with, and the products we use every day should be safe and free from harmful chemicals.

As you know, the Toxic Substances Control Act – or TSCA – is the principle federal statute governing the use and safety of the thousands of chemicals that we are exposed to in our everyday lives. When Congress passed TSCA in 1976, it gave the EPA authority to regulate and even ban chemicals that present unreasonable risks to human health and the environment.

However, since the beginning, TSCA has been weak and ineffective. To begin with, it exempted more than 60,000 chemicals that were widely used before the law went into effect. It makes no sense to ignore whether tens of thousands of chemicals pose a risk to humans or the environment, just because they were used before Congress passed the law.

One of those chemicals is Perfluorooctanoic acid (PFOA). For almost seventy years, companies have used PFOA in a variety of manufacturing processes and have sold common household products – particularly Teflon cookware – that contain PFOA. And yet, there is evidence suggesting PFOA never breaks down in the environment, is found in the blood of the vast majority of Americans, and likely has caused cancer in lab animals.

In the forty years since Congress passed TSCA, EPA has placed meaningful restrictions on just six existing chemicals and four new chemicals. In fact, TSCA's provisions are so weak that the EPA could not even ban cancer-causing asbestos. It is clear we need *real* toxic chemical reform that protects public health and the environment.

And to my mind, a fundamental tenet of TSCA reform must be protecting the rights of states to pass and enforce laws they deem are necessary to protect their citizens from dangerous chemicals. Under current law, there is no preemption of state regulation of a chemical *as long as EPA has not specifically addressed that chemical under TSCA*. In other words, the existing federal law is somewhere in-between no preemption and complete preemption.

Not surprisingly, in the wake of such a weak federal law, thirty-three states – including Vermont – have passed laws restricting the use of chemicals such as BPA, lead, mercury, flame-retardants and other substances. Many of these state laws – including Vermont’s – take into account the health of vulnerable populations like pregnant women or children. To undo those state laws, or to prevent future state laws to protect public health, would be wrong.

There were two competing TSCA reform bills in the U.S. Senate, and they treated the issue of preemption very differently. I am a proud co-sponsor of S.725, the Toxic Chemical Protection Act, which would entirely eliminate TSCA preemption. I strongly support the approach of this bill, which says that federal chemical regulations should be a floor from which states are allowed to go above, rather than a ceiling they cannot exceed.

Unfortunately, the Senate leadership decided to move forward with a different bill – S.697, the Frank Lautenberg Chemical Safety Act – which had provisions that would rollback the authority of states to regulate toxic chemicals. Senator Gillibrand and I offered an amendment in committee to eliminate the preemption provision, but we could not garner enough support.

The bill the committee reported did incrementally improve the preemption provisions, and it was improved further on the Senate floor. The bill passed by the Senate would grandfather Vermont’s existing regulations, even if the EPA decides to study and regulate the same chemical. Moreover, the bill holds EPA to a shorter timeline to make final determinations on chemicals it studies, which means a shorter “pause” for states than was originally proposed. However, even with these improvements, the bill does not adequately protect states’ rights to regulate chemicals as they see fit.

I should say that while the Lautenberg bill was not the approach I preferred, it does vastly improve TSCA. The bill requires safety reviews for all chemicals already in commerce, and requires a safety finding for new chemicals *before* they enter the market. It uses a *health-based* safety standard instead of the current *cost-benefit* safety standard. It protects children, pregnant women and other vulnerable populations. And it improves transparency by limiting companies’ ability to say safety information is confidential, allowing states and others to more effectively evaluate a chemical’s safety. That said, the bill falls short on some issues in addition to preemption, such as weakening EPA’s regulation of imports that may contain hazardous substances.

As of today, the Senate has not yet named the members of the conference that will reconcile the Senate and House versions of the bill. I – along with Senator Leahy and Representative Welch – will be urging conferees to allow Vermont and other states to protect their citizens from toxic chemicals.

Thank you again for your efforts to protect Vermonters from unknowing exposure to harmful chemicals, and I look forward to working with you on this issue.